REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 6 - TRANSPORT AND CUSTOMER SERVICE

INQUIRY INTO ACQUISITION OF LAND IN RELATION TO MAJOR TRANSPORT PROJECTS

CORRECTED

Virtual hearing via video conference on Wednesday 6 October 2021

The Committee met at 09:33.

PRESENT

Ms Abigail Boyd (Chair)

Mr Mark Banasiak (Deputy Chair)
The Hon. Scott Farlow
The Hon. John Grahm
The Hon. Shayne Mallard
The Hon. Taylor Martin
The Hon. Daniel Mookhey

The CHAIR: Welcome to the third public hearing for the inquiry into the acquisition of land in relation to major transport projects. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which the Parliament sits. I would also like to pay respects to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present and those who may be listening today.

Today's hearing is being conducted virtually. This enables the work of the Committee to continue during the COVID-19 pandemic without compromising the health and safety of members, witnesses and staff. As we break new ground with the technology, I would ask for everyone's patience through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link as provided to them by the Committee secretariat. Today we will be hearing from representatives of The Law Society of New South Wales, impacted business owners, the local member for Granville and also the New South Wales Valuer General.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the virtual hearing. I therefore urge witnesses to be careful about comments you may make to the media or to others after you complete your 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. There may be some questions that a witness can only answer if they have more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. Today's proceedings are being streamed live and a transcript will be placed on the Committee's website once it becomes available.

Finally, a few notes on virtual hearing etiquette to minimise disruptions and assist our Hansard reporters. Could I ask Committee members to clearly identify who their questions are directed to and could I ask everyone to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking. Please remember to turn your microphones back on—and there really is always at least one person who does this, so do not be worried if it is you, it might be me this time. So turn your microphone back on when you are getting ready to speak. If you start speaking while muted, please do start your question again so it can be recorded in the transcript. Members and witnesses should avoid speaking over each other so that we can all be heard clearly. Also to assist Hansard, may I remind members and witnesses to speak directly into the microphone and to avoid making comments when your head is turned to the side.

PENNY MURRAY, Partner, Addisons Lawyers, and Member, Environmental Planning and Development Committee, The Law Society of New South Wales, affirmed and examined

CHRISTOPHER DRURY, Deputy Chair, Environmental Planning and Development Committee, The Law Society of New South Wales, sworn and examined

The CHAIR: I now welcome our first witnesses. Could I invite you to start by making a short statement? If you could keep it to no more than a couple of minutes, that would be great.

Mr DRURY: Thank you, Chair. I will introduce our committee, if I may. The Environmental Planning and Development Committee is one of the Law Society's 27 standing committees. Penny Murray and I are two of 15 members of that committee. Our committee monitors all issues and, in particular, legislation and court decisions about environmental planning and development law, which includes compulsory acquisition law and compensation issues arising from compulsory acquisitions. We represent the Law Society and its members on policy and practice issues. Our priorities include developing and commenting on law reform and legal policy by submissions to and liaising with government and other stakeholders; educating the legal profession about changes to the law and providing guidance on practice and procedure affecting our area of the law; and exchanging information about legal trends and new developments, such as case law, of interest or concern, particularly where there are issues of legal policy arising from case law and the like. Now I will hand over to Penny Murray, who will talk to our submission.

The CHAIR: Thank you, Mr Drury.

Ms MURRAY: Thank you. As I mentioned at the beginning, I am a partner at Addisons Lawyers and I have been practising as a solicitor for 20 years. As a member of the Law Society committee, I raised the need for reform of the Land Acquisition (Just Terms Compensation) Act primarily arising out of multiple issues that I was experiencing on behalf of my clients, and it is as a result of that that ultimately led to The Law Society of New South Wales' submission. It does not address all of the terms of reference, but the primary focus of the Law Society's submission is that there should be a review into the Act. There has not been a wholesale review into the basis for which you can get compensation for acquisition for 30 years. There has been some reference to the Russell review in 2004 and the Government response to that in 2016, which it is acknowledged did lead to some beneficial changes to the legislation and processes.

But the Russell review specifically excluded consideration of the level of compensation payable for acquisitions of real property and David Russell actually made a recommendation that there should be further consultation on this. The New South Wales Government's response to that in 2016 was that detailed guidelines have been developed for acquiring authorities to ensure a more consistent assessment of business claims. But there was not further consideration of compensation, and particularly for business claims. If there is a review, the Law Society could make submissions at that point. But in the interim I think there are some immediate measures that could be taken to alleviate some of the stressors in the system such as provisions for advanced payment, acquiring authorities detailing the basis of the offers that they make and that the six-month informal negotiation period commence with the issuing of an offer not a mere letter, and that there be stamp duty dispensation for all owners where they intend to relocate or purchase another property.

Chris Drury and I are here today as representatives of the Law Society, so we can speak to the submission lodged. But for other questions we may have to take them on notice or, alternatively, can provide our personal views, which would not be those of the Law Society. Thank you, Chair.

