

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 6 - TRANSPORT AND
CUSTOMER SERVICE**

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

CORRECTED

At Jubilee Room, Parliament House, Sydney on Tuesday, 15 June 2021

The Committee met at 1:15 pm

PRESENT

Ms Abigail Boyd (Chair)

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Taylor Martin

The Hon. Daniel Mookhey

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The CHAIR: Welcome to the first hearing of the Portfolio Committee No. 6 – Transport and Customer Service inquiry into the acquisition of land in relation to major transport projects. Before we commence I acknowledge the Gadigal people who are the traditional custodians of this land. I pay respects to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. Today we will be hearing from a number of stakeholders, including the New South Wales Auditor-General, government representatives and a property developer. I thank everyone for making the time to give evidence to this important inquiry.

Before we commence I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they may make to the media or to others after they complete their evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions taken on notice are to be provided within 21 days. If witnesses wish to hand up documents they should do so through the Committee staff.

In regard to the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. For those with hearing difficulties who are present in the room today please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, please turn your mobile phones to silent for the duration of the hearing.

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PAUL ADDISON, Group Commercial Manager, Billbergia, affirmed and examined

RICK GRAF, Development Director, Billbergia, affirmed and examined

The CHAIR: I welcome our first witnesses. Would you like to start by making a short statement?

Mr GRAF: I have an opening address that will take just a few minutes. Thank you for inviting us to appear and share information about the acquisition and sale of 4-6 Grand Avenue, Camellia. As you may be aware, there has been media reporting on the acquisition and sale of this site, and much of what has been written and broadcast conveys an incorrect impression and omits relevant facts. Consequently, we welcome the opportunity to provide the facts of what actually took place. Firstly, a bit about us. Billbergia is a family-owned Australian property group, which has been operating for more than 33 years. We are a vertically integrated business across the full spectrum of the property lifecycle. Our mission is not to just build buildings; we create entire communities in large precincts with a healthy, sustainable lifestyle and vibrant areas for social interaction.

More than 25,000 people currently live in Billbergia communities and a further 25,000 people will move into our new communities over the next 15 years. We have a diverse property portfolio across high-quality residential, retail, industrial, commercial and hospitality in New South Wales and Queensland. These investments are located at Wentworth Point, Rhodes, Rhodes East, North Sydney, Lidcombe, West Ryde, Arncliffe, Camellia, Concord West, St Leonards and Brisbane. Billbergia specialises in urban renewal, transforming brownfield sites into sustainable, integrated communities, and delivering social and transport infrastructure. This includes the provision of privately funded, publicly accessible social infrastructure with access to transport, shopping, public open spaces and community facilities. As an example, we planned, funded and built the Bennelong Bridge—a public transport bridge that spans Homebush Bay between Rhodes and Wentworth Point—with ownership of the asset subsequently transferred to Government. We also fund the Baylink Shuttle bus service linking these communities to rail and ferry services.

Many of our major property projects have been recognised for excellence with State and national awards for their planning, design, construction and leadership in delivering integrated community precincts—more than 20 awards in the past seven years. In Camellia, for a decade and a half Billbergia has been a strategic long-term landowner. We currently hold multiple parcels of land totalling almost 20 hectares, not including the six hectares at 4-6 Grand Avenue now owned by Transport for NSW [TfNSW]. We intend to continue creating jobs and housing in Camellia for at least the next two decades. Our purchase of 4-6 Grand Avenue, Camellia, in 2015 was part of our ongoing long-term strategy for urban renewal of the precinct. In January 2015 we made a direct approach to its long-term owners, AkzoNobel, to acquire the land and to invest in new industrial buildings. We were informed months later, in March 2015, by CBRE, the agents, that they were running a registration of interest campaign on behalf of AkzoNobel to sell the site. Following a three-stage competitive public tender process, we were finally able to sign unconditional contracts to purchase the land eight months later, in November 2015.

At this point I would like to make two important points to this Committee. The first point is that at no stage in the 10 months we sought to purchase the land, and when Billbergia exchanged contracts for the purchase of the land in November 2015, were we aware that TfNSW was interested in the site for any purpose. The draft preferred network for the Parramatta Light Rail was not released for initial stakeholder consultation until 8 December 2015, when former Premier Mike Baird announced work would commence on a final business case and detailed planning. Significantly, his announcement did not include a detailed route or identify any proposed stops and there was no indication that TfNSW may have been interested in acquiring the site. Indeed, it was not until February 2017 that Premier Berejiklian unveiled the detailed route and announced the proposed locations for the 16 Parramatta Light Rail stops. This was two years after we took steps to acquire the land and eight months after TfNSW had purchased the site from us.

The second point I would like to make is that we were and remain a very reluctant seller. We had already spent money on environmental assessments and we had negotiated with Lion Nathan culminating in the signing of the detailed heads of agreement, including concept design, in early March 2016. We were close to executing a long-term commercial lease with them for construction of new facilities on site for their major distribution centre. Furthermore, we had several additional prospective tenants interested in leasing facilities on the site once it was developed for employment uses, including Computertrans, Downer EDI and Fastway Couriers. At this stage we were still unaware of any TfNSW interest in the site. In fact, when first approached by agents CBRE in the middle of March 2016, acting on behalf of TfNSW, we asked them to look elsewhere for land. But when informed they could compulsorily acquire the land from us, we had to move quickly owing to our commercial relationships with Lion Nathan and the other prospective tenants.

The price ultimately paid by TfNSW was \$53.5 million and from our side of the transaction it covered, or partly covered, three components. It covered the price Billbergia paid for the site, the costs expended by

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Billbergia over the 18-month period since January 2015, and partial consideration of the value of Billbergia's lease revenue forgone from the proposed redevelopment of the site because of the sale. We were and remain a very reluctant seller and we lost a 30-year asset. I would like to conclude by saying that when Minister Constance first announced the referral of the purchase to the Auditor-General and the Independent Commission Against Corruption, we immediately wrote to both agencies and have publicly and privately made it clear that we welcome any investigation of the transaction. We have and will continue to fully-cooperate with any inquiry or investigation deemed necessary. Furthermore, we are more than willing to provide all relevant information and answer any questions the Committee may have. Billbergia is not only proud of its track record but of our history and reputation for absolute integrity in everything we do. Thank you.

The CHAIR: Thank you very much for agreeing to be here today; we do appreciate it.

The Hon. DANIEL MOOKHEY: Thank you, Mr Graf and Mr Addison, for your appearance today and for such a frank and open statement. Do you have a copy that you could table for the Committee?

Mr GRAF: Absolutely.

The Hon. DANIEL MOOKHEY: Could I start by getting a bit more preliminary information about Billbergia?

Mr GRAF: Yes.

The Hon. DANIEL MOOKHEY: You say it is a family-owned company. Who is the CEO of such owners?

Mr GRAF: The company is owned by John and Bill Kinsella and has been since the beginning—two Irish brothers—and began as civil contractors and then very quickly became major providers of housing and jobs in the areas.

The Hon. DANIEL MOOKHEY: Is it fair to say that the predominant area of your activity so far has been in western Sydney? Is that a fair summary?

Mr GRAF: It is centred on Wentworth Point and Rhodes—the highest level of activity. We have also developed in Brisbane. We developed Brisbane Skytower up there, which is one of the largest residential buildings in the Southern Hemisphere. We have won numerous awards for our projects in Wentworth Point and Rhodes. We are also developing in North Sydney, and we are doing three projects at the moment in partnership with Land and Housing Corporation for social housing, affordable housing and market housing in Lidcombe, West Ryde and Arncliffe.

The Hon. DANIEL MOOKHEY: I was going to ask this later on, but I will ask now. Did you say you are doing projects with Land and Housing?

Mr GRAF: Land and Housing Corporation, yes.

The Hon. DANIEL MOOKHEY: Is that the only State government agency that you are currently doing any work for or in partnership with?

Mr GRAF: Yes, it is.

The Hon. DANIEL MOOKHEY: It is fair to say that your work in Rhodes and Wentworth Point—either you had or through those projects, you acquired a specialty in the remediation of former industrial sites. Is that fair?

Mr GRAF: We began the business 33 years ago as a civil contracting business and all of the key personnel, who have been with the company for many years, had a specialty in civil contracting, which includes remediation.

The Hon. DANIEL MOOKHEY: Just to be clear, both you, Mr Addison, and you, Mr Graf, were involved directly in the negotiations over 4-6 Grand Avenue, Camellia?

Mr GRAF: I was at the periphery but Mr Addison was at the centre.

Mr ADDISON: I was predominantly, yes.

The Hon. DANIEL MOOKHEY: And Mr Kinsella was involved as well or presumably you were reporting to him?

Mr ADDISON: He was to an extent, but I was largely reporting to him.

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The Hon. DANIEL MOOKHEY: You make the point that you have been a strategic landowner in Camellia for a while. That started with your purchase of 1 Grand Avenue, the former James Hardie factory, back in 2007. Is that correct?

Mr GRAF: Yes.

The Hon. DANIEL MOOKHEY: And since then you have acquired a whole bunch of sites in the Camellia precinct. Is that fair?

Mr ADDISON: Yes, not only acquired but we have progressively, both prior to the acquisition of 4-6 Grand Avenue and subsequent to that, approached a number of landowners, predominantly along the foreshore of the Parramatta River and adjoining Grand Avenue.

The Hon. DANIEL MOOKHEY: As a result you have also been a proponent of public transport investment to the Camellia precinct. Is that fair to say?

Mr GRAF: Yes, we have.

The Hon. DANIEL MOOKHEY: You have argued publicly for the Parramatta Light Rail stage two. Is that correct?

Mr ADDISON: As part of a collective landowner group.

The Hon. DANIEL MOOKHEY: Yes. In fact, to be fair to you, I think it was, amongst others, the WestLine Partnership group, which is a series of landowners and residents in the area, that has been arguing for a greater public transport connection to the Camellia site for a long time now. Is that correct?

Mr ADDISON: Yes, that is correct. We are a strong proponent of public transport to these higher-density precincts, as we have been in both Rhodes with the train station there and Wentworth Point. You will notice that a lot of our properties are adjoining.

The Hon. DANIEL MOOKHEY: There is nothing uncommon about you arguing for that. I just want to be clear.

Mr ADDISON: No.

The Hon. DANIEL MOOKHEY: You have also argued for the construction of a train station at Camellia as part of the western metro project. Is that fair?

Mr GRAF: Yes.

The Hon. DANIEL MOOKHEY: To be fair, that is in keeping with the City of Parramatta and the Parramatta council's views too. There is nothing novel about what you have been arguing for. But just to be clear, you have been arguing for these two forms of investment.

Mr GRAF: Yes, we have.

The Hon. DANIEL MOOKHEY: Can I turn specifically to the acquisition of 4-6 Grand Avenue. You purchased this from AkzoNobel. Is that correct?

Mr GRAF: Yes, we did.

Mr ADDISON: Yes, that is correct.

The Hon. DANIEL MOOKHEY: You purchased it through a company called Grand Investments Pty Limited 4, I think it was.

Mr ADDISON: Yes.

Mr GRAF: Grand 4 Investment.

The Hon. DANIEL MOOKHEY: Grand 4 Investment. And that was a subsidiary of Billbergia?

Mr ADDISON: It is a special purpose vehicle [SPV], a typical structure buying our assets into those sort of—

The Hon. DANIEL MOOKHEY: The only asset that it was in control of was 4-6 Grand Avenue. Is that correct?

Mr ADDISON: That is correct, yes.

Mr GRAF: Yes.

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The Hon. DANIEL MOOKHEY: And that is a common strategy that is often done in all property transactions, to be fair to you as well.

Mr GRAF: Yes.

Mr ADDISON: I understand so. We pursue that strategy, yes.

The Hon. DANIEL MOOKHEY: AkzoNobel previously operated a chemicals factory or site on the land, did it not?

Mr ADDISON: I believe so.

The Hon. DANIEL MOOKHEY: And it did that for a good couple of decades. Is that correct?

Mr GRAF: Yes.

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: When you acquired it, were you aware that the land was contaminated?

Mr ADDISON: We were aware that it had been contaminated and we were aware that there had been some remediation that AkzoNobel had carried out on the property.

The Hon. DANIEL MOOKHEY: When you acquired it from AkzoNobel, you acquired the liability to clean it up, did you not? AkzoNobel did not warrant to clean it up for you. It did not give you a guarantee that they would clean it up.

Mr ADDISON: We did not provide them with a warranty we would clean it up, but we did take on the responsibility of the remediation at that stage.

The Hon. DANIEL MOOKHEY: Legal liability shifted to you when you acquired the site.

Mr ADDISON: Under contract, yes.

The Hon. DANIEL MOOKHEY: At the time this was listed on the Environment Protection Authority [EPA] register, so it was there for all to see that the land was contaminated with some pretty serious contaminants. Is that fair?

Mr GRAF: Yes, there was absolutely no doubt that many sites in Camellia were contaminated and 4-6 Grand Avenue was one of the more contaminated sites. For a long time it had been on the New South Wales contaminated lands register. When AkzoNobel put the project to the market, it provided in its data room for all prospective purchasers details of all of the environmental investigations and reports that it had had carried out on its land. I mean, it is a chemical company and it had been operating there for decades and the contamination was a consequence of that activity.

The Hon. DANIEL MOOKHEY: But it is one of the worst contaminated sites in the Camellia precinct. Do you agree?

Mr GRAF: Yes, it is.

Mr ADDISON: If I might add to that and as I said previously, it was evident that they had carried out some remediation previously, hence the site was vacant at the time.

The Hon. DANIEL MOOKHEY: I was going to ask you this later, but I might just ask you now. Did you ever figure out what it would cost to remediate the land if you had continued in its ownership?

Mr ADDISON: We did not pursue that path because we had a separate strategy of making the land fit for its intended use.

The Hon. DANIEL MOOKHEY: That would create a different level of remediation than perhaps what Transport eventually embarked upon. Is that fair?

Mr ADDISON: That is what we understood.

Mr GRAF: We cannot comment on what Transport might have wanted to do or what they have in fact done or are doing. We can only comment on what we would have done for our intended uses. We did have those plans and we had been through them with prospective tenants and were on the verge of signing leases with them.

The Hon. JOHN GRAHAM: How much would that have cost to get to that level of appropriate use?

Mr GRAF: This is to make the site fit for human habitation as an industrial distribution centre?

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The Hon. JOHN GRAHAM: Yes.

Mr GRAF: It was of the order of \$10 million.

The CHAIR: Can I just clarify that. At the time that you purchased the land, you had not estimated the cost of remediation?

Mr GRAF: We had done our investigations and we knew broadly what the cost bandwidth would be.

The CHAIR: To keep it in industrial use—

Mr GRAF: Yes.

The CHAIR: —then it needed about a \$10 million remediation?

Mr GRAF: Perhaps some commentary on remediation of sites generally: In Rhodes where we have developed thousands of apartments in award-winning communities, Rhodes previously was one of the most contaminated sites on earth, with dioxins and so forth from decades of industrial use. Now that has been fully remediated and it is a model residential community. We were not proposing to do that in Camellia for this site. The remediation that you would do, depending on the use, is a sliding scale. If you want to do it for industrial and human habitation, as for a distribution centre where no-one is living on site and there is no kids playground, you do not need to decontaminate to the ultimate extent. That is as a private entity; Government may have other views.

The CHAIR: Did AkzoNobel give you warranties in the course of the purchase in the contract around the amount of the contamination that had been disclosed? Were they of the usual kind? Can you talk to us about that?

Mr ADDISON: From what we understood at the time, its reports had specified a certain amount of contamination on the property. As I said earlier, there had been some clean-up of certain types of contamination that AkzoNobel had carried out. When we took on the responsibilities, we were really looking at if we went down the path of residential, which it was not zoned for, then we would have had to carry out significant remediation. But we were looking at a warehouse operation where we could manage the remediation.

The CHAIR: Were there warranties given in relation to the spreading of that contamination to neighbouring properties?

Mr ADDISON: No.

The CHAIR: Were you aware of any risk of spreading of contamination that you were taking on?

Mr ADDISON: Not at that time when we purchased the property from what I can recollect, no.

The CHAIR: So you subsequently found out about that risk of spreading of the contaminants from 4-6 Grand Avenue to others neighbouring?

Mr ADDISON: No, we identified that we needed to clean up one or two hotspots, but apart from that we were not aware of the risk of it spreading.

The Hon. DANIEL MOOKHEY: I think there is a slightly different way of putting the question as well, Ms Boyd, to cover the other scenarios.

The CHAIR: Please.

The Hon. DANIEL MOOKHEY: There is a scenario in which it spreads after you have acquired it. Were you ever advised by your lawyers or any adviser that by buying 4-6 Grand Avenue you would be also responsible for cleaning up any surrounding land that was contaminated as a result of activity on 4-6 Grand Avenue?

Mr ADDISON: That was our understanding of the contract that we had entered into.

The Hon. DANIEL MOOKHEY: So you were at the time aware that when you acquired it you were potentially liable for pollution of other people's land caused as a result of activities on 4-6 Grand Avenue?

Mr ADDISON: Yes, we were.

The Hon. SCOTT FARLOW: Can I just pick up on that line of questioning? In that \$10 million remediation that you were prepared to undertake for that site, considering its use, what was the time frame you were expecting that use to continue on that site? You were saying 30 years of land.

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Mr GRAF: We were negotiating 20 years of industrial use with a 10-year option and that in 30 years, if there was a change of use on the Camellia peninsula to a higher and better use, then we knew that that would require a higher and greater degree of remediation before it could be used for that purpose.

The Hon. SCOTT FARLOW: How long were the leases in place that you were negotiating? What was the upper limit of those leases?

Mr ADDISON: That was a 30-year lease with Lion Nathan, and then similar ones would have been with the other entities.

The Hon. JOHN GRAHAM: What was your estimate for the cost of remediating to that higher use as you looked at the site and its potential options?