The CHAIR: Thank you very much. I am going to start questions with the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. Firstly, can I thank the witnesses for their appearance this morning and can I equally thank you for the comprehensive nature of your submission. I might direct these questions at first instance to you, Ms Murray. You said that the Law Society's submission stemmed from your experiences with the system, I presume representing some of your clients. Is that correct?

Ms MURRAY: Yes.

The Hon. DANIEL MOOKHEY: Can you take us through what those experiences were which prompted you to bring the need for reform to the Law Society?

Ms MURRAY: Yes. Look, I think some of my personal experiences have arisen out of—probably in the last two or three years. There has been a combination, I think, of case law that has become—has a stricter approach, if you like, to the interpretation of the legislation and in conjunction with, I know, an approach from acquiring authorities to be much more conservative, less likely to be willing to engage in a forthright discussion

on compensation matters. At the same time, the market has gone up in particular areas and so they were negotiating in an environment where the offers did not reflect reality.

The Hon. DANIEL MOOKHEY: Step us through, step by step. You have made mention of adjustments to case law. Is there a particular case or decision that you think has impacted on how the system is operating, which we should know about?

Ms MURRAY: Yes. There has been a series of cases in the last few years to confirm that you cannot obtain stamp duty where you are not an owner-occupier. I think an informal, more relaxed approach was taken to this until the case law was solidified on this basis in the last few years. So where you have a company that leases it to a related entity for asset protection purposes or you have got self-managed super funds or you have got a husband leasing it to the wife's business or whatever, none of those entities can claim relocation stamp duty costs.

I find stamp duty is a helpful thing to sort of convince people that the offer that they have got is reasonable, because if they sold it on the market tomorrow they would not get stamp duty but at least you can say, "Look, you haven't got everything that you wanted on the compensation on this case but you have saved money on stamp duty—you should accept the offer". That has disappeared for many landowners. I think in this latest round of acquisitions there were a lot more business rather than residential acquisitions, so this has become a much more prominent issue. There have been some other cases such as the United Petroleum case, which talked about the limited extent to which you can claim business disruption lost profits and particularly where you have short-term leases, even if they have been historically renewed year after year.

The Hon. DANIEL MOOKHEY: And then the second point you pointed out which led to your push for reform was your experiences with acquiring authorities. Are you finding that there has been a change in the attitude of the acquiring authorities and their willingness to negotiate?

Ms MURRAY: Yes, and I should say, Mr Mookhey, that this is my personal experience and not that of the Law Society.

The Hon. DANIEL MOOKHEY: Please.

Ms MURRAY: Yes. I have just experienced, I think, since—I would actually say since the Camellia audit and concerns about that transaction and the Commonwealth's Leppington acquisition where there were concerns that the Government had paid too much for land, that there has been a much stricter approach to the way in which some acquisition authorities—not all of them—have been approaching acquisitions.

The Hon. DANIEL MOOKHEY: Do you mean the Transport department and the Sydney Metro, amongst others?

Ms MURRAY: Yes.

The Hon. DANIEL MOOKHEY: When you say that you think that it coincided with the, I guess, exposé around Camellia, practically what has that translated to in terms of your ability to actually get an outcome for your clients in a timely way let alone a just way?

Ms MURRAY: I am finding that the offer that is made, it is very difficult to change their minds. If we have put on consultant expert material which substantiates a particular position, if there is no counter position or counter-expert on the other side—sometimes there is not even one because the Government has not appointed one—then there is no sort of counter-expert to counteract that but then it will just be a position that "We're not willing to engage on that particular topic".

The Hon. DANIEL MOOKHEY: But are they willing to share with you the basis upon which they reached their valuation or not, or is it relatively opaque?

Ms MURRAY: Eventually. Once you reveal the detail of your claim, yes, you do get an understanding of where they are coming from. I think that is true.

The Hon. DANIEL MOOKHEY: Look, I am conscious that I have got to pass to my colleagues soon, but can you also take us through any experiences you have had with the Valuer General's office. Are they engaging with your clients in a timely way? Are they providing relief in terms of the ability to at least ascertain the value quickly in order for your clients to make decisions about their commercial and personal interests?

Ms MURRAY: My personal view is that the Valuer General's office has generally been very good. But in the last six months there has been difficulties. There has been a lot of delays, I think, with the Metro West acquisitions. I am not sure of the numbers or whether they have been overwhelmed with the number of people going to the Valuer General [VG] rather than reaching agreement, but we have been seeing delays of six months to get determinations and then sometimes two or three months between a preliminary and a final determination,

with the appointment of some consultants who had not done a thorough investigation and some I would question whether their consultants who were doing the investigation were adequately qualified to make some of the comments that they made.

The Hon. DANIEL MOOKHEY: Mr Drury, I just invite you to provide any reflections of your own experiences, either in your own personal capacity or the Law Society's capacity, on any of the questions that I directed to Ms Murray.

Mr DRURY: I would say one of the biggest disappointments that persons whose land is about to be acquired have to face—and we address this in our submission—is that when one receives an offer from the acquiring authority one receives a letter of offer, one does not receive a copy of the valuation upon which the offer is based. One writes to the acquiring authority and asks for a copy of the valuation and you are told "No, that's not our policy". Then you either telephone or write back and say, "As you know, section 10A of the just terms Act requires that there be a genuine attempt to negotiate an agreed price, and surely a genuine attempt would involve providing to the affected owner a copy of your valuation?"

The response given—and this is not just my experience but I have had discussions with barristers who practise in the area, and valuers. The response given is "No, it's on our website. The policy is on our website. Therefore, we must follow the policy and not provide a copy of our valuations unless and until you provide yours." As the Law Society's submission makes clear, that then requires an affected owner to spend whatever it might be, $15,000 or so, to obtain their valuation with the consequent delay et cetera.

It may well be that the acquiring authority's offer is based upon a fair and reasonable valuation and it can save time, money et cetera, et cetera. But, with the greatest of respect, one cannot avoid the statutory obligations contained in section 10A by saying, "No, we have a policy on our website". A good point Penny Murray made, particularly I think in relation to Sydney Metro and the Parramatta Light Rail and Sydney West, has been that there have probably been a lot of acquisitions and there has been a terribly delayed process of offers being made, particularly from the VG's office, to affected owners for whatever reason. And, yes, periods of up to six months delay, which impact upon affected owners quite significantly.

The Hon. DANIEL MOOKHEY: But the [disorder].

Mr DRURY: [Disorder] what can be done about that, but—

The Hon. DANIEL MOOKHEY: My last question, just on that particular point about the VG delay, is the VG by law is required to reach a determination within a certain period, is that correct?

Mr DRURY: Yes.

The Hon. DANIEL MOOKHEY: And that period, from memory, is it 75 days or is it less than that?

Ms MURRAY: [Audio malfunction].

Mr DRURY: You are on mute, Penny.

Ms MURRAY: Sorry. It can be 45 days, but it can be extended by another 60 days.

The Hon. DANIEL MOOKHEY: Last I checked, the average of the VG for a determination was about 115 days and there has been a deterioration, I think, from the last available public information. Is it your experience that, in respect to your clients, VG determinations are taking place outside the timetable that is permitted by the law?

Mr DRURY: Yes.

Ms MURRAY: Yes.

The Hon. DANIEL MOOKHEY: Thank you, Chair.

The CHAIR: Thank you. I will throw to the Hon. Mark Banasiak first, because I think I left him out yesterday at one point. Go ahead.

The Hon. MARK BANASIAK: Thank you, Chair. Just picking up on the point that you made, Mr Drury, about the first letter of offer just being a letter of offer. Would you suggest that we actually legislate that the so-called first letter of offer must contain a valuation report that can then be assessed by the opposing party?

Mr DRURY: Well, it is my understanding and the latest experience I had where we eventually did get the valuations is that the offer is made by reference to a valuation. So if the acquiring authority has a valuation I would have thought that the genuine attempt to negotiate must impart an obligation of good faith—even though

those words are not used in the legislation, perhaps deliberately so—but I would have thought that it is in everybody's interest for the offer to be accompanied by a preliminary valuation, and it can be just that. It does not need to be a valuation that has the same legal effect as the Valuer General's valuation, but it can help to inform and assist persons affected by a proposed acquisition.

The Hon. MARK BANASIAK: Okay. Just picking up on your brief comments in your submission on the uplift in value where you state that it is more a matter of revenue generation and taxation than being related to compulsory acquisition. But would you accept that with that uplift in value, that may come from partly the improvements that are made with further amenities, that it sort of does become an issue in compulsory acquisition because the person who is having their land compulsorily acquired finds it quite difficult to, I guess, find a like-for-like or similar dwelling in the neighbouring suburb or that suburb, so it is in fact an issue that is related to compulsory acquisition?

Mr DRURY: Ms Murray can speak more to this than me. But the point, Chair, that the Committee member makes about the difficulty of owners finding like-for-like is probably one of the most significant problems that affected owners face. It is not just residential owners but it is business owners as well—you know, if you have a warehouse in a particular location A it does not necessarily follow that you can easily find another one nearby. It is a big problem.

The Hon. MARK BANASIAK: Just on that point, Mr Drury, do you think we should have separate procedures or more well-defined procedures for commercial properties that are acquired over residential? We have heard some submissions that they are obviously two completely different beasts. Do you think we should perhaps separate out commercial properties as a separate process?

Mr DRURY: Well, I think this is part of the Law Society's suggestion that there needs to be a look at the Act as a whole, and I might hand over to Penny Murray in this context because Penny's got some particular and detailed experience with acquisitions.

The Hon. MARK BANASIAK: Sure. Thank you.

Ms MURRAY: Look, I think from the Law Society's point of view, we have said there needs to be a review. I do not think we have necessarily got all the answers as to whether they should be split into two separate processes, but I would say that it is definitely a very different compensation assessment process for a business relocation and compensation claim than it is for residential.