Mr ADDISON: We had not carried out a full analysis on that basis because there was not a realistic case for it at the time.

The Hon. JOHN GRAHAM: So you were weighing up these options but at no point did you estimate that cost?

Mr ADDISON: No, because at the time it was zoned industrial and we were focused on that use.

The Hon. DANIEL MOOKHEY: Did you ever get quantified what your potential liability could be for other landowners whose land was polluted as a result of activity on 4-6 Grand Avenue?

Mr ADDISON: No, we did not quantify that.

The Hon. DANIEL MOOKHEY: Could I just now turn to the next part of this? I ask that this document be provided to the witness. I have got to obtain a copy for the Committee afterwards. When you purchased the site, what was your financing structure to buy it off AkzoNobel?

Mr ADDISON: We had a multitiered agreement with AkzoNobel at the time that comprised of a delayed settlement. Subsequent to the delayed settlement, we negotiated a delayed payment for the land and hence we only had to settle it in mid-2016.

The Hon. DANIEL MOOKHEY: Just to be clear on the timetable here, you bought the land from AkzoNobel—or you signed the contract on 25 November 2015 or thereabouts?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: Then you set up Grand 4 Investments, a subsidiary, on 12 November 2015 or thereabouts?

Mr ADDISON: Thereabouts, I think.

The Hon. DANIEL MOOKHEY: Is that correct?

Mr ADDISON: I think, yes.

The Hon. DANIEL MOOKHEY: So you created the special purpose vehicle [SPV] about two weeks before the transaction was formally executed?

Mr ADDISON: Yes, which is the normal course of business for us.

The Hon. DANIEL MOOKHEY: Yes, of course.

Mr ADDISON: We never open up sort of proper structures until we need to.

The Hon. DANIEL MOOKHEY: But part of the way in which you acquired the site was that AkzoNobel effectively took a mortgage over the site, did they not?

Mr ADDISON: Yes, that is correct. That was the delayed payment secured by the mortgage over the property. We had received title; however, we had a delayed payment.

The Hon. DANIEL MOOKHEY: Yes, and they took entry into the second schedule?

Mr ADDISON: Yes.

Mr GRAF: Mr Mookhey, if I may say, in the process of acquiring the property, we had offered a number of prices based on alternative financing scenarios—you know, if we were to pay cash up front, this is all it was worth to us.

The Hon. DANIEL MOOKHEY: Yes, which is standard.

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Mr GRAF: If they assisted with a delayed settlement, we could offer them more and did so.

The Hon. DANIEL MOOKHEY: I just want to be clear no implications are being made against you in terms of the financing structure that you pursued, but it does become important in terms of Transport's behaviour later on.

Mr ADDISON: I think in alignment with that, we had negotiated a debt facility agreement with an institution.

The Hon. DANIEL MOOKHEY: Yes.

Mr ADDISON: That comprised two components, one to settle on the land and one to develop the warehousing.

The Hon. DANIEL MOOKHEY: Yes. I just stress again—no implications at all about this, but I just want to understand this for the purposes of asking Transport questions more than you per se. I have just given you a document, which is an excerpt of a mortgage document that was given by AkzoNobel. You can see on the first page that that is a document that has been executed by Mr Kinsella and Mr Fitzgerald. Do you see that?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: If you turn to page 3 of 39, do you see that it says:

Final Payment Date means the earlier of:

- (a) 30 June 2016; and
- (b) any date for payment of the Indebtedness in accordance with clause 4.2.

It actually is 30 June 2016, which is the settlement date for the mortgage. Is that correct?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: So you had to repay AkzoNobel the outstanding unpaid amount by 30 June 2016, just to be clear?

Mr ADDISON: Yes, that is correct.

The Hon. DANIEL MOOKHEY: Then if you turn to page 6, the "unpaid sum" means \$26,518,918. Do you see that?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: Basically of the \$38 million, effectively you put down \$11 million as your equity component.

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: Then you awarded them a mortgage for the balance of \$26 million.

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: You had to pay that \$26 million by 30 June 2016?

Mr ADDISON: Yes, which coincided with sort of end of financial year.

The Hon. DANIEL MOOKHEY: Was that the main reason?

Mr ADDISON: Generally, we just align things up around that time.

The Hon. DANIEL MOOKHEY: Basically you used \$11 million of your own money and you had a mortgage at the time?

Mr ADDISON: That is correct, yes.

The Hon. DANIEL MOOKHEY: Fair enough.

Mr ADDISON: I might just add to that. The finance facility that we had negotiated and were going through legal documentation on provided for a land settlement amount, I think, of \$25 million. So we would have chipped in the \$1 million-odd.

The Hon. DANIEL MOOKHEY: Fair enough. To be fair, again, there is nothing at all sinister about this as a financing structure, but it does start to explain some behaviour elsewhere by Transport, which is the only reason I was asking.

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The CHAIR: For the benefit of those who might not know why an SPV would be used—and in this particular context, I am not 100 per cent sure of all of the benefits—is an SPV structure used in order to minimise tax or does it also work to minimise liability in some way?

Mr ADDISON: No, generally, we might—

Mr GRAF: Neither of the above.

Mr ADDISON: Neither of them, yes.

The CHAIR: Then please explain the benefits for why the property is purchased through a special purpose vehicle.

Mr ADDISON: Generally, we find a cleaner to hold these assets and we do it across the board—hold them in separate entities, so that we can deal with them as separate entities in terms of financing and securitisation of them, and perhaps bringing in partners as well.

The CHAIR: So it is an on-balance sheet?

Mr GRAF: Yes. It is an on-balance sheet and parent company guarantee. It is not something that is outside the company; it is not something that is different to the normal business of the company. In fact, we use that for many of our land acquisitions that we intend to develop and hold. As you see, it is referred to as Grand 4 Investments, not Grand 4 deconstruction or construction or development. It is Grand 4 Investments, and it was intended to be a long-term asset.

The CHAIR: Understood. It is an on-balance sheet, so it is not tax-neutral. It is mainly for administrative purposes?

Mr GRAF: Yes, administrative purposes within the group, and it should be viewed in context. We were at the same time during this period acquiring land in other suburbs in exactly the same routine way. We have a large number of SPVs which are capable of carrying on the business of that particular site, whether it be investment on hold or whether it be partnership, but it is done as part of the ordinary course of business of the company.

The CHAIR: If a neighbouring landholder was to claim that their land had got contaminated because of contamination on 4-6 Grand Avenue, they could still sue for that directly from Billbergia or would they get stuck at that SPV level?

Mr GRAF: Our group does not function in that way.

The CHAIR: Fine. Okay.

Mr GRAF: There has never been a situation in 33 years where we have walked away from any relationship with any litigation in the company.

The CHAIR: Legally, would they be limited? Would a person be limited to only be able to claim against the SPV or would they have recourse to Billbergia?

Mr ADDISON: We would have to take that on notice. It is a complex question. Sure, it is an SPV but there are directors involved, which are common directors, common shareholders. It is probably a lot broader answer than we can anticipate at the moment.

The CHAIR: Because if there are no assets sitting in the SPV other than the property—

The Hon. DANIEL MOOKHEY: The land.

Mr ADDISON: Yes.

The CHAIR: If you could take it on notice, that would be useful.

The Hon. DANIEL MOOKHEY: I am tabling two other documents now that I just provided to you. Let me just explain what they are. The first—I think the document is labelled A—is a document that has been produced to the New South Wales upper House but was in fact created by Transport for NSW. It is their chronology of the transaction that they put together in response to a freedom of information request from *The Guardian* back in February 2019 I think it was, but it has been produced as a result. So it is not the gospel truth by any means—it is a Transport for NSW document. You are free to disagree with that if you think any aspect of it is wrong.

Mr ADDISON: We have not seen that before.

CORRECTED

The Hon. DANIEL MOOKHEY: No. I am not surprised. The second document is an excerpt from the Auditor-General's report, which you might have seen.

Mr GRAF: And it contains activities on dates prior to our knowledge.

The Hon. DANIEL MOOKHEY: And dates after your knowledge, too. So to be fair, it is not meant to be anything that purports to be a Billbergia document or anything. It is just their version of what they say happened and we just would not mind testing—

The Hon. SCOTT FARLOW: Just for clarification. Is this timeline of events exhibit 3 in the—

The Hon. DANIEL MOOKHEY: Yes. It is a chronology. We have got a tabled copy.

The Hon. SCOTT FARLOW: That is fine. I just have not got one in front of me.

The Hon. DANIEL MOOKHEY: It is a chronology that Transport for NSW has put together and read in conjunction with the chronology that the Auditor-General has put together, it allows us to source our questions from these two documents, if that is fair to you. To be clear: You were approached by CBRE, which was retained by Transport for NSW at the time, and they said to you that Transport was interested in acquiring the site.

Mr ADDISON: Sorry, did you say they were retained by Transport for NSW?

The Hon. DANIEL MOOKHEY: Arising from your opening statement you said that CBRE contacted you and said Transport was interested. They may not have retained—

Mr GRAF: They were retained by Billbergia, not by—we do not know if they were retained by Transport for NSW.

The Hon. DANIEL MOOKHEY: I do not believe they were to be fair, sorry.

Mr ADDISON: But they were certainly retained by ourselves for the purpose of leasing the property. I think we have made evident to—

The Hon. DANIEL MOOKHEY: Right, and they had a direct approach from Transport for NSW. Is that what your evidence was?

Mr ADDISON: Yes, that is what we understand and for some time—sorry, we had understood from CBRE that Transport for NSW had approached them and we were, as Mr Graf said in his opening statement, a very reluctant seller of the property. We had gone down the path of negotiating leases, we had gone down the path of designing the warehouse and having pre-DA meetings with Parramatta council. We had negotiated finance and at that stage we did not want to pursue the path of selling it.

Mr GRAF: May I say again for the avoidance of doubt, until the approach by CBRE we had no knowledge of any interest by Transport for NSW [TfNSW] in the site at all.

The Hon. DANIEL MOOKHEY: That approach via CBRE from Transport for NSW took place on 12 April 2016 or thereabouts? That is according to this document.

Mr ADDISON: According to document A?

The Hon. DANIEL MOOKHEY: Yes. It says, "TfNSW first approach to Billbergia re 4-6 Grand Ave?" and "a 'conversation' between the parties." They reference an email that you sent, Mr Addison, a 15 April email from—do you have any recall of this?

Mr ADDISON: Yes. It would have been around that time.

The Hon. DANIEL MOOKHEY: Three days later or thereabouts—or perhaps in the same email that you sent back—you say that Billbergia valued the site at between \$64.5 and \$90 million.

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: And then you see also in that—there is an entry that is described as the Billbergia rationale that sets out that you would want \$75 million for the site, your site preliminary evaluation advice to Transport for NSW from Knight Frank for \$30 million, and what seems to be an internal Transport for NSW assessment that the market value of the site is \$49 million to \$55 million. Does that accord with your recollection?

Mr ADDISON: Yes. I am not sure of the Knight Frank but we had had a CBRE valuation carried out based on the intended leases that were being negotiated.

CORRECTED

The Hon. DANIEL MOOKHEY: Are you in a position on notice to provide us with that valuation by CBRE?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: Thank you. But at the time Knight Frank said the site was worth \$30 million—

Mr ADDISON: May I just ask, will we just get a record of what we have put on notice?

The CHAIR: Yes, you will.

Mr ADDISON: Thanks, Chair.

The Hon. DANIEL MOOKHEY: Knight Frank at the time—or Transport for NSW's starting position was that the site was worth \$30 million. Is that your recollection?

Mr ADDISON: I cannot recall that, no.

The Hon. DANIEL MOOKHEY: Do you have any idea what they are talking about when they say "TfNSW for Knight Frank for \$30 million"?

Mr ADDISON: I cannot recall that.

The Hon. DANIEL MOOKHEY: Going forward in time, you see that you had a face-to-face meeting on 15 April or thereabouts, did you not? Or 12 April? If you go to the Auditor-General's sheet it says on 12 April you had that meeting.

Mr ADDISON: Yes, it must have been around that time. That is correct.

The Hon. DANIEL MOOKHEY: Do you recall who you were meeting with?

Mr ADDISON: At that time it was the Technical Director, Property Services or—Mr Graf, would recall the title?

Mr GRAF: I think it was James White. It is the name that springs to mind.

The Hon. DANIEL MOOKHEY: Was that when they indicated to you that they thought the site was worth \$30 million?

Mr ADDISON: I cannot recall the discussions at that time on the price that they proposed. I can remember what we had put on the table at that time.

The Hon. DANIEL MOOKHEY: The Auditor-General says you had a meeting on 1 April 2016. Was it possible that that meeting was when they said it was worth \$30 million?

Mr ADDISON: No. That was a meeting, from what I recall, at CBRE's offices.

The Hon. DANIEL MOOKHEY: Yes, it was.

Mr ADDISON: And we would not have discussed price at that, no.

Mr GRAF: I do not recall a document at any stage that referred to the value that you are suggesting of \$30 million.

The Hon. DANIEL MOOKHEY: Fair enough. So what was Transport's first offer to you?

Mr ADDISON: I cannot recall a first offer but I can recall us on that meeting of 12 April discussing a price in the early \$50 millions.

The Hon. DANIEL MOOKHEY: Okay. But at the same time you were suggesting the site was worth \$75 million to \$90 million?

Mr ADDISON: Not at the same time. We then went away and did a valuation on it with CBRE and came back to Transport and suggested that in our opinion it was worth a lot more, subject to us closing out the leases that we were negotiating. And there was some time pressure on that.

The Hon. DANIEL MOOKHEY: Did they dispute your valuation?

Mr ADDISON: I can remember them coming back to me. Most of it is in the emails that we provided to the Auditor-General—in fact, I think all of it is. But they did come back and say that we had proposed a figure of in the \$50 millions at our meeting on 12 April and that that is what they were standing by.

CORRECTED

The Hon. DANIEL MOOKHEY: To be clear: At the meeting that took place, you suggested at the time that it was \$50-ish million. You then go away and get a bit of a valuation, which is appropriate that you would do your due diligence, and come back and say it is actually worth more. Then Transport for NSW's response was to try to get you back you back to the original \$50-ish million.

Mr ADDISON: We were saying it would be worth more subject to us signing out these leases that were pending at the time, and that is why there was an impetus to close the deal before we got locked into 30-year leases with tenants.

The Hon. DANIEL MOOKHEY: Right. But at no point did they dispute your starting figure of around \$50 million?

Mr ADDISON: I cannot recall that, no.

The Hon. DANIEL MOOKHEY: At any point did they suggest to you that the site was worth less than \$50 million? At any point in the negotiation?

Mr ADDISON: I cannot recall that, no.

The Hon. DANIEL MOOKHEY: At any point did they show you any valuations that they had obtained?

Mr ADDISON: I do not think so. I do not think we had seen any valuation.

The Hon. DANIEL MOOKHEY: At any point by this time in April onwards—

Mr ADDISON: No, I do not think we had, and subsequent to reading the Auditor-General's report the evaluations were carried out afterwards.

The Hon. DANIEL MOOKHEY: But at any point did they tell you that they only had authority to offer you \$30 million or less?

Mr ADDISON: Not that I can recall.

The Hon. DANIEL MOOKHEY: At no point.

Mr ADDISON: Not that I can recall, no.

The Hon. DANIEL MOOKHEY: Mr Graf, do you have any recollection?

Mr GRAF: No. I was not directly involved in those discussions but I have seen no documents that refer to that or any notes via emails that would suggest that that was done.

The Hon. DANIEL MOOKHEY: So at no point did they inform you in that March of that year they only had authority to offer you up towards the \$30 million.?

Mr ADDISON: No, we were not aware of any authority levels within Transport for NSW.

The Hon. DANIEL MOOKHEY: Right. I am happy to pause there.

The CHAIR: At what point in the negotiations was it accepted that Transport for NSW would accept the contamination liability? So in the auditor's report—

The Hon. DANIEL MOOKHEY: I was going to get to that.

The CHAIR: I will ask that question just quickly. We are told in the Auditor-General's report that at the beginning of those negotiations Transport for NSW was not going to take on the liability for contamination. Is that correct?

Mr ADDISON: During those negotiations—I cannot recall at what stage or if it was when we got into legal documentation—we essentially were going to pass the property over as we had bought it, so not taking on the liability on ourselves.

Mr GRAF: It is very clear from the documentation that we did not ever make use of the site other than as an asset on which to build new facilities, but we had not begun that process yet because we had not yet signed the binding leases. We were on the cusp of doing so. So, we had not contaminated the site. We bought it as is, where is, with the contamination risk transferring from the contaminator—the previous owner—and we accepted that we would deal with the contamination when we were doing our use. The proposal from Transport for NSW is that they wanted to acquire the site from us before we got to use the site. So it would be inappropriate for us to accept liability for something that we had not done. The final documentation between Billbergia and Transport for NSW was on back-to-back terms, which is a typical commercial arrangement. If we buy it on one basis and

CORRECTED

you buy it soon after from us, you will accept the back-to-back terms that we had accepted from the original owner of the site.

The CHAIR: Your understanding was that they would always take the contamination liability.

Mr GRAF: We certainly would not if we were not going to be long-term owners of the site. It was our understanding that if they wanted to acquire the site, they would have to do it on the same terms that we acquired the site.

The Hon. SCOTT FARLOW: In terms of the liability—just to clarify—you held the property for seven months. You had accepted that liability on acquiring the property and then you transferred it after that seven months with the same liability that you came into the property with.

Mr GRAF: Yes. If I can reaffirm for the record that we were and we remain very reluctant sellers. For us we had spent money acquiring the land and proposing for long-term investment on the land with tenants and buildings and jobs and real uses. If it was to be taken away from us, it would be unreasonable and unfair for us to accept a remediation responsibility for a site that we are not using for that purpose.

The Hon. DANIEL MOOKHEY: In the Transport for NSW chronology that I gave to you, do you mind just turning to the entry that says 29 April 2016? Can you see that?