The Hon. MARK BANASIAK: Okay. I will pass back to you, Chair, if you have a few questions—just to share the load.

The CHAIR: Thank you. Just picking up on that point, in our discussion yesterday with Sydney Metro—and we have heard this a lot from government agencies when we have asked these sorts of questions—we hear that they are doing everything in accordance with the just terms Act. To what extent do you see the processes, attitude and perhaps even culture of some of these acquiring agencies being, I guess, outside of the spirit of that Act? To what extent could they improve their processes before we actually change the Act?

Ms MURRAY: I think, things like advanced payments. Because there have been huge delays with a lot of the Metro West acquisitions this year, some people have not had compensation for six or seven months for land that has been taken from them. They have incurred all these costs—including legal and valuation costs, but also relocation costs—with not a cent of compensation, continuing to have to pay their mortgages and not receiving rent from premises if they were rented out to tenants. Then the interest under the Act is 2.2-something per cent but the land prices are going up 2 per cent per month, so they are having to buy replacement properties in a market that is completely different to the land that it was taken in. Some of them are having to look to move from, say, the Westmead/Clyde area to Emu Plains to get equivalent land at the price for which they received compensation.

The other thing that is also within the power of the authority is whether they charge these landowners rent and the terms on which they continue to occupy. So one of my clients has incurred $100,000 worth of rent because that is what the Government said—they would have to pay rent whilst they were in occupation, until they found premises. Once they found premises to relocate to they would not be charged rent, so they did not have to pay twice. But they had been waiting for the VG's determination before they would move because they wanted to know how much money that they would have. So rent was imposed and when I asked "How did you come up with this rent amount?" there was no discussion as to the amount. I approached them before the gazettal to say, "What are the terms of occupation? The Act suggests we're meant to reach agreement and in the absence of agreement you can dictate the terms of rent." There was no discussion as to what the terms of occupation would be. We were just told two days before what it will be and "If you don't accept it then, basically, if you stay on the land you're deemed to have accepted the rent".

The CHAIR: Wow.

Ms MURRAY: So there are things like that that could be improved.

The CHAIR: Yes. Right. Just to clarify then, we heard yesterday from a number of residents and I have had many discussions with impacted residents across the State for various projects who have described the heartache that they have experienced through this acquisition process and, you know, the uncertainty, the emotional distress, the financial strain. Are you saying that there is an element of that that is caused by discretionary actions of the Government—it is not necessarily something they were required to do under the Act, that they could have actually made the lives of these people easier?

Ms MURRAY: They definitely, under the terms of the Act, have the power to charge rent and they are choosing to charge rent. For some of these occupants, they were owner-occupiers so they had never paid rent before, whereas others were paying rent to a different landlord and so, I guess in some sense, they were used to paying rent. But some had never paid rent. So they were having to pay their mortgage for land that had just been acquired and now have to pay rent as well.

The CHAIR: But that is not required under the Act, that is a discretionary decision?

Ms MURRAY: Yes.

The CHAIR: Thank you. Do you think that the obligation to, I guess, negotiate in good faith extends to ensuring that the particular people that you are dealing with have sufficient resources and knowledge to engage in that negotiation? I guess I am picking up on that point that the Hon. Mark Banasiak raised about the difference between a sophisticated property investor or property developer that you may be acquiring land off versus someone whose family home is being taken who might not have any sort of legal or financial experience. Does the obligation to ensure a reasonable attempt at negotiation extend to considering that difference do you think?

Ms MURRAY: Well, the Act uses the words "genuine attempt". It does not use the phrase "good faith". Look, some acquiring authorities will make advance payments for legal and valuation costs to give people the ability to incur—to get that advice to respond to the offer. But I think in the submission we talked about how it is not a consistent approach and also the extent of the advance payment is not consistent. So sometimes it might be they will say you can spend $2,000 on getting a valuation but you have gone to a valuer and the valuer is telling you it will cost $5,000 or a little bit more, so there is not a consistent approach as to whether you will get advance payment.

The CHAIR: Thank you. My time has expired, so I will run it to the Government. Mr Farlow?

The Hon. SCOTT FARLOW: Thank you very much. I am just interested, in terms of—I think your submission talks about, of course, section 56 and the definition of market value. Does the Law Society take any view as to any amendments that should be made to that definition or its suitability?

Ms MURRAY: Not at this point. We think there should be a review and a wholesale consideration of whether the Act is working.

The Hon. SCOTT FARLOW: So there is no position that the Law Society would take on that, it is just captured in terms of a broader review. Now I think you mentioned as well, previously, Ms Murray, about the change in approach from Transport for NSW when it comes to acquisitions because of the issues that have happened at Camellia and the like. It is sort of a case, I guess, of damned if you do and damned if you don't. So those instances are where, obviously, it is reported or suggested that Transport paid over market value. Of course, we have been dealing and hearing with certain instances through this inquiry where it is suggested that the offers from Transport for NSW are perhaps, well, I would not say under market value but a fair market value from what they are determined at present, but do not capture any uplift. What do you think can be a better process to try and address that gulf between both situations?