Mr ADDISON: No.

The Hon. DANIEL MOOKHEY: Down the bottom. You see that there are two entries—28 to 29 April 2016 and there is a distinct entry that is 29 April 2016. Can you see that?

Mr GRAF: Yes.

The Hon. DANIEL MOOKHEY: This is not your document, but it says:

Recommends that FIC—

which stands for Finance and Investment Committee—

—approve the release of \$142.2m, including \$80.2m for "purchase and remediation" of Grand Ave site.

You can see in the description it says:

TfNSW will negotiate a contract where the remediation and cost associated will be at the landowners cost.

Did they ever in any negotiation raise with you a request that you clean it up?

Mr ADDISON: No.

Mr GRAF: Firstly, I do not think it is appropriate for us to comment on Transport's records of internal processes within Transport. That is not our business. That is your business.

The Hon. DANIEL MOOKHEY: I accept that. But at any of the negotiations that you had—the 1 April meeting, the 12 April meeting and the emails and phone conversations you had throughout the month of April as you negotiate this deal—did Transport for NSW ever say to you, "It is your responsibility to clean this site up."?

Mr GRAF: It would have ended the conversation if that had been the case.

The Hon. DANIEL MOOKHEY: But they never did say that to you.

Mr ADDISON: I believe the initial assumption was that they were buying it without that risk. But later on we made it clear that we were only selling it on the basis of how we had purchased the land.

The Hon. DANIEL MOOKHEY: They basically assumed that you would do it and then at some point in the negotiations you told them their assumption was wrong.

Mr ADDISON: When the matter arose through legal documentation we corrected that. Yes.

The Hon. DANIEL MOOKHEY: Did you do that through your lawyers or through a negotiation?

Mr ADDISON: I think it was in emails. I think it was in an initial email and then the lawyers brought that into the documentation.

The Hon. DANIEL MOOKHEY: Can you go forward now to 10 May 2016, which is the next page at the top. For what it is worth, it is only 11 days after this entry.

Mr ADDISON: Sorry, just bear with us a second. Yes, go ahead.

The Hon. DANIEL MOOKHEY: It says—

CORRECTED

Mr GRAF: Is it 10 May?

The Hon. DANIEL MOOKHEY: Yes, 10 May 2016, up the top—the letter from Swaab regarding site acquisition. It says:

We confirm your instructions that TfNSW is acquiring the property in its current state and will assume all liability for contamination and pollution in the property, both current and historical.

To be fair, it is not your lawyer and it is not your letter, but we can infer from this that somehow in the 11 days that passes from 29 April to 10 May 2016 you correct them of their assumption and they accept that therefore the liability is theirs. Is that a fair reading of the record?

Mr ADDISON: According to this it is, but obviously—

The Hon. DANIEL MOOKHEY: Does that accord to your recollection as to when you would have sent that email?

Mr ADDISON: I think that is what I expressed in my previous statement, yes.

The Hon. JOHN GRAHAM: It does not contradict anything you know of the process, though. This is not in contradiction to anything you were—

Mr ADDISON: No.

The Hon. JOHN GRAHAM: Can I just ask, where it says "confirms Grand 4 for indemnity", what does that refer to?

Mr GRAF: We will have to take that on notice.

The Hon. DANIEL MOOKHEY: It might help if you read the entry from 13 to 17 May 2016, down the bottom. It says:

Approval of Deed of Acquisition, Settlement and Release between TfNSW and Grand 4 and payment of \$53.5m.

You actually sell the site or sign the contract to sell the site around that period of time. Is that correct?

Mr GRAF: Around that period of time, yes.

The Hon. DANIEL MOOKHEY: It says:

Notes the vendor is indemnified against risks associated with contamination.

As part of your sale contract, did Transport for NSW indemnify you against any claims for contamination?

Mr ADDISON: I am not sure to the extent of an indemnity. I am aware that in broad terms Transport for NSW took the liability and risk for that.

The Hon. DANIEL MOOKHEY: Did you explicitly ask for them to give you a warranty that they would accept liability for the clean-up?

Mr GRAF: It was, again, on back-to-back terms the conditions under which we had obtained ownership and those conditions were being passed on to the new purchaser.

Mr ADDISON: Mr Mookhey, I think the specific terms of that would be evident in the contract.

The Hon. DANIEL MOOKHEY: Sure. Basically what you are saying is you obtained from AkzoNobel a warranty from them—or, actually, they obtained from you that you would accept liability for the remediation and you then, in turn, asked Transport for NSW to offer you the same comfort. Is that fair?

Mr GRAF: Similar terms.

The Hon. DANIEL MOOKHEY: As a result, right now, you do not have any liability arising for 4- 6 Grand Avenue because you only owned it for seven months and you got a warranty from them. Is that fair?

Mr GRAF: And we did not use the site.

The Hon. DANIEL MOOKHEY: Yes. Therefore, any wider landowners who wish to come for the cost of cleaning up their land cannot come to you either. That is fair?

Mr GRAF: That is fair.

The Hon. DANIEL MOOKHEY: Can I just ask you for a final time, do you have any recollection whatsoever of anyone from Transport for NSW saying to you that it is your job to clean up the site?

CORRECTED

Mr ADDISON: I cannot recall, and I am aware that most of the discussion around that contamination was in emails.

The Hon. DANIEL MOOKHEY: Fair enough. Is it possible that we could produce the emails that you are referring to on notice?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: In fact, can we get the emails that you provided to the Auditor-General?

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: Thank you. Can you table that? It would be very helpful.

The CHAIR: Did you ever receive any advice advising what the value of the land would be if it was to be compulsorily acquired instead of negotiated privately?

Mr ADDISON: No, we did not.

The CHAIR: Was that something that was ever considered or discussed with you?

Mr GRAF: From the documents, there were clearly considerations of—the process of compulsory acquisition takes time and it is not done overnight. But there were leases drawn and agreed but not yet executed with Lion Nathan and Grand 4 Investments for the long-term development and use of the site. It is very clear that if those leases and that development had proceeded and then the land was compulsorily acquired, there would have needed to be provision for compensation to the tenants who had tenure of the land long term, which would have considerably increased the acquisition cost to the Government.

The CHAIR: Is that why there was some haste towards the time of actually executing the purchase?

Mr GRAF: I think it is fair to say at this stage there were a couple of factors; that was one. But there was no clear, exclusive intention expressed by the Government to use the site wholly for that purpose. Indeed, if you review the emails, you will see that our first approach was to suggest to them that they should acquire land elsewhere, not this land, because we were busy with it and had been for some time. There is an email from Transport for NSW that says, "We looked at acquiring the site next door, as you had suggested to us, but because there are long-term leases in place there that won't proceed. We are back looking at you." We had proposed to them, "You may not need the entire six hectares of the site for your purpose, in which case can we keep part of the site and you can use your part and we will use our part." That was discussed in email traffic as well. But eventually, of course, that did not take place. There is also in the email traffic—because sometimes governments change their mind about things they are doing—

The Hon. DANIEL MOOKHEY: No.

The Hon. SCOTT FARLOW: I have never heard of that.

Mr GRAF: So we put on record with them that, okay, you are acquiring the site, but if you subsequently do not proceed with your plans we would like an agreement to buy the site back from you under the same conditions for the same price, so that we can proceed with what we were doing. Our context for that is that we are busy on lots of sites across the city and so is government, and not all plans come to fruition. There had not been, as we subsequently found out, a final business case, nor was there a final route, nor were there final stop locations for the thing. The stabling yards proposal could equally well have gone elsewhere. So we were in a position where we were trying to protect the interests of our commercial tenants with whom we had a close and ongoing relationship and not say, "Well, look, sorry, I know we have drawn your buildings and we have drawn the leases and we have agreed the terms and so forth, but we are going to sell it to Transport." That is not us.

The CHAIR: So, why the haste? Sorry, if we can get to that.

Mr GRAF: We had signed heads of agreement and we were on the cusp of signing the lease. If the lease was signed the land, would be worth a lot more, because under compulsory acquisition the Government would be paying out existing leases.

The CHAIR: Understood.

Mr ADDISON: May I add to that as well? We were on the cusp of signing a second heads of agreement and it was just that the party involved, being Fastway Couriers, were travelling at the time and could not actually sign it. But we had negotiated it. Furthermore, we had the funding locked in and one would know that when you are borrowing large amounts from banks and financial institutions, they need to allocate that funding in advance.

CORRECTED

They had us on a hook, but we had that all pending. So, we had a number of these things on the go. We had resolved the design with Lion Nathan of what style of shed they would need for automated packing.

The CHAIR: I understand your haste, but from the perspective of Transport for NSW it was really that the cost might go up?

Mr ADDISON: Yes, that is what it would have—

The Hon. DANIEL MOOKHEY: Well, equally though, did you not on 4 May 2016 or thereabouts also say to Transport for NSW that you required settlement by 30 June 2016 in order to avoid defaulting on the AkzoNobel mortgage?

Mr ADDISON: Yes, that is correct.

The Hon. DANIEL MOOKHEY: That was equally a factor for why it was urgent for Transport for NSW to complete the deal. Is that correct?

Mr ADDISON: Yes. Can I just paint the picture? We would have been closing our debt finance on that day. Now if the debt financiers were aware that this transaction was happening then that funding would not have come to the table and we would have been left at risk—

The Hon. DANIEL MOOKHEY: With a liability, yes.

Mr ADDISON: —of nothing happening with Transport for NSW and the finance not being available.

The Hon. DANIEL MOOKHEY: Yes. Again, that is prudent risk management on your part.

Mr GRAF: Yes.

The Hon. DANIEL MOOKHEY: But just to be clear, you actually did end up settling with Transport for NSW on 30 June 2016. That was the settlement date. Is that correct?

Mr GRAF: Thereabouts, yes.

Mr ADDISON: I think it is in the auditor's—

Mr GRAF: It is in the chronology.

The Hon. DANIEL MOOKHEY: You, therefore, also then settled the AkzoNobel mortgage and discharged both at the same time. Is that correct?

Mr GRAF: Yes.

Mr ADDISON: Yes.

Mr GRAF: I think, in fairness, we should not lose sight of the fact that sometimes governments go through with things and sometimes they do not. We had a lot of balls in the air with real tenants and real financiers and a real business to run. If the Government had turned around the next week and said, "I'm sorry you cancelled all those arrangements but we're not going to proceed", we are left in a situation of acute commercial embarrassment and financial loss.

The Hon. DANIEL MOOKHEY: I accept that, Mr Graf.

Mr GRAF: There was no credible reason for us to stop our process of executing leases unless there was a binding offer to acquire the land by the Government and an acceptance by us that although it did not meet our needs we would accept it and move on. In the event, that is what happened. We accepted the offer even though it was not fulfilling our economic loss, by losing a 30-year asset. It was some compensation but not all. By accepting that and moving on, we then had to turn around and tell all of the people we had lined up by way of tenancies and financiers that we were not proceeding with that because the Government has said they want the land and we, reluctantly—as a very reluctant seller—have agreed to accept their offer.

The Hon. DANIEL MOOKHEY: I understand.

The Hon. SCOTT FARLOW: Mr Graf, I take it that throughout this period you were communicating this to the Government as well, or Transport for NSW—that it was business as usual for you and Billbergia in terms of your execution of contracts and in terms of your negotiations with parties and you were not putting that on a go-slow at all?

Mr GRAF: It would have been imprudent for us to do otherwise, yes.

CORRECTED

The Hon. DANIEL MOOKHEY: Can I just ask you about a couple of meetings? On 20 April Mr Kinsella had a meeting, it is not clear with whom. Was that with Mr James White?

Mr ADDISON: Sorry, what was the date on that?

The Hon. DANIEL MOOKHEY: It is 20 April 2016. It says in your chronology here that there was a meeting with John Kinsella and there are no minutes of that meeting. It is referred to in an email from James White to John Kinsella, cc'd to you, Mr Addison, and Mr Poole from Transport for NSW. Do you know what the purpose of that meeting was?

Mr ADDISON: I cannot recall. I would need to look at the email.

The Hon. DANIEL MOOKHEY: Could you, if you do not mind? Did you have any meetings or discussions with—

The Hon. JOHN GRAHAM: Could you also tell us whether remediation discussed at that meeting— or the remediation costs or responsibility for remediation?

Mr ADDISON: I would need to have a look at that.

The Hon. JOHN GRAHAM: I would be happy if you do that on notice.

The Hon. DANIEL MOOKHEY: At any point—

Mr ADDISON: I think it is in the emails, in the Auditor-General's report.

The Hon. JOHN GRAHAM: Okay, thank you.

The Hon. DANIEL MOOKHEY: Which you have tabled today as well?

Mr GRAF: Yes.

Mr ADDISON: Yes.

The Hon. DANIEL MOOKHEY: At any point, did Billbergia have any meetings with the Minister about this land acquisition?

Mr GRAF: No.

Mr ADDISON: None that I am aware of.

The Hon. DANIEL MOOKHEY: Did you have any discussions with any member of Parliament about this transaction?

Mr GRAF: It was not that sort of transaction that was on the radar at a political level. This was a very routine business activity and there was absolutely no reason to seek to engage with any member of Parliament.

The Hon. DANIEL MOOKHEY: Just to be clear, there was no engagement with any member of Parliament about anything to do with 4-6 Grand Avenue?

Mr GRAF: That is correct.

The Hon. DANIEL MOOKHEY: Finally, on the compulsory acquisitions question—this is arising from the Chair's questions and is to you, Mr Addison—did Transport for NSW ever tell you that they had approval to go through with the compulsory acquisition?

Mr ADDISON: I cannot recall that, no. It would be in the email traffic though.

The Hon. DANIEL MOOKHEY: Yes. On 19 April 2016, in the chronology, there is reported a conversation between you Mr Addison and Mr White in which, according to Mr White, it was said that Billbergia "won't accept less than the mid-60s for the site" and Mr White said "I reiterated that we do have compulsory powers and he thought that once he'd leased up the site Baird wouldn't touch it"—which I think is Mr White paraphrasing or attempting to interpret what you may or may not have said to him. Do you have any recall of that conversation?

Mr ADDISON: No, but I am sure he would have said that because those are the powers that the Government does have.

The Hon. DANIEL MOOKHEY: You are familiar with the Land Acquisition (Just Terms Compensation) Act, correct?

Mr ADDISON: Subsequent to that, I am.

CORRECTED

The Hon. DANIEL MOOKHEY: And you are aware that if you had embarked upon that leasing strategy under the just terms Act that was compensable for you, correct?

Mr ADDISON: At that stage I was not familiar with the just terms Act at all.

The Hon. DANIEL MOOKHEY: To be fair.

Mr ADDISON: To be fair.

Mr GRAF: We have learnt a lot since.

Mr ADDISON: Unfortunately our major tenant had just been through a similar process prior to coming to want to lease the land from us.

The Hon. DANIEL MOOKHEY: To be crystal clear, to summarise here, Transport for NSW never tried to negotiate a price less than \$50 million with you at any point?

Mr ADDISON: I cannot recall. I can remember us putting the price forward and justifying it, and then myself going back after we had done some valuation numbers and justifying that it was actually further than that.

The Hon. DANIEL MOOKHEY: And Transport never asked you to clean up the site?

Mr ADDISON: It would be in email traffic but it was assumed at that time I think.

The Hon. DANIEL MOOKHEY: At no point did Transport tell you that they had authority to acquire the site via compulsory acquisition that the Minister had already approved?

Mr ADDISON: Not that they had authority but they had the powers to do that, yes. That was iterated in that email.

The Hon. DANIEL MOOKHEY: But not the authority?

Mr ADDISON: No, not that I can recall.

The Hon. DANIEL MOOKHEY: Finally effectively, understanding the commercial realities that you are talking about—that you were a reluctant seller—in effect \$38 million, of which actually \$11 million was put down, was translated into \$53 million in the space of seven months. Is that the commercial outcome that Billbergia achieved?

Mr ADDISON: Yes, that is the commercial outcome predicated on the value we had added to the land during that time.

The CHAIR: You said you have 20 hectares in Camellia. The area is known to have a number of petroleum and gas pipelines running through it. Do those pipelines present any particular risks in terms of land use on the land that you own?

Mr ADDISON: From what we understand those pipelines come from the original Shell refinery, which is down the eastern end of Camellia. There are some pipelines that run down the middle of Grand Avenue—I think it is a 400 millimetre pipeline?

Mr GRAF: It is a Caltex aviation fuel pipeline. There are those pipelines that run through many suburbs in Sydney and there are buildings that are developed within five metres of those pipelines. It is not as though it is an untoward risk. It is part of living in a major city that there will be pipelines—gas pipelines and fuel pipelines—that run and they have all of the normal protective arrangements around them. They happen to run through Camellia because there was a refinery there and there is still a distribution facility there on the former Shell site.

The CHAIR: Are there limits on land use around Camellia because of those pipelines?

Mr GRAF: Not along Grand Avenue. We investigated the reconstruction of Grand Avenue as part of a voluntary planning agreement and planning proposal that we would do for developing our site at 1 Grand Avenue—the former James Hardie site, where we had about 10 hectares. The reconstruction of Grand Avenue was not dramatically impeded by protecting and respecting the corridor. It is a Caltex pipeline. We have engineers reports on all of that.

The CHAIR: So the pipelines are not on 4-6 Grand Avenue, on the actual land itself?

Mr ADDISON: Not that I am aware of at all.

Mr GRAF: In the median of Grand Avenue in front of the site.

The CHAIR: Understood.

CORRECTED

The Hon. SCOTT FARLOW: Just with respect to the original expression of interest process when you took ownership of the site. Was there anything said as part of that process with respect to remediation and remediation responsibility? As part of the EOI process was that part of the parameters? Was there anything put—in terms of your tender was it non-conforming in the sense that you took responsibility for remediation?