Ms MURRAY: Look, I think that is why the Law Society is saying that there needs to be a review. I have personal views about the process, about the choice of valuers, for example, that the Government is using and I think in the current market, particularly with the industrial market last year, the valuations which were done by the Government were out of date. So if they had been brought up to actual current market—and even when you are assessing market value for an acquisition in March you tend to be assessing it in January, so you are never really up to date almost until after the event. So even if they just brought their market values up to date that would be helpful.

The Hon. SCOTT FARLOW: Thanks very much for that. Mr Mallard?

The Hon. SHAYNE MALLARD: Thank you for coming in this morning and for your submission. I first want to just clarify, the Russell review, that was—I might have misheard you—you said in 2004 but my reference says 2014. Is that right?

Ms MURRAY: Fourteen.

The Hon. SHAYNE MALLARD: Fourteen. Okay.

Ms MURRAY: It was 2014.

The Hon. SHAYNE MALLARD: I just wanted to clarify that, because it was a long time to have a review sitting on a desk and then turn into legislation. You say it delivered some positive outcomes when the current Government legislated to do some reforms. Do you want to just dot point us through the positive side of it—we hear a lot about the negatives—the positive reforms that occurred out of that? What year was it that we did that?

Ms MURRAY: So, 2016.

The Hon. SHAYNE MALLARD: Sixteen, yes.

Ms MURRAY: So they were things—yes, things like the six-month informal negotiation period which was mandated with the genuine attempts to reach agreement. That was one of the reforms. The solatium payment, which is the emotional distress payment for people who are occupying their house when it is taken, that did increase and it had stayed at the same number for a while. They also introduced a provision to talk about reinstatement, so if there was no general market—there was no market value for your land, you could claim reinstatement.

The Hon. SHAYNE MALLARD: Into the community?

Ms MURRAY: I am not sure how often that has been—yes. I am not sure how often that has been used.

The Hon. SHAYNE MALLARD: Heaven forbid they have to go to Emu Plains. So they can go back into—I came from Emu Plains—their local community. I get that. That was a little rib.

Ms MURRAY: Yes. But it does have a limited application because it talks about where there is no general market for the land.

The Hon. SHAYNE MALLARD: Yes.

Ms MURRAY: I do not know whether it is really meant to apply a lot of the time to residential ones, because you would say there is a market for residential dwellings in a lot of the cases. And there were—

The Hon. SHAYNE MALLARD: So you are saying—sorry.

Ms MURRAY: I was going to say, apart from the legislation there were improvements in procedures, I think, for residential—you know, they did appoint case managers, there was that acquisition centre that sort of would help, I think, people who are very overwhelmed by the process. But that sort of case manager approach does not really work very well for businesses. I have not really seen that being applied. Whenever my clients have rung them they have not really found much assistance from them in a business context.

The Hon. SHAYNE MALLARD: You are saying that the area that it did not address, in your view, adequately—in your society's view, adequately, was tenants and commercial. We see commercial are pretty good at looking after themselves and going to court. I have seen a few pretty significant court wins in terms of the WestConnex. But tenancies, in particular residential, are they falling between the cracks here?

Ms MURRAY: Do you mean residential tenants?

The Hon. SHAYNE MALLARD: Yes.

Ms MURRAY: No, I do not believe so.

The Hon. SHAYNE MALLARD: So they are relocated and there is a process that is fair and reasonable for that?

Ms MURRAY: Yes, they get their relocation costs, removalists' costs, that sort of thing. You have got to be careful, though, about businesses and assuming that they are the big guys. There are a lot of small family businesses that have been acquired who would not be ones who would be willing to take things to court but have felt that they cannot buy back into the industrial area in which they were.

The Hon. SHAYNE MALLARD: How long have you and your colleague here been involved in this area of law?

Ms MURRAY: I have been doing it for about 20 years.

Mr DRURY: In my case nearly 40 years.

Ms MURRAY: Chris has doubled me.

The Hon. SHAYNE MALLARD: Twenty, 40—auction. Would I be right to say that it is a factor of the current Government since 2011 and the incredible boom in infrastructure that we have been doing that you have had a greater caseload in this area because it is a factor of the multiplier, the fact that we need to acquire more sites for so much more infrastructure?

Mr DRURY: I think that is a fair comment. Interestingly, somebody from Sydney West Metro said to me that "We really are doing our very best to put pressure on the Valuer General's office to get valuations out, but we can only do that, we can only put pressure on them." And he said, "We, in fact, have demanded that", at the relevant time, "all valuations be completed by a date." But all they could do was, to use his words, "demand". It did not happen, of course. But, yes, I think that is a fair comment; there is a lot happening.

The Hon. SHAYNE MALLARD: Clearly, that could be an issue of resourcing at the Valuer General's office then.