Mr ADDISON: Our understanding throughout the EOI process was that the original vendor was selling the land and not wanting to take any risk themselves. We purchased it on that basis and that was negotiated into our contract with them. The clauses are all pretty evident.

Mr GRAF: May I say that is quite a common commercial transaction.

The CHAIR: That is all we have time for. Thank you so much for attending this hearing. It has been incredibly useful for the Committee. The Committee has resolved that answers to questions taken on notice will be returned within 21 days. The secretariat will contact you in relation to the questions you have taken on notice.

Mr GRAF: We are happy to do that.

Mr ADDISON: Thank you.

(The witnesses withdrew.)

CORRECTED

ROBERT SHARP, Secretary, Transport for NSW, sworn and examined

CAMILLA DROVER, Deputy Secretary, Infrastructure and Place, Transport for NSW, sworn and examined

The CHAIR: I now welcome our next witnesses. Would you like to make a short statement?

Mr SHARP: Firstly, I acknowledge the Committee's invitation to appear as a witness today and appreciate the opportunity to outline Transport's position in regard to the acquisition of the land at 4-6 Grand Avenue, Camellia. We welcome and accept the findings of the Auditor-General in respect to the acquisition. I have been charging Transport with implementing the recommendations that have been directed and have targeted the end of this year for that to be done. The majority of the Auditor-General's recommendations relate to Transport for NSW acquisition policy and procedures. I have instructed work in response to these recommendations to commence immediately. One of Transport's actions in response is to bring in independent expertise to help address the deficiencies identified by the Auditor-General in the land acquisition policies and processes, but also to expedite the formulation of a single set of policies and procedures which govern all of Transport's projects. To ensure that our processes reflect best practice, we will also obtain independent assurance and validate the efficacy of our improvement initiatives.

I would like to reiterate the Auditor-General's findings in respect of the efficient use of public resources and process. With respect to the recommendation of the Auditor-General for the conduct of an investigation, I am aware that this matter has been separately referred to the Independent Commission Against Corruption. I am advised that Transport did not identify information in 2019 when this matter was reviewed, which necessitated this matter to be referred to ICAC. But following media reports to the Minister, it is on record that he referred this matter to ICAC. I support the investigation by ICAC, which I believe will ensure that the matters can be finally resolved. Noting the Auditor-General's recommendation, ICAC's advice has been sought on what, if any, action Transport may take in respect of that recommendation. ICAC has requested that Transport not take any action at this stage until ICAC has had the opportunity to consider the matter and revert to Transport. To that end, I am not in a position today to provide a substantive response to the Committee's questions that go to individuals involved in this matter nor to the investigation by ICAC.

With the opportunities afforded by the integration of Transport and the former Roads and Maritime Services [RMS], Transport's property functions have just undergone significant operational transformation. In late 2020 the property teams from the legacy RMS and Transport for NSW [TfNSW] organisations have actually been brought together into a newly formed Infrastructure and Place division within Transport for NSW. This instigated a full review of the property team's roles, delegations, approaches and practices, with the aim of informing the organisational design for the new property services function within the Infrastructure and Place division. Its objectives included ensuring compliance with regulation and legislation governing acquisition compensation and government policy, meeting community expectations across New South Wales, and also providing efficient property service for expanding the capital program and providing role clarity on what is an integrated workforce.

The review of the legacy teams demonstrated that there were different approaches, which were historically being taken and which needed to be aligned so that there was consistency and we could actually support compliance. A finalised organisational structure was determined in late 2020 and a key element of the new structure worth highlighting is that the property function was organised to reflect the lifestyle of property, consisting of teams responsible for scoping requirements, including projects and undertaking property acquisitions to access land for construction or operational purposes. In addition, Transport moved the management of property litigation and other complex legal matters out of the property services function and under a newly formed Commercial Services team. This provides separation between the property function and those managing these complex matters, and obviously it leverages commercial skills that are required for those matters.

A key component of the new structure is to ensure that there are branch-based roles coordinating with projects to define their needs and then bringing that back to central centres of excellence to undertake activities such as property acquisitions by the Land Access team. This means the scoping of required property remains close to the projects but acquisition transactions are centralised to ensure consistency and compliance with policies and procedures. A portfolio view can also be taken for activities such as the appointment of independent valuers, comparison of valuation approaches and also the introduction of peer reviews. This is a shift away from the legacy Transport for NSW approach where project-based property teams delivered property services end-to-end and they sat in those teams. Property decisions are now less siloed within the actual projects.

To wrap up, as secretary it is important for me to ensure that there are adequate and effective controls in place to manage risk in relation to land acquisitions. I have already described to you the work in respect of the policies and the procedures. In respect to assurance, the policies and procedures will articulate standards of monitoring and compliance assurance designed to give confidence that we are meeting our obligations and that

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we are managing those risks. The execution of a risk-based compliance assurance program will complement the policies and procedures. Together, these actions I believe will provide a firm foundation moving forward as the new Secretary of Transport. Thank you.

The Hon. JOHN GRAHAM: Thank you for that opening statement. I just want to clarify the point you were making about the independent investigation. As I understood it, the view you just put was that you are barred from taking that step recommended by the Auditor-General because of the advice you have received from ICAC. Is that correct?

Mr SHARP: Correct. ICAC has communicated to me and asked me to not commence any specific investigations until they have actually reverted to me following their review. They are considering the matter at the moment.

The Hon. JOHN GRAHAM: That was a specific guidance in relation to that question about—

Mr SHARP: Yes.

The Hon. JOHN GRAHAM: —whether you should initiate an independent investigation.

Mr SHARP: Yes. The Minister wrote to me formalising a request for me to take actions on the Auditor-General's recommendations. Off the back of that, I communicated with ICAC to ensure that I was not crossing their investigation and that was the response that I have received from them.

The Hon. DANIEL MOOKHEY: Thank you for your appearance today, Mr Secretary and Deputy Secretary as well. Congratulations on your appointment, Mr Secretary.

Mr SHARP: Thank you.

The Hon. DANIEL MOOKHEY: On notice, can we get a copy of that exchange of correspondence—the Minister's letter to you—for the record.

Mr SHARP: Yes, I am happy to table that.

The Hon. DANIEL MOOKHEY: If you are in a position to table what you are referring to in terms of ICAC and your exchange of letters with them, that would be helpful as well. Ms Drover, when did you become the Deputy Secretary of Infrastructure and Place?

Ms DROVER: I was confirmed in the role about a month ago.

The Hon. DANIEL MOOKHEY: Were you acting in the role prior?

Ms DROVER: I was acting in the role whilst the deputy secretary was acting as the secretary.

The Hon. DANIEL MOOKHEY: Were you the Deputy Secretary of Infrastructure and Place or acting deputy secretary around November 2019 or not?

Ms DROVER: No, I was only Acting Deputy Secretary of Infrastructure and Place, I think, from 19 February this year.

The Hon. DANIEL MOOKHEY: Great. Congratulations to you as well, Ms Drover.

Ms DROVER: Thank you.

The Hon. DANIEL MOOKHEY: Mr Secretary, do you mind tabling a copy of your opening statement?

Mr SHARP: By all means.

The Hon. DANIEL MOOKHEY: In your opening statement you described a variety of policies and procedure improvements that Transport has made. Is that a fair summary of what you have said?

Mr SHARP: Yes, there have been considerable improvements over the period since about 2017 right through until current times. I talked to the current changes but the Russell and Pratt reviews, which I know you all will be familiar with, recommended about 40 improvements. In 2017 a Centre for Property Acquisition was established, and that is actually based in Transport for NSW but it has a whole-of-government remit. It actually looks at lifting the standards of processes and guidelines right across all agencies. Obviously the lion's share of that work sits within Transport for NSW.

The Hon. DANIEL MOOKHEY: I just want to ask you to then respond to the Auditor-General's finding in which she says that "internal policies and procedures to guide the transaction were, and continue to be, insufficient".

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Mr SHARP: Yes.

The Hon. DANIEL MOOKHEY: She goes on to say:

Where the procedures did contain relevant requirements or guidance, this was not followed. As at the time of this audit, the policies and processes are largely unchanged for TfNSW, and the performance gaps identified in the 4-6 Grand Avenue transaction remain.

How is it possible that we can have confidence that there have been improvements in Transport for NSW's policies when the Auditor-General is telling us the opposite?

Mr SHARP: I mentioned the RMS merger. That has actually crystallised the ability to improve. That happened in late 2020. I will pass to Ms Drover who can actually talk through exactly what those changes were.

The Hon. DANIEL MOOKHEY: I am happy to hear the changes, but I just want a direct response to the finding of the Auditor-General which says that the same rules for negotiations for property acquisition that took place for 4-6 Grand Avenue still apply. Do they still apply?

Ms DROVER: Yes, and perhaps I can respond to that. We are still undergoing a process of reform, given the coming together of the legacy RMS and the legacy transport organisations. That did commence in early 2020 as part of the restructure. An interim structure was put in place by mid-2020. That interim structure was about getting the various property functions that were distributed across Transport into the one place, and they largely came into Infrastructure and Place as the primary division where we do property acquisition. Additionally, there is capability in Metro as well. From mid-2020 we had interim structure. Between then and the end of 2020 we looked at reviewing the processes, the procedures, the capability, delegations and reviewing all the job descriptions to work out how we would actually structure that new property function within Infrastructure and Place.

Our property function is more than just property acquisition. It also deals with customer inquiries about Transport-owned land. It deals with leasing, asset management, divestment. So all the property functions were put together. They were reorganised at the back end of 2020, went through staff consultation, union consultation and by the end of 2020 we had a determined new structure for the property function in Infrastructure and Place. As the secretary said, that new structure reflects the life-cycle of property. So it starts with centralised teams focused on land information, then what we call land access that does property acquisition, then leasing and asset management, and finally divestment. Over and above that we have branch-based roles, which are property professionals who are embedded within projects. They help with our interface between the centralised property teams and the projects. The projects at the coalface, they assist with defining the property requirements of a project and then bringing it back to a centralised team that actually does the acquisition.

The Hon. DANIEL MOOKHEY: Ms Drover, then do you disagree with the Auditor-General when she says that the exact same policies and processes are unchanged?

Ms DROVER: No, look, we do accept—

The Hon. DANIEL MOOKHEY: Do you accept her findings?

Ms DROVER: We accept her findings, and I think the legacy Transport policies have not been significantly reformed because, going forward, we are largely basing our future policies and procedures on the legacy RMS approach. That makes sense given that RMS historically did about five to six times the number of property acquisitions that Transport did.

Mr SHARP: The Auditor-General did actually specifically comment on the new processes, and she did say that they were fit for purpose and they were an improvement over the old processes. So she acknowledges that in the report.

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: I am not disputing that, and I accept that going forward you are going to be using the reformed RMS processes to guide your policies. Currently Transport for NSW acquires property by negotiation, which you are meant to under the Act, and you can buy through compulsory acquisition. Is that true?

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: How many properties are you currently commercially negotiating on the acquisition of today?

Ms DROVER: It varies year to year and obviously some acquisitions take longer than a year.

The Hon. DANIEL MOOKHEY: How many are active?

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Ms DROVER: I would have to take that on notice and confirm. In any year—look, it is circa 200 but it depends on the capital program at the time and what property we are buying for pending projects that are approaching delivery.

The Hon. DANIEL MOOKHEY: Right now, in just the negotiation phases of your property acquisition, can we infer that there are approximately 200-odd properties that Transport for NSW is actively negotiating over, using the same policies and procedures that were in place for the Grand Avenue transaction?

Ms DROVER: We would have to take that on notice and confirm the exact number that are in train at the moment, but historically it has been anywhere from 100 up to 300. That is right across Transport, not just Infrastructure and Place.

The Hon. DANIEL MOOKHEY: Given the clear deficiencies that the Auditor-General has pointed out, which you have accepted, how can we have confidence that for those 200 to 300 properties you are currently negotiating over that taxpayers are getting value for money?

Ms DROVER: As I said, we have accepted the recommendations of the Auditor-General. We are fully focused on expeditiously addressing her recommendations. The secretary has tasked me with doing that. I have an action plan that needs to be agreed in the next couple of weeks—by the end of June—and then by the end of the year we need to respond to those recommendations. So, yes, we are picking up the legacy RMS policies and procedures, but we are going beyond that because we recognise—

The Hon. JOHN GRAHAM: That management action plan, has that already been presented to the Executive and to the Audit and Risk Committee?

Ms DROVER: No, it has not. It is due at the end of this month. Just to reiterate, we do recognise that even the current RMS policies and procedures, there are opportunities to improve them to ensure that we meet customer expectations, community expectations et cetera.

The Hon. JOHN GRAHAM: It is not due at the end of the month. The secretary has written to the Minister saying that will be done by mid-June. It is currently mid-June and that has not yet been presented to that committee. Is that correct?

Mr SHARP: The audit committee meeting is happening at the end of this week, so by 30 June I committed to the Minister I would table that agreed plan. We are on track to do that. Just to the question that was raised, though, the procedures that were used back in 2015 when the negotiations were happening are not the ones being used now because of the restructure that took place in 2020. So current process has moved on.

The Hon. JOHN GRAHAM: Understood.

Mr SHARP: Is it at an optimal level? No, it is not.

The Hon. JOHN GRAHAM: But, Mr Sharp, it is not that it is not at an optimal level. I have never seen a report from the Auditor-General that is this scathing, and what you are saying is you have not even yet presented the plan to deal with it to the Executive.

Mr SHARP: The plan is to be presented to the committee, as I indicated in my letter, and that is at the end of this week. So we are on track with committing to that plan and I am committed, as the secretary, to deliver the action items by the end of the year, which is what I have written to the Minister and I have tabled those documents. But there are other assurances as well. We do have an independent internal audit process and there is a report that is underway at the moment.

The Hon. DANIEL MOOKHEY: I was going to ask you about that, Mr Secretary.

Mr SHARP: Yes.

The Hon. DANIEL MOOKHEY: You said in your letter to Mr Constance on 28 May that:

An internal audit into residential and commercial property acquisitions for TfNSW's infrastructure ... was commissioned late last year. A total of 20 acquisitions undertaken between 1 November 2019 and 30 October 2020 were reviewed ... The draft report is currently being finalised and I will brief you on the key findings.

Is that what you are referring to?

Mr SHARP: That is the audit report.

The Hon. DANIEL MOOKHEY: Has a draft report since been finalised?

Mr SHARP: My understanding is it is currently being finalised. I have not seen it. When that is finalised, it gets presented to me to review.

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The Hon. DANIEL MOOKHEY: Have you briefed the Minister?

Mr SHARP: There are 20 acquisitions up until—so these are recent acquisitions in the last 12 months.

The Hon. DANIEL MOOKHEY: Do you understand what the findings are of that audit?

Mr SHARP: No, the report has not been finalised or tabled yet.

The Hon. DANIEL MOOKHEY: I presume, therefore, you have not briefed the Minister.

Mr SHARP: No.

The Hon. DANIEL MOOKHEY: I am just putting it to you to be clear.

Mr SHARP: I will brief the Minister when the report is finalised.

The Hon. DANIEL MOOKHEY: Yes, clearly. Transport for NSW commissioned a commercial land acquisition internal audit report back in 2019, did it not?

Mr SHARP: Yes, late 2019.

The Hon. DANIEL MOOKHEY: That was presented to your predecessor, Mr Wendler, was it not, Ms Drover—the Assistant Deputy Secretary, Infrastructure and Place?

Ms DROVER: I think Mr Wendler was the Acting—

The Hon. DANIEL MOOKHEY: Yes, he was. To be clear, in the last three years we have had three separate investigations into how Transport for NSW acquires property. Is that fair? We had an internal audit done in 2019.

Mr SHARP: Correct.

The Hon. DANIEL MOOKHEY: We had another internal audit commissioned last year and we have had the Auditor-General look into one specific transaction. Is that fair?

Mr SHARP: The report that was commissioned last year is in regard to the broader controls and processes around property acquisitions. That would have come through the normal annual plans that we run for audits. Each year there is a process of audits focused on various areas and that has covered property acquisitions.

The Hon. DANIEL MOOKHEY: To be clear, the report that was presented in November 2019 was commissioned in February 2019, was it not?

Mr SHARP: Correct.

The Hon. DANIEL MOOKHEY: That was after I started asking questions in the budget estimates hearing in August of 2018. Is that correct?

Mr SHARP: I would have to check that time line.

The Hon. DANIEL MOOKHEY: I can definitely tell you I was asking questions in budget estimates in 2018, so you can take that as a given, Mr Secretary. This report was commissioned after Transport for NSW received media inquiries from *The Guardian*, was it not?

Mr SHARP: The questions that were raised by *The Guardian* did flag internally. That was the time when that internal audit was actually commissioned.

The Hon. DANIEL MOOKHEY: This was all documented in the Auditor-General's report.

Mr SHARP: That is correct.

The Hon. DANIEL MOOKHEY: In fact, *The Guardian* puts in media requests and then there is effectively what looks like a crisis form of meeting that takes place in Transport for NSW that results in this internal audit being commissioned. Is that fair?

Mr SHARP: There was a meeting internally to review the concerns that had been raised through the media. Based off the back of those concerns, the Executive at the time took the view that an internal audit would be tasked to have a look at the controls and the environment. That is my understanding of the 2018 or early 2019 time line. I think it was commissioned in February 2019.

The Hon. DANIEL MOOKHEY: It was. Did Transport for NSW ever at that point think about referring these matters to the Auditor-General or ICAC?

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Mr SHARP: There is a reference made—and I think it is highlighted in the Auditor-General's report—that at the time the consideration was that it was going to be subject to an audit report, not an investigation.

The Hon. DANIEL MOOKHEY: But that was because some people thought that it should be referred immediately to the Auditor-General and ICAC, did they not?

Mr SHARP: The question of a review would always in nature take the direction of is it an audit or is it an investigation? The comments that I believe were made at the time were that the—I am just looking for the right words that were used here. That there was no factual—sorry, I am just going to have to find the right words that were actually spoken. I will have to take that on notice. It is in the papers here. I think it is in the Auditor-General's report as well.

The Hon. DANIEL MOOKHEY: Basically, Transport decides the appropriate way forward is through an internal audit instead of an immediate reference to ICAC.

Mr SHARP: That is right. There was some particular wording they used but that is correct.

The Hon. DANIEL MOOKHEY: This audit is into all commercial acquisitions that were undertaken from 2010 to 2020, was it not, or 2019 at the time?

Mr SHARP: I believe it covered five years. There were 24 commercial land acquisitions over \$1 million and they looked at 16 per cent of those during that five-year period.

The Hon. DANIEL MOOKHEY: Over the same period there were about 80 commercial acquisitions, of which 24 were above \$1 million. That accords with your recollection?

Mr SHARP: They are the facts that I have got here, yes.

The Hon. DANIEL MOOKHEY: The total acquisitions of the 80 in total were circa \$99 million, were they not?

Mr SHARP: I would have to take that on notice. I do not have that number here.

The Hon. DANIEL MOOKHEY: And the 4 Grand Avenue Camellia transaction on page 7 is listed at \$53 million. Do you see that?

Mr SHARP: Of the Auditor-General's report?

The Hon. DANIEL MOOKHEY: No, of the internal audit report. However you cut it though, I guess the point of my question is the Camellia transaction has been the biggest commercial acquisition by Transport for NSW in at least a decade. That is correct?

Mr SHARP: Yes.

The Hon. DANIEL MOOKHEY: It is a massive deal, a massive transaction. That is fair? Compared to the standard?

Ms DROVER: I think perhaps up until the end of 2019—

The Hon. DANIEL MOOKHEY: Up until 2019 this was by far the biggest deal that Transport for NSW had engaged in in the marketplace whatsoever, correct?

Ms DROVER: We would probably need to take that on notice because—

The Hon. DANIEL MOOKHEY: But you have no reason to disagree with me right now?

Mr SHARP: I could agree that it was a large transaction. Whether it was the largest in a decade we would have to take on notice and come back to you.

The Hon. DANIEL MOOKHEY: Sure, but it dwarfs the ordinary ones you would be engaged in, would it not?

Mr SHARP: Even the current reference—there is 20 over \$1 million, so it would certainly be one of the larger transactions. I concur.

The Hon. DANIEL MOOKHEY: So do you not think it is worrying that, for one of the largest transactions, Transport for NSW never bothered to get it valued?

Mr SHARP: Clearly, process was not followed and the view of the new secretary coming in is that those controls and processes that were in place were not followed. There needs to be assurance activities put in

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place and I have committed to implementing those. In terms of valuation, it is fundamental across our processes to have an independent valuation. In this case there was no external, independent valuation.

The Hon. DANIEL MOOKHEY: Yes, and that led to immense loss for the taxpayers. Do you agree?

Mr SHARP: The whole purpose for assurance is to underpin the value for money that taxpayers are receiving for the money that is spent. That is why the secretary has a focus on putting these controls and mechanisms in place to ensure assurance. The Auditor-General has highlighted that no valuation externally was performed in this instance.

The Hon. DANIEL MOOKHEY: Can you turn to page 10 of the internal audit report.

Mr SHARP: Yes, I have that.

The Hon. DANIEL MOOKHEY: It says here at the first dot point, "Grand Avenue is an acquisition that was performed prior to full project approval due to the availability of the land on the open market. An initial offer by Transport for NSW for the property was rejected and the property was secretly acquired by a third party." It goes on to describe what happens next. The second paragraph says, "An independent valuation from Colliers supporting the value of the land was obtained after the acquisition." Do you see that?

Mr SHARP: Yes.

The Hon. DANIEL MOOKHEY: So Transport was told back in November 2019 that this deal was a stinker but did nothing about it. Why not?

Mr SHARP: What they did was commission the audit. The findings came down in late 2019. My understanding is all the recommendations that were raised out of that audit have been implemented. Subsequent to that, the Minister directed ICAC to have a look at the risks that were underpinning it. So those were the actions that took place following that comment.

The Hon. DANIEL MOOKHEY: Mr Secretary, I accept that you were not the secretary at the time but a report like this is given that shows that this deal, however you cut it, was a disaster and policies were not followed. Yet instead of Transport for NSW itself referring this to the Auditor-General or ICAC—or even bringing this report to the Minister's attention—effectively it does nothing other than a couple of recommendations around procedural improvements. Is that an unfair rendering of the record?

Mr SHARP: All I can do is talk to the facts as are articulated in the Auditor-General's report, which I think highlighted the control weaknesses. I have referenced the broader assurance program that Transport rolled out. That was implementing the Russell and Pratt reviews, restructuring the business, two audit reports—so Transport would be saying that they did take actions. These findings are serious. I have committed to fully addressing them. So, as the current secretary, what I look at here are weaknesses and processes that have not been followed. The assurance processes need to be lifted and I am giving a commitment to deliver on that.

The Hon. DANIEL MOOKHEY: I appreciate that, Mr Secretary. Ms Drover, were you on the Transport for NSW executive at the time—at the end of 2019?

Ms DROVER: No. I joined Transport for NSW on 1 December 2019, when the RMS was integrated with Transport for NSW. I came from the legacy RMS organisation.

The Hon. DANIEL MOOKHEY: Were you on the executive when you joined?

Ms DROVER: No.

The Hon. DANIEL MOOKHEY: Were you aware of this audit?

Ms DROVER: No, I was not.

The Hon. DANIEL MOOKHEY: Do you know why this report was not provided to the Minister at the time?

Mr SHARP: No. I would have to take that on notice.

The Hon. DANIEL MOOKHEY: Do you know whether or not it was ever discussed at the Transport for NSW executive?

Mr SHARP: I would have to take that on notice. I do not know.

The Hon. DANIEL MOOKHEY: Transport knows that this deal is a disaster at least two years before the public got wind of it—actually, before it was properly treated in the public domain—yet did nothing. It appears

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like this was an attempt to either bury bad news or cover it up. Why weren't your own policies followed and this immediately referred to either the Minister or the Auditor-General or ICAC?

Mr SHARP: The normal process for referring any matter is that there needs to be prima facie evidence for investigations.

The Hon. DANIEL MOOKHEY: You don't think this is it?

Mr SHARP: The Auditor-General highlighted that the audit report—the view taken by management at the time was that an audit was required to review those and they actioned those findings. I can only talk to the facts that were presented there. In terms of what they were thinking at the time, I cannot talk to that.

The Hon. DANIEL MOOKHEY: At the bottom of page 3 of the Auditor-General's report, it says:

The Director of Audit and Risk noted that an internal audit would be unlikely to detect wrongdoing unless the audit included a 'deep dive' component. The then Deputy Secretary, Infrastructure and Place, made the decision to conduct an internal audit on the basis that an internal audit was the most appropriate initial course to identify whether the acquisition had been made in accordance with TfNSW policy.

It is the case that Transport took steps actively not to properly investigate this. Is that a fair reading of the record?

Mr SHARP: I cannot infer that into those words. I have not had the conversations with the people at the time to know.

The Hon. DANIEL MOOKHEY: Who was the Deputy Secretary, Infrastructure and Place at the time this was done?

Mr SHARP: As I mentioned at the beginning, given there is an ICAC referral, any specific questions about individuals I am not in a position to talk to.

The Hon. DANIEL MOOKHEY: Who was in charge of the property team when the Camellia transaction took place? Which officer? I do not want you to name them, but which officer?

Mr SHARP: Ms Drover, do you know the property team's structure at the time?

Ms DROVER: I think it sat in the then division which was Infrastructure. I think it was called Services, not Infrastructure and Place.

The Hon. DANIEL MOOKHEY: That was Mr Regan, was it not? He was the deputy secretary at the time who was responsible for that.

Mr SHARP: As I said, I cannot comment on individuals because the matter has been referred to ICAC.

The Hon. JOHN GRAHAM: I just want to return to the letter you sent to the Minister and this question about the advice you received from the Independent Commission Against Corruption. At the stage you were writing to the Minister—this is on 28 May this year—you indicate:

... the Workplace Conduct & Investigations Unit is seeking clarification from the Independent Commission Against Corruption (ICAC) on the scope of work ... Following confirmation ... an independent workplace investigator will be engaged.

That is not indicating that this will not proceed or that ICAC advice has been received. That was then subsequently received, was it?

Mr SHARP: Correct.

The Hon. JOHN GRAHAM: Have you written to the Minister to indicate that that is the case—that you will not be proceeding with an independent investigation while that ICAC process is taking place?

Mr SHARP: At the moment I am preparing the action plan to present to the audit committee and I have committed to the Minister an action plan by 30 June. That will take into account the current position from ICAC at that point.

The Hon. JOHN GRAHAM: But have you briefed the Minister on that or is this first the Minister knows that you are not proceeding with his independent investigation when you just announced it then?

Mr SHARP: There are investigations underway. These are the action plans. The action plans are actually talking about independent reviews. Those independent reviews we are commissioning. An investigation into the actual Camellia report is the item I am referring to, which is subject to the ICAC review. It is specifically to do with Camellia, not the broader review of acquisitions and process and policy.

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The Hon. JOHN GRAHAM: That is exactly what this letter on 28 May is referring to. You are saying you now have that ICAC advice. I am asking have you briefed the Minister? Have you written to the Minister and briefed the Minister to say you will not be proceeding with an independent investigation?

Mr SHARP: No, I have not. The reason for that is that I agreed to brief the Minister by 30 June on the full plan, which would include these investigations. For the purposes of the Committee, I am giving you an update—

The Hon. JOHN GRAHAM: Until today the Minister is still expecting there might be an independent investigation into this.

Mr SHARP: I am fully expecting an independent investigation. ICAC, however, has indicated to me to hold off that until they have considered the matter. I am giving the Committee the latest information I have, which is current. There will be a current update before the Minister as well.

The Hon. JOHN GRAHAM: Have you been given any time frame as to how long that might take?

Mr SHARP: I have not.

The CHAIR: We have heard that this was a substantial transaction. This was an unusually large amount. What assurance do we have that there are not other transactions done around that time or subsequently that would also fall into this category of procedures not having been followed?

The Hon. DANIEL MOOKHEY: Or documented.

The CHAIR: Or documented.

Mr SHARP: There are two layers of assurance. One is the items I have spoken about. These are the internal audit reports—the current internal audit report, which is also looking at transactions, but also my commitment to the Minister where I indicated that I would be taking an independent review of the Camellia transaction. However, that is subject to the item that we were just speaking about.

The CHAIR: But other than the Camellia transaction.

Mr SHARP: More broadly, yes there is a review we have got looking at that assurance element to ensure that there were not any broader issues. The Auditor-General—

The CHAIR: And other transactions. If we are getting 200 or so a year, how many of those were not conducted in accordance with the processes?

Mr SHARP: I am not aware of any and I have not been advised of any. However, as I indicated—

The CHAIR: How would you know?

Mr SHARP: —there is a review that we are commissioning to actually answer that specific question. That is the action plan that I have agreed to submit to the Minister by 30 June.

The CHAIR: That was as a result of the—

Mr SHARP: Correct.

The CHAIR: If the media had not picked up on this particular acquisition, which had not then lead to this referral et cetera, would you have had any way of knowing whether those old transactions had been conducted in accordance with the processes?

Mr SHARP: For any organisation to have that confidence, you have got to have confidence in your assurance programs. The assurance programs have been addressed by the Auditor-General, where there are recommendations in there. The assurance programs at the time were annual audit reviews. The assurance programs can be improved. I have committed to broaden those assurance programs.

The CHAIR: Could I ask you about the contamination at the site. Have you now got an estimate of the cost of remediation of the site?

Mr SHARP: Yes, \$105 million.

The CHAIR: How much has been spent already?

Mr SHARP: That is \$105 million. The total cost is estimated at \$106 million. The works are basically complete, or nearly complete.

The Hon. DANIEL MOOKHEY: I struggle with that—

CORRECTED

Ms DROVER: Can I just clarify that? The value of the earlier works contract is circa \$105 million. The majority of that is for remediation, but not all of it. There is almost \$20 million which is for—

The CHAIR: Mr Mookhey is bursting out of his seat to ask a question. Go ahead.

The Hon. DANIEL MOOKHEY: I am bursting at the seams on this one.

The Hon. SCOTT FARLOW: Can we just allow Ms Drover to finish what she was saying. There is \$20 million for what, sorry?

Ms DROVER: There is an early works contract. The value of that contract has been published publicly. It is of the order of \$105 million. Most of that is for the remediation of the site, but not all of it. There is almost \$20 million for other ground preparation works as well.

The Hon. DANIEL MOOKHEY: We are talking about the contract for the remediation of 6 Grand Avenue, are we not?

Mr SHARP: Correct.

The Hon. DANIEL MOOKHEY: This is a contract that has been entered into with Ventia.

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: This was the one you announced on 26 March this year via press release as the updated figure. Is that correct?

Ms DROVER: I would have to clarify the timing, but that sounds about right.

The Hon. DANIEL MOOKHEY: This was published on the tender database then. Is that correct?

Ms DROVER: All our contracts are published.

The Hon. DANIEL MOOKHEY: Can I just table this and show it to you?

Ms DROVER: You can.

The Hon. DANIEL MOOKHEY: You are absolutely adamant it is \$106 million or thereabouts?

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: Why then does the contract that has been published on the eContract database show that the amended cost for remediation is \$116 million? If you turn to the second page it says that the amended estimate payable to contractor is \$115 million or thereabouts.

Ms DROVER: I am not familiar with this form of the eTendering—

The Hon. DANIEL MOOKHEY: That is the contract database. It is the way it has to be published, according to the Information Commissioner.

Ms DROVER: I am very happy to take that away and get that validated and confirmed et cetera.

The Hon. DANIEL MOOKHEY: It is your document. This is not my entry. This is the entry that Transport for NSW put on the database, not me. It shows quite clearly that it is \$116 million.

Ms DROVER: I am happy to take that away and get it validated.

The Hon. DANIEL MOOKHEY: Sure. Either the figure—

Mr SHARP: There is always context to these forms so we need to take it on notice to have a look at what that number is referring to.

The Hon. DANIEL MOOKHEY: I am familiar with it. I am familiar with the contract database. That number is an amended estimate. It is an updated contract. Originally the contract was published—last year it was circa, forgive me if I am wrong, about \$80 million, and then it was revised up to \$115 million. What is the actual cost? Is it \$105 million or \$115 million to clean up this site?

Ms DROVER: We can take that on notice and clarify for you.

The Hon. DANIEL MOOKHEY: Since entering into that contract have you received any further claims from Ventia?

Ms DROVER: Sorry, from entering into the contract—

CORRECTED

The Hon. DANIEL MOOKHEY: Under the contract, as a contractor, they have the right to make certain claims. Yes?

Ms DROVER: Yes. The value of the contract has moved with time.

The Hon. DANIEL MOOKHEY: It moved from approximately \$50-ish million to about \$105 million and now apparently \$115 million.

Mr SHARP: It was \$53 million in June 2016, I think.

The Hon. DANIEL MOOKHEY: In June 2016 it was \$53 million. The cost of remediation has gone up to at least \$105 million and it may have gone up to \$115 million. Have we since received any further claims from Ventia?

Ms DROVER: To get an increase in contract value you obviously have to put in claims and variations so they would have taken the contract value up. My understanding was \$105 million but, as I said, I will take that away and get that validated.

The Hon. DANIEL MOOKHEY: I accept, Ms Drover, that you will now have to go and clarify, but my point is since you entered this contract in March, has Ventia made any further claims? In the last three months have any further claims been made?

Mr SHARP: In the last three months? No.

Ms DROVER: Not to my knowledge, no.

Mr SHARP: But, once again, we can take that on notice and revert if that is a formal question that you would like us to answer.

The Hon. DANIEL MOOKHEY: Yes, I would like to know. It is a variation or a modification request—I think they are the two terms under your contract framework that you use. So, on notice, how many modification and variation claims, for what and for what value? Thank you.

The CHAIR: Could I just come back to the rest of the contamination issue. Are you aware of contamination from the site seeping onto neighbouring sites?

Ms DROVER: No, look, the remediation solution that we are implementing at the site mitigates that. There is a perimeter barrier around the site now that stops the ingress and egress of contamination in and out of the site. There is a capping layer to go on the top of the site. There is a new groundwater treatment plant. There is some containment of contamination at the southern end of the site. So there is a raft of remediation activities which stop what you have described. Over and about that, as I said, beyond the remediation the early works contract also includes ground improvements. So there is a whole lot of piling that has occurred right across the site to improve the bearing capacity of the site so that we can go ahead and build the stabling facility on the site.

The CHAIR: Is there additional risk on the 4-6 Grand Avenue site by virtue of the chemicals in the soil and groundwater being so close to gas pipelines and oil pipelines?

Ms DROVER: I am not across that level of detail. However, I do know that we are obviously complying with the planning conditions around that site. There are EPA provisions that we need to comply with. We have an independent environmental auditor associated with the project that is there to ensure that we are complying with all requirements of the EPA et cetera. So I anticipate that has already been looked at and that would be being addressed in our remediation solution.

The CHAIR: Are you able to provide any information on the safety of the site? Has a safety audit of some sort been undertaken?

Ms DROVER: We can take that on notice and see what we can bring back on that.

The Hon. DANIEL MOOKHEY: On the contamination, did you provide a warranty to Billbergia which excuses them from any liability for any claims?

Ms DROVER: I think it is a statement of fact and it is recorded in the Audit Office report that the site was purchased on an "as-is" basis.

The Hon. DANIEL MOOKHEY: Did Transport for NSW ever obtain any legal advice as to whether or not you bear liability for cleaning up neighbouring landowners' land from contamination caused on 4-6 Grand Avenue?

Ms DROVER: I am not aware of that, but I am happy to take that on notice and see what we can provide.