Mr DRURY: Of course the Valuer General, it retains private valuers to do the valuations. As I say, I was doing this 40 years ago and my experience was that the Valuer General's office per se was a bigger organisation then and a different organisation then to what it is now. Although not in our submission, it is also possibly important to bear in mind, in terms of the pressure upon valuers, that a lot of valuers did leave the industry over a period of time because they had suffered pretty unpleasant experiences in cases before the court, where they could be cross-examined for days on end. This was many years ago, but a lot of very good valuers did leave—sorry, not so much leave the industry but get out of doing that sort of work, the court work. And if you are not going to do the court work, they would not do the preliminary valuations and so on. So that was a bit unfortunate. So, yes, I think there is a resource problem.

The Hon. SHAYNE MALLARD: I certainly would not want to be a valuer. The fast-moving market, the pressure from banks and financiers to get the information correct, and then the people trying to borrow the money have their own expectations. I have been there myself. It must be an incredibly stressful profession.

Ms MURRAY: The other thing to keep in mind for business acquisitions, particularly for tenants, is it is actually about less valuation and more about quantity surveyors and that sort of thing, about what is it going to cost me to pack up and move and set up somewhere else.

The Hon. SHAYNE MALLARD: That is all my questioning, Madam Chair. Thank you for your answers.

The CHAIR: Unfortunately, we have run out of time. Thank you very much for attending and for giving us the benefit of your knowledge this morning. I do not believe there were any questions taken on notice, but if there were or if we have any supplementary questions for you the Committee secretariat will be in touch. There are 21 days to return those. I thank you and say goodbye. We will move to our next session.

Mr DRURY: Thank you, Chair.

(The witnesses withdrew.)

(Short adjournment)

CHRISTOPHER WALSH, Head of Property, Heworth Holdings Group, sworn and examined

The CHAIR: Thank you very much for your attendance today. Would you like to commence with a short opening statement?

Mr WALSH: On behalf of Heworth, I would like to thank you, Chair, and members of the Committee for the opportunity to address you all and ensure that you are properly informed to the fullest extent about Transport for NSW's unreasonably protracted attempt to acquire our development site at Rozelle and the many flaws within the just terms Act that has allowed these events to unfold. There is a letter that we wrote to the Hon. Andrew Constance, at the time the Minister for Transport and Roads, in October 2020, which best describes the convoluted acquisition process and our frustrations pertaining to it, which I have provided to the Committee for their benefit, so I will refrain from going into the same detail here.

There is also a letter to the Secretary of Transport for NSW the Committee may find beneficial. However, by way of background, Heworth purchased the iconic site on Victoria Road, the former home of the Balmain Tigers rugby league club, in late 2017 and lodged a development application [DA] shortly after. Roads and Maritime Services [RMS] first advised Heworth they would likely require temporary use of the site as a construction site for the Western Harbour Tunnel and Beaches Link project in March 2018. Transport for NSW publicly announced the proposed acquisition in July of the same year, with the Western Harbour Tunnel environmental impact statement [EIS] study confirming our site as the project's dive site in January 2020. Subsequently, once the EIS went on public exhibition, Heworth paused all critical development activities, such as off-the-plan sales and marketing, on the basis that the site would be acquired imminently. The DA was under assessment at the time, so it was progressed and achieved development consent in September 2020.

The cornerstone of the 28,000-square-metre mixed-use development was supposed to be a new Tigers leagues club. In line with the State Government's COVID economic recovery plans, the site's development would have created over 1,000 jobs during construction and its ongoing operation, and was expected to generate almost $60 million a year in retail sales. It was not until May 2021 that Transport for NSW finally issued a proposed acquisition notice, or a PAN, seeking to acquire a seven-year lease of the site. In the recent budget estimates hearing, Transport for NSW in fact conceded that tenderers for the Western Harbour Tunnel project may have their own preferred dive site, rather than our Rozelle site, which might explain why a simple acquisition has taken Transport over three years to reluctantly issue a PAN for.

The acquisition was gazetted last Friday on 1 October 2021, with an assessment of compensation now to be determined by the Valuer General. In my view, not only has Transport for NSW failed to make bona fide attempts to reach a settled outcome but it has repeatedly and significantly delayed in providing offers of compensation such as to frustrate the acquisition process and draw out negotiations. The fact that Transport for NSW has not ever provided an open offer of compensation and has not provided any offer of compensation for market rent in over 13 months is but one example of the lack of good faith they have exhibited and delay tactics they have used over the last 3½ years. This is despite the statutory obligation for Transport to make a genuine attempt to acquire the land by agreement for at least six months before giving a proposed acquisition notice.

As a result, Heworth has incurred over $1 million in professional fees, approximately $15 million in holding costs, and has suffered a 21-month delay to the development program. I would like to note that none of these costs would have been recoverable if a PAN was not issued. The conduct of Transport for NSW as a whole is simply representative of how heavily weighted the just terms Act is towards the acquiring authority and how a landowner's rights are dependent on a box-ticking exercise with no real certainty until the final hammer falls. There are many areas of the Act that require urgent review. I hope any answers I provide to your questions will assist in a fairer and a more equitable and just compulsory acquisition system being adopted in New South Wales. Thank you.

The CHAIR: Thank you very much, Mr Walsh. I will start with questions from the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. Firstly, Mr Walsh, thank you for your appearance. Can I ask you at the outset, what has been the effect on the club and on the community members who support the Balmain Tigers as a result of the delays that you have described rather comprehensively in your opening statement?

Mr WALSH: As outlined in our submission and in some of the things I have touched on in the opening statement, the development was to help secure the financial viability of the club. However, the protracted acquisition process we have endured has jeopardised the entire development, also the reconstruction of the club

and our monetary contributions to the local infrastructure and community grants. The club, who is not alone, is left with another saga of uncertainty.

The Hon. DANIEL MOOKHEY: You made the point that you got development consent in September 2020. Many members on this Committee are familiar with the ins and outs of the turmoil that led to various other proposals for the site. It is the case, is it not, that it actually was a development consent that was given by the department that does have the support of the local council and the club and had finally brought a bit of resolution about the future of that site? Is that fair?

Mr WALSH: That is correct.

The Hon. DANIEL MOOKHEY: Can you tell us, why do you think Transport for NSW has behaved this way? You have described a four-year process to acquire one dive site for one project. Why do you think that they have engaged in this behaviour?

Mr WALSH: My understanding is that, firstly, all other properties earmarked for the acquisition relating to the Western Harbour Tunnel project have already been acquired. So I can only assume that Transport either cannot say with 100 per cent certainty that they actually require the site, which is what we have been led to believe, or they are uncertain as to when the Western Harbour Tunnel project will commence and, as such, have attempted to somewhat kick the can down the road for as long as possible. I am not going to speculate as to why that may be, but this is a site that has a development with a $400 million gross realisation value to it. It is not a cheap site to rent, so perhaps budget constraints or OPEX constraints have prevented them from proceeding earlier.

The Hon. DANIEL MOOKHEY: For Hansard, by "OPEX", you mean operating expenditure?

Mr WALSH: I do, yes.

The Hon. DANIEL MOOKHEY: I have a final question before I pass to my colleague. I asked the questions in budget estimates about whether or not there was an alternative site that Transport for NSW was considering, which you made reference to in your opening statement. Have you heard a suggestion from them or others that they are actually looking for an alternative site that, if they proceed with, could have avoided putting your business and the Tigers through this turmoil?

Mr WALSH: Around the time that the PAN was issued, Transport did acknowledge that they had been speaking with some early contractors, as in early contractor involvement or engagement, and that they were not certain that one of those contractors or tenderers may propose an alternate site and, through a value engineering solution, tunnel from an alternate location. My understanding is there is a contractor at Rozelle Interchange. That really would be the only alternate viable solution, to tunnel from there, but I don't know any more than that as speculation.

The Hon. DANIEL MOOKHEY: I will pass to my colleague.

The Hon. JOHN GRAHAM: [Audio malfunction].

The Hon. DANIEL MOOKHEY: You are on mute.

The Hon. JOHN GRAHAM: Thanks for your submissions. When was that discussion that you had? Was that around the time that the property acquisition notice was issued?

Mr WALSH: I believe so, yes. I would need to check exactly when that was but I think it was about three or four months ago.

The Hon. JOHN GRAHAM: So it is speculation at that point but from your point of view very expensive speculation, given the value of this site.

Mr WALSH: Exactly, and at that point it had been a three-year ordeal and protracted process that we had gone through with Transport. So to find out then, that far into the process, that they in fact at some point in the future, whether that was 12, 18 or 24 months later when a contractor was engaged, may not need the site was incredibly frustrating and off-putting.

The Hon. JOHN GRAHAM: That discussion was in around May this year. As of today, is that still a possibility, that in fact the value engineering solution—the cheaper way to do this and the more effective way to do this—might be from another site? Is that still possible or has that been ruled out as an option?

Mr WALSH: I am not entirely sure whether that is in fact possible. That would probably be a question that the Western Harbour Tunnel project team would have to answer, But based on what I have heard—that there is a potential to tunnel from the Rozelle Interchange and that until Transport's formal tender process has been completed, they will not have complete certainty around that.

The Hon. JOHN GRAHAM: If the preferred dive site is elsewhere, what do you know or what have you been told about what that means for your site?

Mr WALSH: We have been told nothing. We do not know what that means for our site. We do not know if that means we get paid compensation for the financial costs that we have incurred, whether we get to recover the financial burden and costs/loss that is associated with the 21-month delay in our project program or whether we get nothing. I believe the PAN protects us with providing some level of compensation, but there are many elements and heads of compensation—i.e. disturbance is one example—that is quite vague and does not necessarily cover all aspects of financial cost incurred [disorder].

The Hon. JOHN GRAHAM: What you are describing there is basic business information that you need to make the decisions you have to make at your end, and you have been able to get none of that information in these discussions?

Mr WALSH: Very limited. Constantly changing time lines. When we first met with Transport in early 2018, they were proposing a construction commencement date, I believe, in late 2019 or early 2020. They are now talking about late 2022.