CORRECTED

The Hon. DANIEL MOOKHEY: Have you since obtained any legal advice as to whether or not any neighbouring landholder could sue Transport for NSW for the contamination of their land?

Mr SHARP: We would have to take that on notice. The typical project team would liaise with our in-house legal teams on a regular basis. I would need to take on notice that question.

The Hon. DANIEL MOOKHEY: Could you? The environmental reports that were prepared—

Mr SHARP: We will see what we can revert with.

The Hon. DANIEL MOOKHEY: Yes. The environmental reports that were prepared show that 77 hectares of neighbouring land might have been contaminated by activities which took place on 4-6 Grand Avenue, Camellia. Were you aware that that was said or have you since been made aware?

Mr SHARP: No. But, as I indicated, I will revert back to you with any legal advice that we can find on that.

The Hon. DANIEL MOOKHEY: Do taxpayers have any protection against any claim from neighbouring landholders for liability of their sites?

Ms DROVER: I am not aware of anything. But, as the secretary said, we can take that away. The only comment I will make is that it was well known that the whole of that precinct was contaminated, based on its historic industrial use.

The Hon. DANIEL MOOKHEY: Indeed. But the issue here is that because taxpayers have bought the site we are liable to clean up for neighbouring landowners if their land was polluted as a result of activities which took place on the site we now own. Is that fair?

Mr SHARP: As I said, I would need to get legal advice. I am not a lawyer and I am not across that. I have not been made aware of any such issue. But I will clarify that and revert as required.

The Hon. DANIEL MOOKHEY: This did feature in the public debate and in the public reporting, that the liability could be a lot larger if we are liable for neighbouring land pollution. It is quite a common part of the debate. This has never been looked into by Transport for NSW?

Mr SHARP: We are just not aware, so we will revert with the details.

The Hon. DANIEL MOOKHEY: Ms Drover, are you aware?

Ms DROVER: I am not aware, but I suspect our remediation solution addresses that. But, as I said, we will take that away and see what we can find on that.

The Hon. DANIEL MOOKHEY: What do you mean by you suspect that the remediation solution addresses it? This is for contamination which has taken place previously.

The Hon. JOHN GRAHAM: Putting up a wall now will not assist with this problem.

The Hon. DANIEL MOOKHEY: It will not fix it. Or, if it does, how does it?

Ms DROVER: Well, as I said, the remediation solution includes a barrier wall on the perimeter of the site to stop the ingress and egress of contaminants across that barrier.

The Hon. JOHN GRAHAM: But this is about the decades of liability that might have accrued from previous contamination that now taxpayers might foot the bill for.

Mr SHARP: Yes, I understand the question. I will revert once we have gone back and see what we can come back with on the legal aspects regarding that question.

The Hon. DANIEL MOOKHEY: Are contaminants still seeping into the Parramatta River from this land?

Ms DROVER: I am not aware contamination ever seeped into the Parramatta River. But, again, we can take that away and clarify.

The Hon. DANIEL MOOKHEY: But the EPA investigated this just a couple of years ago, after people made complaints. This was reported by News Corp four months ago, that there was leakage from this site to the Parramatta River which caused the EPA to fine you I think?

Ms DROVER: As I said, I am not aware of that matter but I am happy to take it away and see what we can find to confirm.

CORRECTED

Mr SHARP: The site itself has been subject to environmental reviews. This question would have been covered by that and we will revert on that. I am not aware of that. No-one has been raising that as an issue with me. But we will find out and revert—take that on notice.

The Hon. DANIEL MOOKHEY: Has the EPA signed off on your remediation solution?

Ms DROVER: I believe there have been some sign-offs from EPA. The exact nature of those? I am happy to take that away and clarify.

The Hon. DANIEL MOOKHEY: But it is still listed on their risks register, is it not?

Ms DROVER: I would have to confirm that.

The Hon. DANIEL MOOKHEY: Were the EPA asked to look into the solution prior to you committing \$100 million to create it?

Ms DROVER: I am aware EPA, as I said, have provided a number of sign-offs. We can take that away and clarify exactly the nature of those sign-offs, the timing, et cetera.

The Hon. DANIEL MOOKHEY: I appreciate that, but I am asking were they consulted prior?

Ms DROVER: Look, obviously I was not there at that time. But it is normal standard practice to consult the EPA on a remediation strategy of such a site.

The Hon. DANIEL MOOKHEY: Because it is a massive site?

The Hon. SCOTT FARLOW: Ms Drover, perhaps you could take it into consideration in that on notice response that you have already outlined to Mr Mookhey that you will undertake?

Ms DROVER: Yes.

The Hon. DANIEL MOOKHEY: That is fair. If you could take on notice if the EPA was consulted and, if so, when and by whom?

Ms DROVER: Yes, certainly.

The Hon. DANIEL MOOKHEY: This has been performed by the Parramatta Light Rail project team. Is that the team inside Transport for NSW which has been responsible for the remediation project?

Ms DROVER: Yes, the project team is responsible for all components of the project.

The Hon. DANIEL MOOKHEY: The money that was allocated for this—the \$53.5 million and the subsequent \$105 or \$115 million—where was that money sourced from? Was that from Transport for NSW's general budget or did you get a special appropriation or special Treasury—

Ms DROVER: No, it all comes from the Parramatta Light Rail stage one project budget. That is standard practice.

The Hon. DANIEL MOOKHEY: So it came out of the capital budget of Parramatta Light Rail stage one. It was the case that the original budget for the acquisition of the site—and when I say "original" I will be generous and we will go off not the approval from the AkzoNobel process but will use Billbergia—was \$80.5 million, was it not? The Finance and Investment Committee signed off on an \$80.5 million budget for both the acquisition and remediation of the land?

Ms DROVER: I think the Audit Office report does confirm that, yes.

The Hon. DANIEL MOOKHEY: It has doubled, at least, from that point in time. Is that fair?

Mr SHARP: Just in terms of the dollars, the \$115 million that you raised earlier is the \$105 million plus GST—so we are talking one in the same number.

The Hon. DANIEL MOOKHEY: Right. That is useful. Thank you very much. Although, I am fairly positive I have listed the GST separate on that—but, fair enough. So, the \$80 million has doubled? It has gone over budget and it has doubled it. Is that fair?

Ms DROVER: It is a statement of fact that the Finance and Investment Committee [FIC] at the time did sign off on the 80-odd figure for the acquisition and what they then thought would be the remediation cost. Obviously, that is not the figure that we have spent on the early works contract, noting that the early works contract covers more than remediation.

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The Hon. DANIEL MOOKHEY: At that time as well, Transport for NSW obtained advice from PricewaterhouseCoopers about the ability to construct up to 3,000 apartments above the stabling yard. Do you recall that?

Ms DROVER: I am not across that information.

Mr SHARP: I am not across that.

The Hon. DANIEL MOOKHEY: Are you still contemplating constructing apartments above the stabling yards?

Ms DROVER: No, we are not.

The Hon. DANIEL MOOKHEY: That has been taken off the table?

Mr SHARP: The site was purchased to support the light rail for staging and cleaning, and that is the use that it is committed to at the moment for the foreseeable future.

The Hon. DANIEL MOOKHEY: But there is no talk right now of putting in any other forms of development above?

Mr SHARP: There is none at the moment, no. There have been no current discussions at all.

The Hon. JOHN GRAHAM: But has it been ruled out? It may not have been discussed while you are doing this but it was a previous proposal.

Mr SHARP: We do not rule anything out on any asset, but it has not been discussed and we do not have plans to do so at the moment.

The Hon. JOHN GRAHAM: You did have plans?

Mr SHARP: You asked me currently. It is not on my plan list. The current position is that. I would have to take on notice the historical plans because I was not privy to them.

Ms DROVER: There has been no information in my time that that has ever been contemplated. We are happy to take that away and confirm.

The CHAIR: Perhaps you can take on notice also if there was ever any quote given in relation to remediation of the site to make it available for use as residential.

Ms DROVER: By Transport?

The CHAIR: I will rephrase my question. The question is whether there was a quote given to Transport in relation to remediating the site to a high level to allow the site to be used for other than just stabling?

Ms DROVER: We can take that away. To my knowledge nothing of that nature has ever been raised or discussed and I have not seen any documents that would suggest that was.

The Hon. DANIEL MOOKHEY: I will happily table one now. You got Colliers to value the transaction afterwards, did you not?

Mr SHARP: Yes.

The Hon. DANIEL MOOKHEY: And they valued it on two bases. They valued it on the basis of its as is value and the redevelopment potential. They list precisely how many units and others you could do. In fact, they were told to by Transport for NSW. I am happy to table the document for you. It is quite clear at the time that the finances of this deal were justified according to the idea that somehow we would be able to put units on it. That was a way in which it was then apparently explained as making financial sense. Are you not aware of any of this?

Ms DROVER: The only comment I can make in regard to that is in accordance with the just terms Act we are obliged to pay fair market value for a site.

The Hon. DANIEL MOOKHEY: If you go to page vi.

Mr SHARP: The Auditor-General on page 24 specifically noted that the valuation approach that was adopted by Transport for NSW was an internal valuation. To the comment that was just made by Ms Drover, the pricing needs to take into account potential profits generated by future development. I am assuming that report would have been for the purposes of that internal valuation. Unacceptable, because from an assurance perspective you want independent external valuation. But I am assuming that context would relate to that element that the Auditor-General highlighted.

CORRECTED

The Hon. DANIEL MOOKHEY: That is helpful, secretary, because I think that is right. At the time, from an assurance perspective, this was not a valid method of valuation but the method that Transport embarked upon was clearly on the basis of redevelopment potential. You can see yourself on page vi of that report. The one valuation report that was taken into this deal assumed that somehow we would be able to build a lot of units.

Mr SHARP: That is for the purposes of a valuation. They are arriving at a number to make an offer. That is what the purpose of that valuation is.

The Hon. DANIEL MOOKHEY: Take this on notice because I think maybe this will clarify it.

Mr SHARP: I will take it on notice to clarify it.

The Hon. DANIEL MOOKHEY: Can you take on notice whether you ever instructed Colliers to value the site assuming it would be redeveloped and that was on the basis of the site coming in as being worth half what you paid for it.

Ms DROVER: We can take that on notice but as the secretary said we are obliged under the just terms Act to make a valuation based on highest and best use fair market value.

The Hon. DANIEL MOOKHEY: The just terms Act tells you that but you were not using the just terms Act, you were using a commercial negotiation.

Ms DROVER: You still use the principles of the just terms Act when you are negotiating by agreement.

The Hon. DANIEL MOOKHEY: I accept that. But it is quite clear from the Auditor-General's report that those principles were observed in the breach, perhaps is a generous way of putting it. Do you accept that?

Ms DROVER: We accept that there were some deficiencies in the approach taken, absolutely.

The Hon. DANIEL MOOKHEY: And this is one of the deficiencies in the process.

Mr SHARP: Correct.

The CHAIR: Our time has expired. Thank you for your attendance. You have taken a number of questions on notice. Answers need to be returned within 21 days. The secretariat will be in touch in relation to those.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

MARGARET CRAWFORD, New South Wales Auditor-General, Audit Office of New South Wales, affirmed and examined

IAN GOODWIN, Deputy Auditor-General, Audit Office of New South Wales, sworn and examined

CLAUDIA MIGOTTO, Assistant Auditor-General, Performance Audits, Audit Office of New South Wales, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would you like to make a short opening statement?

Ms CRAWFORD: Very briefly, thank you. First off, thank you very much for the invitation to give evidence to this Committee. I note that this session actually precedes the deadline for making a submission so we will probably make a submission but we have not to date. We will talk today explicitly to our audit of the acquisition of 4-6 Grand Avenue, Camellia. This audit was completed at the request of the Minister for Transport and Roads under section 27B of the Public Finance and Audit Act. The Minister made his request on 17 November 2020. Our audit report was tabled on 18 May 2021 concluding that Transport for NSW conducted an ineffective process to purchase this property. Transport for NSW concurred with our findings and accepted the recommendations.

The Hon. DANIEL MOOKHEY: Thank you Auditor-General and Deputy Auditor-General for your appearance today, and I thank you for the audit as well. Auditor-General, I am a fan of your work. I do not think I have ever read a report as clear and damning as this. Damning is my word, I accept that. I am not trying to put words into your mouth. Is it the case that in your years of audit experience that you have ever come across a transaction like this before?

Ms CRAWFORD: Mr Mookhey, this was a very specific request by the Minister. We were able in this audit to confine our work very much to the specifics of this transaction. That led to the specificity of our findings. We were able to dig deeply into one transaction whereas many of my performance audits go much more broadly, more thematically. In this case it was a very specific transaction so we were able to confine our findings to that transaction.

The Hon. DANIEL MOOKHEY: In any report that you have issued in the last five years per se have you ever called for an additional independent investigation?

Ms CRAWFORD: You are asking me to remember all my reports. I counted them the other day and I am up to, I think, nearly 100 performance audit reports.

The Hon. DANIEL MOOKHEY: I am working through the collective works of the Auditor-General.

Ms CRAWFORD: I do not know that that would be so unusual but I cannot recall a specific example.

The Hon. DANIEL MOOKHEY: You say you cannot exclude the possibility of corruption. That is a pretty serious thing to say, is it not?

Ms CRAWFORD: It is a serious thing to say, yes. That is based on the gaps that we were able to identify in the conduct of our audit. Given failings such as poor documentation, Transport's own policies and procedures and guidelines were not followed, all the indicators that the price changed so much between one date and another, all of those matters—the lack of a probity plan, the lack of negotiation plans, the lack of elements or the lack of things that we would expect to see for a transaction of this nature means that we could not rule out the possibility of corrupt practice.

The Hon. DANIEL MOOKHEY: That is basically what you mean when you say in your report:

TfNSW's insufficient probity practices and gaps in documentation mean that we are unable to exclude the possibility that the transaction was affected by misconduct or corruption.

Ms CRAWFORD: Correct.

The Hon. DANIEL MOOKHEY: Insofar as you have powers to get to the bottom of it, is it your view that you do not have the powers to properly continue the investigation to the point where you could exclude the possibility of misconduct or corruption?

Ms CRAWFORD: My mandate goes to conducting audits rather than investigating specific individuals. In the conduct of this audit we were able to go so far but did not go to the extent of a full investigation into all the individuals and what they did or did not do during this transaction.

The Hon. DANIEL MOOKHEY: To be fair, you would not have the power to investigate a private organisation.

CORRECTED

Ms CRAWFORD: Correct. We would not. We did speak to the gentlemen who were here earlier this session, but that was because they volunteered. But I would have had no power to require them to give me evidence.

The Hon. DANIEL MOOKHEY: Under oath you had no power or the ability to compel them to produce documents to you.

Ms CRAWFORD: I would have no power to the request that. I mean, I could request it but if they did not wish to provide it, then that would be up to them.

The Hon. DANIEL MOOKHEY: That is because you do not have follow-the-money powers basically.

Ms CRAWFORD: Correct.

The CHAIR: Were there bits of information and documents that you were not able to obtain that you would have wanted to from Billbergia that would have helped inform your report?

Ms CRAWFORD: Not from Billbergia. There were documents that we would have liked to have seen from Transport for NSW that were not available. I am not suggesting that they held them back but there just seemed to be gaps in that. I might defer to my Deputy Auditor-General who maybe can add to that answer.

Mr GOODWIN: I might just come back to the question about where the authority of the Auditor-General to access documents sits and also vis-a-vis the private sector entities, but also to just touch on the difference between an audit and an investigation into corrupt practices. There is a subtle difference. In this case we are doing an audit at the request of a Minister, so that sets out the scope and the terms of reference. Effectively, that was to look at whether the process was effective and, as the Auditor-General has said, the process was ineffective as a conclusion.

That is very quite different to a process to look at corrupt behaviour, which is more within the remit of the ICAC and certain materials get referred to if needed in that respect. But there is a difference in the nature of the work insofar as the mandate of the Auditor-General did not reside within the entities that we can conduct a financial audit of in essence, which is the government sector. While we did talk to Billbergia, as the Auditor-General said, that was by agreement, but there is not an ability to compel outside of the government sector to do evidence by oath. That is quite different to other integrity agencies where they might have that power. One of those limiting factors is the fact that in New South Wales the Auditor-General does not have the follow-the-dollar mandate.

The Hon. DANIEL MOOKHEY: In your report you make references to some people you did interview as part of the audit. One of them is the Deputy Secretary, Infrastructure and Place. Who else did you interview in this audit?

Ms CRAWFORD: We do have a list. Will I defer to Ms Migotto?

Ms MIGOTTO: We interviewed multiple members of staff who were involved at the time who remain within Transport for NSW. We could, for the reasons that have been explained, not necessarily interview people who have left Transport for NSW who were involved in the transaction—project directors; the Deputy Secretary, Infrastructure and Place as you have noted; other staff involved. We can provide a specific full list.

The Hon. DANIEL MOOKHEY: On notice, could you provide the full list?

Ms MIGOTTO: Sure.

The Hon. DANIEL MOOKHEY: Can I ask you specifically about two people? Did you speak to the person who held the role of Secretary of the Department of Transport in 2015, Mr Reardon?

Ms MIGOTTO: No, we did not interview him as part of this.

The Hon. DANIEL MOOKHEY: Is there a reason why you did not or did you try to?

Mr GOODWIN: I think it comes back to the scope of the request audit. We were not commissioned to do an investigation into individuals. What we were asked to do was an audit of whether the process was effective. In doing that—

The Hon. DANIEL MOOKHEY: Yes. No, I am—

Mr GOODWIN: Sorry, I will try to answer your question. In doing that, it becomes a matter of where you have the evidence and where you have to fill the gaps. The secretary obviously has a role as the chief executive of the cluster at that time, but what we were able to satisfy was through the documentation through the Finance

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and Investment Committee [FIC] where the secretary plays that role to be able to understand what role the secretary had. But it was not an investigation into individuals.

The Hon. DANIEL MOOKHEY: To be fair, I was not suggesting that it was. I am not asking you nor am I suggesting that any of these individuals warrant an investigation per se. What I am asking is, as part of your audit did you speak to them or did you seek to speak to them?

Mr GOODWIN: We would seek to speak to people if we have gaps in information or they have a direct role in terms of documentation that we are seeking to understand that they were a party to the documentation.

The Hon. DANIEL MOOKHEY: One of the episodes you describe is the episode in which the FIC approves this transaction with only two hours of notice. Do you recall that part of the report? You say on page 32 that in that meeting the secretary and Deputy Secretary, Freight, Strategy and Planning did not vote. Do you recall saying that in your audit?

Ms CRAWFORD: Yes.

Mr GOODWIN: Yes.

The Hon. DANIEL MOOKHEY: Did you not think that that perhaps warranted questions to the secretary as to why he did not vote? Why did the secretary not vote on a deal this big?

Mr GOODWIN: One of the things that we did consider is the terms of reference of the FIC and what was the nature of a quorum, what is the nature of a consensus vote. The documentation around that was not specific around the requirements of a quorum or the consensus. I think the fact that we make reference in the report that they did not vote is probably the comment that we are making.

The Hon. DANIEL MOOKHEY: Yes, I know. I appreciate that, but I am trying to understand the context as to why they did not vote.

Mr GOODWIN: The context is we are making it clear that they did not vote.

The Hon. DANIEL MOOKHEY: Yes, I accept that, but in exhibit 6 of your report you describe the investment decision thresholds. In that table you say "new funding allocation to investment, high risk or high value \$10 million to \$100 million" should go to the FIC and then "unplanned/unforeseen expenditures" is "as directed by the secretary". Did you at any point in the audit feel it necessary to probe whether or not this was unforeseen and unplanned?

Mr GOODWIN: There is another piece to understand in terms of the role of the secretary. I think we also mention in the report that the director had spoken with the secretary, and the secretary beforehand had said that it would be important to ensure that value was achieved in the transaction. That was what was ascertained. The issue in terms of us calling out who voted or did not vote is—the fact that we call out the absence of the vote is the point that we are making.

Ms MIGOTTO: We did not characterise this as an unforeseen or unplanned expenditure.

The Hon. DANIEL MOOKHEY: Okay, fair enough. But you make it clear that FIC members were provided less than two hours to vote on the proposal. To be clear, the vote took place on email. Is that correct?

Ms CRAWFORD: Correct.

Mr GOODWIN: Yes.

The Hon. DANIEL MOOKHEY: It was not a meeting in which they were given—

Ms CRAWFORD: No, it was an out of session—

Mr GOODWIN: Out of session.

The Hon. DANIEL MOOKHEY: It was an out-of-session email which people replied to and they basically said "yes" or "no". That is fair. Is that correct?

Ms CRAWFORD: Yes.

The Hon. DANIEL MOOKHEY: Some members voted and some did not on this email chain. Is that fair? But you also say that there is no evidence that FIC members queried the quality of the advice that they were provided when they made the decision to fund the acquisition. Are you referring to that specific vote or the meetings that took place beforehand or that at any point in time there is no evidence that they have a query?

CORRECTED

Mr GOODWIN: The fact that we comment that it was done out of session is an important point and there are risks that you introduce when you do that. But the broader comment around the fact that there could have been better inquiry around the risks around that transaction is a broader comment. It applies to the out of session, but it applies through the process to get to that point.

The Hon. DANIEL MOOKHEY: I agree—better process, better inquiry. But there was no inquiry. It is not like there were inquiries made by FIC members that were of low quality. It is that at no point is there any evidence in any FIC meeting or out of session or any process whatsoever that anybody sitting on the Finance and Investment Committee of Transport asked any decent questions as to whether this was good value. Is that fair?

The Hon. JOHN GRAHAM: Asked any questions.

Mr GOODWIN: I think what you are outlining are the deficiencies that are summarised in the Auditor-General's report that concludes that the process was ineffective.

The Hon. DANIEL MOOKHEY: Have you ever seen any agency approve the acquisition of a site worth \$50 million or have you seen any agency approve expenditure of more than \$50 million via a reply-all email chain?

Ms CRAWFORD: I could not comment on that. I would have to take that on notice and look at the records.

The Hon. JOHN GRAHAM: One of the concerning things that your report reveals is that there was a business paper submitted that originally did contain a costing and a recommendation about remediation but, at the particular two-hour meeting that we are referring to, that cost of \$26.7 million had dropped out of the consideration of the FIC.

Ms CRAWFORD: Correct.

The Hon. JOHN GRAHAM: There had been some consideration that remediation was an issue that the agency was aware of but, when the decision came, as hasty and imperfect as it was, remediation had disappeared as an issue altogether. Can you give us any other background or any other observations to that? That does seem quite extraordinary.

Ms CRAWFORD: I am going to defer to Ms Migotto but, before I do, I will just say that the purpose of that paper was to approve the release of funds for the purchase of the land, so hence the 53.5. Ms Migotto, are you aware of any other context in relation to the removal of the matter of remediation?

Ms MIGOTTO: Not that is not already expressed in the report. So if there is a further specific question around that, we can go into it.

The Hon. JOHN GRAHAM: Then a separate and secondary matter in relation to remediation, as was detailed in the questions, is Transport for NSW's original position on remediation was dramatically reversed 180 degrees from where they had been. Can you give us any additional information about how that came to be? It really seems that we are left drawing a blank as to how that reversal happened.

Ms CRAWFORD: I think the same could be said for us.

The Hon. JOHN GRAHAM: Yes.

Ms CRAWFORD: There was no evidence of that decision having been made or the justification for that.

The CHAIR: I do not know if you were listening when we had Billbergia representatives here and we were asking them about at what point did Transport for NSW accept liability for the contamination. They were saying that it was always their intention that they would sell it with the liability for contamination attached. Is there anything in the documents that you reviewed that indicated that Transport for NSW had a reason for thinking that they were not taking on that liability?

Ms CRAWFORD: The only thing that we found and reported was that that was their original position when the expression of interest process occurred—the market process earlier had occurred. That had been Transport's formal position at that point, and we were not able to see any evidence or justification for that shift during the direct negotiation. I heard Billbergia refer to emails. I am not sure whether Ms Migotto is aware of any specific reference to a change in position from emails we have seen.

Ms MIGOTTO: No, nothing was added to our appreciation of Transport's change in position on remediation.

CORRECTED

The CHAIR: When you say in the original market process, do you mean when the property was purchased by Billbergia?

Ms CRAWFORD: Correct.

Ms MIGOTTO: During the initial 2015 EOI.

Ms CRAWFORD: Correct.

The CHAIR: So Transport for NSW put a bid in at that time without taking on the contamination liability?

Ms MIGOTTO: Correct.

Ms CRAWFORD: That is correct.

The CHAIR: Understood. Thank you. This is a relatively large transaction. Is that right? We heard from Transport for NSW that they do hundreds of these a year, although not necessarily of this scale. Given the failures in the process that you identified, do you think it is reasonable to assume that there are other transactions that were similarly ineffective in terms of following process?

Ms CRAWFORD: As an Auditor-General, I do not assume.

The CHAIR: Fair enough.

Ms CRAWFORD: But that does go to our recommendations to Transport to assure themselves that the particular issues that we identified with this specific transaction are not occurring more broadly. That is the nature of our recommendation to Transport—that they provide some assurance or assure themselves that the nature of this transaction is not repeated.

The CHAIR: It is okay if you do not know the answer but, if the purchase had been through compulsory acquisition [CA], would Transport for NSW have had to take on the contamination liability?

Ms CRAWFORD: I do not know the answer. We pause and think. Mr Goodwin?

Mr GOODWIN: I could not give you a definitive answer as to whether they would or would not. What I would say is that one of the things that we do call out is that due consideration of the financial and operational risks of the choices between the sites but also choice of what would be the terms and conditions and price through compulsory acquisition, which had ministerial approval, versus by agreement. Going through and understanding the risks and the benefits of all of your options would be something that we would expect to be done, and we did not see documentation that that had been done.

The Hon. DANIEL MOOKHEY: You did come across the fact that the Minister had given his formal legal approval to issue a compulsory acquisition notice?

Ms CRAWFORD: Yes.

The Hon. DANIEL MOOKHEY: That took place circa two weeks or three weeks before they concluded the actual negotiations with Billbergia. Is that correct?

Ms CRAWFORD: That is correct.

The CHAIR: Was there a price on that compulsory acquisition?

Ms CRAWFORD: I do not think so.

Ms MIGOTTO: No.

Mr GOODWIN: No. I think it was part of their risk management plan—

Ms MIGOTTO: Correct.

Mr GOODWIN: —to ensure that they had that as an option.

Ms CRAWFORD: That is normal.

Mr GOODWIN: That is normal and within the statutory requirements. Had that path gone down, the Valuer General would play a role in terms of the valuation. We have not seen the documentation to say that they had gone through the process of informing themselves of the benefits of one approach or the risks of one approach, but they had set themselves up, from a risk management process, to at least have that option available. The next step would have been to go through and understand the benefits and the risks and the costs.

CORRECTED

The Hon. DANIEL MOOKHEY: I presume you did not actually speak to the Minister at any point in the audit about this.

Ms CRAWFORD: We spoke to the Minister before he made the request.

The Hon. DANIEL MOOKHEY: But actually about his role in the compulsory acquisition process as part of the audit?

Ms CRAWFORD: No.

Ms MIGOTTO: We do not necessarily have the power to compel Ministers to participate in our processes.

The Hon. DANIEL MOOKHEY: Yes.

Ms CRAWFORD: But we did not see the need to in any case.

Ms MIGOTTO: We did not ask him.

The Hon. SCOTT FARLOW: But you did not seek it either.

Ms MIGOTTO: Correct.

The Hon. DANIEL MOOKHEY: Fair enough. The CA approval is given, and then the negotiations conclude. You make a point that the deputy secretary, who authorised this transaction, was acting outside their delegation. Is that correct? Did I read that correctly?

Ms CRAWFORD: That is correct.

The Hon. DANIEL MOOKHEY: What was their delegation?

Ms CRAWFORD: It is a technical matter. That position would normally have a delegation to approve acquisitions but within a set of circumstances and those circumstances were not met in this situation. That is because the business case for the Parramatta Light Rail had not been approved at that point. Was there one other matter?

Ms MIGOTTO: There was no funding stream yet—

Ms CRAWFORD: Approved either.

Ms MIGOTTO: —to support acquisitions or other activity on the project.

The Hon. DANIEL MOOKHEY: Is it the case that basically the conditions precedent for the exercise of their delegation were not present?

Ms CRAWFORD: Correct.

Ms MIGOTTO: That is correct.

The Hon. DANIEL MOOKHEY: Had they been present, he or she would have had authority? Is that fair?

Ms CRAWFORD: At that level, that position would normally have that delegation, yes.

The Hon. DANIEL MOOKHEY: To be able to execute a \$50 million?

Ms CRAWFORD: Yes.

The Hon. DANIEL MOOKHEY: They would have had a notification requirement, though, of the leadership or the executive of Transport for NSW?

Ms CRAWFORD: I do not know.

Ms MIGOTTO: On the latter point, we will take that on notice, but we do comment in the report that that would have been within their delegation had a funding stream—

The Hon. DANIEL MOOKHEY: Had the conditions precedent been met.

Ms MIGOTTO: —already been approved.

Ms CRAWFORD: Yes.

CORRECTED

The Hon. DANIEL MOOKHEY: Okay. I now turn to the part of your report in which you talk about Transport for NSW's February 2019 internal audit; you might know the page better than I do. Do you recall what I am talking about?

Ms MIGOTTO: Yes.

The Hon. DANIEL MOOKHEY: We are talking about pages 40 and 41.

Ms MIGOTTO: Yes.

The Hon. DANIEL MOOKHEY: You say that in late March 2019, following media inquiries, a meeting is called to discuss the next steps. Do you know who called that meeting?

Ms MIGOTTO: We named the people involved in that meeting.

The Hon. DANIEL MOOKHEY: But do you know who called it—who initiated the meeting?

Ms MIGOTTO: I am not sure that we do. We will take that one on notice.

The Hon. DANIEL MOOKHEY: Because the people who attend this meeting are relatively high level. It is the chief of staff from the office of the secretary; a general counsel; a director of Audit and Risk; Director, Fraud and Corruption Prevention; and Associate Director, Workplace Conduct and Investigation. We can infer that they are relatively senior people in the organisation. Is that correct?

Ms CRAWFORD: Correct.

The Hon. DANIEL MOOKHEY: They have a specific-purpose meeting to discuss this media inquiry. Is that correct?

Ms MIGOTTO: Correct.

The Hon. DANIEL MOOKHEY: They decide basically that instead of referring it for an external investigation or an independent investigation they would proceed down the path of an internal audit. Is that correct?

Ms MIGOTTO: That is correct.

The Hon. DANIEL MOOKHEY: You probed them as to their reasons why they made that decision, yes?

Ms CRAWFORD: We did.

The Hon. DANIEL MOOKHEY: The deputy secretary advised his or her belief that they thought an internal audit was the most appropriate "to identify whether the decision to purchase the land ... had been made in accordance with the requirements of policy" and "that until an internal audit had been conducted, an investigation could not be appropriately directed to a task or tasks" and "there was no allegation of misconduct" and corruption. That is what you quote from that interview. Was that a reasonable judgement for the deputy secretary to form at the time?

Ms CRAWFORD: I do not think—

Mr GOODWIN: I will just clarify—on the question about whether it was a meeting. My understanding is that it was actually—a discussion is the right term. But it was an email correspondence involving those participants. So participants would have been copied into an email discussion.

The Hon. DANIEL MOOKHEY: Do you know who was leading that discussion or who initiated that discussion?

Mr GOODWIN: I will take that on notice but I believe it was the Director of Audit and Risk.

The Hon. DANIEL MOOKHEY: Is it possible on notice we can get that email? Are you able to produce that for us or not?

Mr GOODWIN: Correction. Sorry, it was the general counsel.

The Hon. DANIEL MOOKHEY: Judging by your reaction, Auditor-General, I might not press that.

Ms CRAWFORD: Normally we would not provide anything beyond this report. The rest is in our audit files and we keep them tight.

The Hon. DANIEL MOOKHEY: You can't blame me for asking.

CORRECTED

Mr GOODWIN: One of the matters when we went through it—it was classified as legal professional privilege, so that would be one of the factors in terms of its availability.

The Hon. DANIEL MOOKHEY: This email chain conversation took place under LPP, legal professional privilege?

Mr GOODWIN: When it was made available to us, it was under that. It was an internal email discussion but when we sought to get access to it—

The Hon. DANIEL MOOKHEY: Transport claimed legal professional privilege over that correspondence.

Ms MIGOTTO: That is correct.

The Hon. DANIEL MOOKHEY: Right. You then go on to further adduce what the deputy secretary's views were. Did you ask at the conclusion—I presume you saw the report that resulted, which is this internal audit report of November 2019.

Ms CRAWFORD: Yes, we did.

The Hon. DANIEL MOOKHEY: I can give you a copy if you want to see it. Did you review that report?

Ms MIGOTTO: Yes, we did.

The Hon. DANIEL MOOKHEY: Did you ascertain why, after Transport for NSW obtained that report in November 2019, no referrals were made to any external agency or were—

Ms MIGOTTO: I can only say that we asked that specific question and the answer that we were given is here in the report in front of you.

The Hon. DANIEL MOOKHEY: What was the answer given?

Ms MIGOTTO: This is quoting from the report. "I believed that until an internal audit had been conducted an investigation could not be appropriately directed to a task or tasks and there were no allegations of misconduct."

Ms CRAWFORD: Sorry, Ms Migotto, but Mr Mookhey was asking then having completed the internal audit—

The Hon. DANIEL MOOKHEY: Did Transport ever have a discussion about whether or not—

Ms MIGOTTO: I was going to follow on with that. Subsequently he says that to conduct an internal investigation—he would only do so unless it appeared to be a step warranted by the findings of the internal audit. So you can—

The Hon. DANIEL MOOKHEY: You then say in your penultimate paragraph on page 41, in the last sentence of that paragraph:

It would have been reasonable, having regard to queries made to the Department and the Internal Audit findings, for TfNSW to engage an independent investigation to identify whether these risks eventuated and whether they were systemic across the land acquisition function within the agency.

Ms CRAWFORD: Correct.

The Hon. DANIEL MOOKHEY: They should have gone to the independent investigation.

Ms CRAWFORD: That goes to our recommendations. We still believe that, in fact, that is a missing step that needs to be taken.

The Hon. DANIEL MOOKHEY: Did you ever get a reason from Transport for NSW why they did not take that step at that time?

Ms MIGOTTO: That is their reason that they provided to us.

The Hon. DANIEL MOOKHEY: They still did not think it was warranted despite receiving this report.

Ms MIGOTTO: I think that is an inference that you—

The Hon. DANIEL MOOKHEY: I am drawing. But am I understanding correctly that that is basically the inference you drew from the answers they gave you?

Ms MIGOTTO: It is the answer that we were provided to that specific question.

CORRECTED

Mr GOODWIN: It is the answer that we were provided. The key point is the recommendation that flows from that, which is recommendation 2 in the Auditor-General's report, to conduct an independent investigation.

The Hon. DANIEL MOOKHEY: To be fair, had this never arrived with the Auditor-General there never would have been an independent investigation, would there? I mean, they are only taking this action in the wake of your recommendation. Any thoughts? Anything you can comment on?

Ms CRAWFORD: We cannot really comment on what they may or may not have ultimately done but clearly they now have accepted the recommendation to do this.

The Hon. JOHN GRAHAM: That independent investigation, though, has not proceeded. I do not know if you heard the answer from the secretary.

Ms CRAWFORD: I did.

The Hon. JOHN GRAHAM: That is quite clearly recent information—that they have been asked to hold that investigation while potentially other activity takes place. I wanted to give you the opportunity to shed any other light on that. I wondered if there was anything you needed to add at that point.

Ms CRAWFORD: No.

The Hon. JOHN GRAHAM: Thank you.

The Hon. DANIEL MOOKHEY: Turning to the issue of the actual negotiations, was it the case that those negotiations that were entered into with Transport for NSW with Billbergia in 2015 took place with FIC having approved an acquisition budget of circa \$32 million to \$33 million?

Ms MIGOTTO: Could you repeat that? I did not quite get the flow of the question.

The Hon. DANIEL MOOKHEY: Sorry, it was probably the way I put it. When Transport for NSW initiated its discussions with Billbergia in circa April 2016, at that point they had no FIC authority to offer anything. Is that correct?

Ms MIGOTTO: That is correct.

The Hon. DANIEL MOOKHEY: Previously, FIC had given them an authority to spend up to \$32 million in the AkzoNobel acquisition process. Is that correct?

Ms MIGOTTO: In the context of the 2015 EOI, correct.

The Hon. DANIEL MOOKHEY: Yes. So the last time FIC considered the matter prior to the Billbergia negotiations commencing, it had approved a budget of \$32 million. Is that correct?

Ms MIGOTTO: That is correct.

The Hon. DANIEL MOOKHEY: At no point in the negotiations did FIC ever provide a ceiling as to what could be offered. Is that correct?

Ms MIGOTTO: We note in the report that the negotiation proceeded without an approval of terms or—

Ms CRAWFORD: A negotiation strategy.

Mr GOODWIN: A value and negotiation strategy. Any of the sorts of things that would—

The Hon. DANIEL MOOKHEY: Did you find out whether or not Transport for NSW's leadership at the time, or the Minister at the time, were even aware that these negotiations were taking place? Was the secretary or the finance investment committee aware that his officers were negotiating with Billbergia to buy this site?

Ms MIGOTTO: As we note in the report, there are a number of gaps in documentation, particularly around that negotiation phase, so we cannot categorically say that it did not happen but we saw no evidence of it.

The Hon. DANIEL MOOKHEY: There is no evidence that it did. There is nothing to disturb the view that it is possible that one or two officers just picked up the phone themselves and went, "We're interested in buying the site."

Mr GOODWIN: For us to answer the way you framed it—and I am trying to be helpful—would be speculative. What we can say—and to go back, the amount of the original approval was \$30 million, not \$32 million.

The Hon. DANIEL MOOKHEY: I think 33 went to the GST, but sure.

CORRECTED

Mr GOODWIN: What we can say is that there would have been an expectation of better documentation to support the decisions and the processes that were occurring to get to that point, and beyond the original \$30 million.

The Hon. DANIEL MOOKHEY: Billbergia say their baseline in the negotiation was above \$50 million. In the second round they increased to it \$65 million to \$95 million and then returned effectively to their range of \$50 million. Is that in accordance with what you saw as well?

Ms MIGOTTO: As I said, I do not know that we saw evidence of the interplay between higher and lower offers. We saw evidence of the final offer being made and the previous high counteroffer from Billbergia.

The Hon. DANIEL MOOKHEY: Did you see at any time whatsoever that Transport for NSW offered to pay less than \$50 million?

Ms MIGOTTO: I do not believe that we did.

Ms CRAWFORD: No.

Ms MIGOTTO: The negotiation documentation was all—

The Hon. DANIEL MOOKHEY: Did you see any evidence at any point that they suggested the land was worth the \$25 million which eventually it was valued at?

Ms CRAWFORD: No.

The Hon. DANIEL MOOKHEY: Is it the case, basically, that they took Billbergia's offer?

Ms CRAWFORD: Again, I do not know that we would ever present it is just the way you have. They had their own internal—Transport had an internal process for determining what they saw as an appropriate amount to offer, which is what they did. We have commented that it would be far better had they sought a formal valuation, which, as the report states, they did not do until settlement date.

The Hon. DANIEL MOOKHEY: They never took any step to validate this with an external body whatsoever. That is what your report makes crystal clear.

Ms MIGOTTO: Yes.

Ms CRAWFORD: Correct. There are notes of meetings and some emails that might go to what is happening in the vicinity of the area and commentary around other properties selling et cetera, but when it comes to the specifics for this transaction, they made the offer that was finally accepted.

The Hon. DANIEL MOOKHEY: Turning to the second part of the negotiations, which was the remediation, did you ever see any evidence that Transport for NSW tried to have Billbergia continue liability for the contamination of the land?

Ms CRAWFORD: Again, I think we are reverting to earlier questions. No, we did not.

The Hon. DANIEL MOOKHEY: You made abundantly clear that they took no steps of due diligence to ascertain what the liability could be.

Ms MIGOTTO: Not prior to making an offer.

Ms CRAWFORD: We do say in our report that Transport would have been aware of the contamination risk.

Ms MIGOTTO: That specific due diligence was insufficient.

Ms CRAWFORD: Correct.

The Hon. JOHN GRAHAM: One of the concerning things you draw attention to is that when the valuation is sought—and it is sought on the day of settlement—there is a specific direction to exclude site contamination from the valuation. That seems quite extraordinary at the time. How big a concern was that to you?

Ms CRAWFORD: Again, our report stands. That was the instruction that was given. You would really have to ask Transport for NSW why they would make such a request.

The Hon. JOHN GRAHAM: Is there any public policy justification or public interest consideration which could see the agency directly rule out any valuation of those things being sought?

CORRECTED

Mr GOODWIN: I will try and answer the question in two ways. The report is very clear that—we go to quite a bit of length to make very clear that the request to exclude the liability was made. I think you should take that as the comment.

The Hon. JOHN GRAHAM: Understood.

Mr GOODWIN: However, it may well be, in a general circumstance, that you might tell a valuer to exclude that particular aspect of the work if you believed that they did not have the technical expertise to do that. But you would then follow up with someone who did have the technical expertise to do that. We did not see that that occurred, and the number had moved a couple of times.

The Hon. JOHN GRAHAM: At this point—this is on 15 June 2016—we know already that in that briefing note on 29 April this remediation cost was at least \$26.7 million. That was the amount that was being requested in that internal note.

Ms CRAWFORD: That was in that briefing note that was then—

The Hon. JOHN GRAHAM: They were aware of it. It was at least \$26.7 million, possibly higher.

Ms CRAWFORD: Again, I am not sure that I can say yes or no. That was the documentation that they provided to the Finance and Investment Committee [FIC].

The Hon. DANIEL MOOKHEY: Just on this line of questioning, on page 24 of your report you describe the valuation that Transport eventually does commission, which is, I think, either a week or a month after they buy the site. On page 24, third paragraph, first dot point, you say:

This assessment assumed a cost of only \$2.0 million for contamination remediation, which is significantly less than what is now being paid by the State ...

Did I read that correctly in saying that Transport for NSW told the valuers to assume it would cost \$2 million? Or did I read that wrong?

Ms MIGOTTO: Sorry, that was the valuation conducted by agency staff?

The Hon. DANIEL MOOKHEY: Yes. The report says:

- an assessment of the speculative development potential value of the site. TfNSW based this on the landowner's purchase price, alongside the potential profit generated by future development and stamp duty costs (arriving at \$53.5 million). This assessment assumed a cost of only \$2.0 million for contamination remediation, which is significantly less than what is now being paid by the State ...

Do you have any idea how agency staff arrived at \$2 million?

Ms MIGOTTO: No. Basically, we published in the report the information that we had about the basis that agency staff came to the valuation. The deficiencies that you have noted are in the report.

The Hon. DANIEL MOOKHEY: If you just go down to the last paragraph—or the penultimate paragraph of that page, it says:

On 24 October 2016, the independent valuer provided a draft of its formal valuation report to TfNSW. On 23 November 2016, TfNSW received the final formal valuation report.

Were there changes between the draft and the final version?

Ms MIGOTTO: I would have to take that on notice.

The Hon. DANIEL MOOKHEY: It says:

TfNSW had instructed the valuer to:

- Conduct a market valuation on an 'as is' basis – with market value based on the methodology described in the Act. This approach valued the site at \$25.0 million.

But then it says:

- Conduct a second market valuation, made on a speculative development basis ... This approach valued the site at \$52.0 million.

This, to be fair, according to the report that I just tabled, is clear. Was that instruction given by Transport between the draft report and the final report or was that always in the draft report?

Ms MIGOTTO: I believe it was the instruction given at the commencement of the engagement. I can confirm that on notice.

The Hon. DANIEL MOOKHEY: You can confirm that on notice?

CORRECTED

Ms MIGOTTO: Yes.

The Hon. DANIEL MOOKHEY: You say:

- Disregard any known or unknown site contamination for both valuations.

That was also an instruction given.

Ms MIGOTTO: Confirming it was at the commencement of the engagement. Those instructions were provided.

The Hon. DANIEL MOOKHEY: The second approach, the market valuation approach, that is not at all in keeping with the just terms Act, is it?

Ms CRAWFORD: Pardon? Sorry.

The Hon. DANIEL MOOKHEY: The just terms Act that Transport has to follow for its acquisitions. That Act does not permit them to value on a speculative development potential basis, does it?

Ms CRAWFORD: I have not got the exact words of the Act in my head, but it does definitely lead to making sure that the value takes into consideration what the owner of the property could—

The Hon. DANIEL MOOKHEY: Highest and best use principle.

Ms CRAWFORD: Yes. That is right.

The Hon. DANIEL MOOKHEY: That is decided according to what its existing zoning is at the time of the acquisition, which is industrial. But they had it valued at residential. To be fair—you might disagree with this and you are welcome to—the just terms Act says highest best use at the time of acquisition, which means it should have been valued at an industrial basis not a residential basis with development potential.

Ms CRAWFORD: My understanding though is that the speculative redevelopment—that the valuation that came back was based on industrial, not residential.

The Hon. DANIEL MOOKHEY: I think it was residential.

Ms CRAWFORD: No, Mr Mookhey.

Ms MIGOTTO: The formal valuation is industrial.

The Hon. DANIEL MOOKHEY: The formal and the as-is basis did.

Ms MIGOTTO: The speculative development did.

The Hon. DANIEL MOOKHEY: The speculative development did? I am prepared to say that I may have read that report wrong, but I am fairly positive it was based on the assumption that there would be a lot of units on the site.

Ms CRAWFORD: My notes here in my preparation do make it clear that the financial value of the vendor's intended use of the site was for industrial use to be leased for industrial use.

The Hon. DANIEL MOOKHEY: That comes in at \$52 million.

Ms CRAWFORD: That was the speculative—

Mr GOODWIN: That is the Colliers approach.

The Hon. DANIEL MOOKHEY: I appreciate that. But, either way, was it valid for Transport to ask for valuations to be done on both bases, or not?

Ms MIGOTTO: The question as to whether it was valid, I am not sure we could answer. The question about whether it was a useful valuation to commission at that point in time in support of an acquisition that had already been conducted is the question that we answer in the report. The answer to that is no.

The Hon. DANIEL MOOKHEY: Basically, this was a retrospective way to justify what they already paid. That is the inference of your report. Am I reading it incorrectly?

Ms MIGOTTO: The report notes that it was a requirement that they should have conducted a valuation in the context of the negotiation—to inform the negotiation.

The Hon. DANIEL MOOKHEY: Can I just turn to the actual remediation contract. Did you ever look into that contract as to why it has risen in such cost as a part of this audit?

CORRECTED

Ms MIGOTTO: No, we were concerned with the due diligence. Consistent with the Minister's request that we look at the process for the acquisition, we were concerned with the due diligence that Transport for NSW had conducted at the time to inform the acquisition. So we had asked for and received the contract as part of this audit and we report the value of that contract here.

The Hon. DANIEL MOOKHEY: That was out of scope, was it?

Ms MIGOTTO: Well, we do not go into the details around how Transport for NSW arrived at that specific figure and the process that it used to determine and negotiate that contract with the remediators.

The Hon. DANIEL MOOKHEY: But I actually asked you specifically about the contract that Transport for NSW then enters into with Ventia, which at the time I think was entered into with it seeking \$50 million but it has now risen to 105. I presume that was not a part of the audit?

Ms CRAWFORD: We report those matters as factual matters.

The Hon. DANIEL MOOKHEY: Yes, but you did not look into it?

Ms CRAWFORD: But we did not make any assessment of whether that contract was the right sort of contract or the right value.

The Hon. DANIEL MOOKHEY: Fair enough. Did you hear the secretary's evidence?

Ms CRAWFORD: Pardon?

The Hon. DANIEL MOOKHEY: Did you hear the transport secretary's evidence?

Ms MIGOTTO: I did.

The Hon. DANIEL MOOKHEY: You did?

Ms MIGOTTO: Today? Yes.

The Hon. DANIEL MOOKHEY: You say in your report that the same policies and procedures that were in place at that time remain in force today.

Ms CRAWFORD: Broadly.

Ms MIGOTTO: At the time we published the report, which was May.

The Hon. DANIEL MOOKHEY: Which was two months ago, yes.

Ms MIGOTTO: Yes.

The Hon. DANIEL MOOKHEY: Did you hear the secretary's explanation as to the reform processes that they have embarked upon?

Ms MIGOTTO: I did, yes.

The Hon. DANIEL MOOKHEY: Does that satisfy your concerns?

Ms MIGOTTO: Without having audited what the secretary described, I could not answer that question.

The Hon. DANIEL MOOKHEY: But you make it quite clear in your report that the risks that were present at the time are continuing risks. Is that fair, Auditor-General?

Ms CRAWFORD: Yes.

The Hon. DANIEL MOOKHEY: And nothing that you have seen since or in the process of engaging with Transport for NSW as part of preparing this audit has caused you to conclude that the risk is—

Ms CRAWFORD: Our comment was at the point when we tabled our report. What Ms Migotto is indicating is that we are not able to comment on anything subsequent to that.

The Hon. JOHN GRAHAM: That was 18 May—it is very recent. Much of the agency's defence today related to—

Ms CRAWFORD: Action.

The Hon. DANIEL MOOKHEY: Last year.

The Hon. JOHN GRAHAM: —last year and changes that might have happened as Roads and Maritime Services and Transport were combined. But you looked at that, assessed that and still made the findings that you made in this report?

CORRECTED

Ms CRAWFORD: Correct. I think we said they are broadly consistent—had not been changed.

The Hon. DANIEL MOOKHEY: The secretary and deputy secretary were explaining actions that they took in the wake of their internal audit report. To be fair and valid, we do not dispute that. But these were predominantly actions taking place in December 2020—or throughout 2020 and concluding in December 2020, I think, to be fair to them—and you still maintain your concerns as of May this year?

Ms MIGOTTO: Some of that activity as described by Transport for NSW today was concurrent with us conducting this audit. So I think when we concluded our piece of work, up until that date, we were satisfied that information was correct, that they remain unchanged. I think that we heard from Transport for NSW today that that is still true.

The Hon. DANIEL MOOKHEY: Still the case, yes. You engaged with the secretary and you provided Transport for NSW with a copy of your report, did you not?

Ms MIGOTTO: As per our usual process.

The Hon. DANIEL MOOKHEY: As you are meant to do and you always do?

Ms MIGOTTO: Yes.

The Hon. DANIEL MOOKHEY: You included Transport for NSW's response as an appendix. That is correct?

Ms MIGOTTO: Yes.

Ms CRAWFORD: Yes.

The Hon. DANIEL MOOKHEY: Did you have any discussions with the secretary in parallel to that?

Ms CRAWFORD: This secretary was very new. Obviously he had only been appointed just prior to the tabling of this report.

The Hon. DANIEL MOOKHEY: Lucky him.

Ms CRAWFORD: I met with him shortly after his appointment and alerted him to our work, but certainly did not interview him or discuss the detail with him at that point.

The Hon. DANIEL MOOKHEY: So, in the appendix, he says in the letter to you, Ms Crawford:

I accept the report's recommendation that I direct the agency and Transport for NSW to develop a program of work to address implementation. This will be developed for Transport's June audit and risk committee and provided to you by 30 June 2021.

Have you been provided that as of this date?

Ms MIGOTTO: I think it is worth pointing out that, as with all of our reports, the responses of the agencies and their leadership is entirely a matter for them.

The Hon. DANIEL MOOKHEY: Sure.

Ms MIGOTTO: There is no requirement in fact—though it is offered—that such a document be provided to the Audit Office. Consistent with the usual process, what we would expect to see is the Public Accounts Committee follows up in 12 months to determine the progress of the recommendations.

The Hon. DANIEL MOOKHEY: I will just be very clear, it is a pleasing commitment that the secretary made to you to provide you with a copy of that. I am just more inquiring, have you so far to this point—

Ms MIGOTTO: No, we have not received it and we have not sought it.

The Hon. DANIEL MOOKHEY: Have you been asked to provide any input into that process? Do you have any advisory powers or capacity?

Ms CRAWFORD: No.

Ms MIGOTTO: No, definitely not.

Ms CRAWFORD: We would not—

The Hon. DANIEL MOOKHEY: You are not allowed to either, probably?

Ms CRAWFORD: Well, no, we will choose not to because then—

The Hon. DANIEL MOOKHEY: You have to audit them, yes.

CORRECTED

Ms CRAWFORD: Correct. But our financial director sits at the audit and risk committees of Transport for NSW, so she is hearing discussions around these matters as part of his role.

The Hon. DANIEL MOOKHEY: Yes, but you are not required to and it is beyond your power to provide any form of authority to sanction their plan? You do not have that power?

Ms CRAWFORD: No. As Ms Migotto points out, in 12 months' time the PAC will write to the secretary to follow up.

The CHAIR: Anything from Government members? I think Mr Mookhey has asked all the questions. Thank you very much for attending this hearing. The Committee has resolved that answers to questions taken on notice be returned within 21 days, but the secretariat will be in touch regarding those. That concludes our hearing for today.

(The witnesses withdrew.)

The Committee adjourned at 16:20.