The Hon. JOHN GRAHAM: Late 2022 for the construction commencement, yes. When was the last time you heard that update? How recent is that information?

Mr WALSH: That was in a discussion about six weeks ago directly from the project team.

The Hon. JOHN GRAHAM: Yes, from the project team to your business, thank you. What is at risk here—1,000 jobs, $60 million in retail sales—is that gone for good? Do you have aspirations down the track? Given all the uncertainties you are facing, is that opportunity lost forever or is there a chance, if you are given some certainty, to recover that down the track?

Mr WALSH: I think our intention has always been to develop the site. The uncertainties around the length of the lease, now there is nothing stopping Transport from—well, they have now acquired the site on a seven-year lease, but there is nothing stopping them from issuing a further PAN in six years' time saying they need the site for a further X number of years, if their program blows out. I would say with every year that goes by beyond that seven-year period, it becomes more and more difficult to deliver on the existing development proposal.

The Hon. JOHN GRAHAM: Yes, and meanwhile you have to maintain finance, maintain the plans for the site, all that, keep your systems in place ready to go—

Mr WALSH: You have to.

The Hon. JOHN GRAHAM: —without any of that certainty and in the face of what is, you would have to describe as, very poor communication?

Mr WALSH: That is completely right. We would have to carry the financial burden of the site, continue to engage with the stakeholders that signed up to this development when we first lodged our DA, which were all fantastic stakeholders. However, with time, things change, plans change, people's interests change. I would hate for the club to find or need to find an alternate site than their traditional home if they are forced to stay and sit in limbo for another seven years.

The Hon. JOHN GRAHAM: Thank you. I will pass to the Chair.

The CHAIR: One quick question, then I will hand to Mr Banasiak. Would it be fair to say then that Transport for NSW has effectively been keeping its options open at your expense?

Mr WALSH: Yes, very well put.

The CHAIR: That seemed to be the summary. And not just at your expense but also at the expense of the community, the club, a whole range of people. That is an extraordinary power for the Government to have and to be able to exercise in such a damaging way. From your understanding, is that really a product of the just terms Act or is it the manner in which the Government is using its powers under that Act?

Mr WALSH: I think it is probably a hybrid of both. The just terms Act has some grey areas. I have got to know it over the last 3½ years, but there are still many areas I do not understand. We have a great legal and valuation team behind us and even they sometimes—there are question marks over what fits squarely within the just terms Act or how the just terms Act can be interpreted. I think there are flaws in the system, and when I say "the system" I do mean the Act, and that simply allows Transport, who is well seasoned in that piece of legislation, to know how to exploit the shortcomings of it.

The CHAIR: Yes, and I think that is what we are hearing from a range of people really. There are, of course, these powers under the Act and there are restrictions under the Act, but there are also a number of discretions in how the Government chooses to use the powers under that Act. In this case, as you have so well put, it does appear that it is using that power to keep its options open.

Mr WALSH: Yes. As an example, we pushed them to issue us a PAN after 2½ years of discussions because we had no certainty around where this acquisition was headed. Yes, it had been publicly made aware in a lot of documentation, a lot of media. However, as I pointed out before, the Act does not cover compensation payable if a PAN has not been issued. So 2½ years into an acquisition process, for a landowner to carry those costs and to carry them without knowing whether they would in fact be reimbursed, I think is a clear indication of a big gap in the Act itself.

The CHAIR: Thank you. Mr Banasiak?

The Hon. MARK BANASIAK: I may have missed it, Mr Walsh, but how much had you invested at the time when they first approached you and said that they were looking at a leasehold on the property? I think you got to the DA stage, but DAs vary in cost. How much had you invested at that point?

Mr WALSH: An all-in cost of about $90 million. That is including the purchase of the land and all development costs to date.

The Hon. MARK BANASIAK: And that has continued to grow, obviously?

Mr WALSH: That has.

The Hon. MARK BANASIAK: Do you have an estimated figure as to what it is today?

Mr WALSH: It is in excess of $100 million. I believe it is close to $108 million, $109 million.

The Hon. MARK BANASIAK: In your submission you talked about how you don't think that the agency made bona fide attempts to reach a settled outcome, despite your company's genuine attempts. Did you get any indication as to why they were not budging in their position? You said you made genuine attempts. That insinuates you were obviously trying to negotiate and come to a landing, but they were not moving at all. Is that the case?

Mr WALSH: Yes, a lot of the discussions over the years have taken various forms. Some of them have been talking timing; others, compensation or market value and rent; and others, terms of a lease. We have tried to engage and be as transparent as possible to Transport for our unique position. It is, I am led to believe, rare that Transport would typically acquire a leasehold over a development site with a looming development approval, or now in fact with a development approval, because it is a costly exercise. I probably should just say that there are "without prejudice" discussions that we have had, which I cannot go into at this point—

The Hon. MARK BANASIAK: Sure.

Mr WALSH: —so I will do my best to not jeopardise them but still answer the question. Transport has a valuer. We have our own valuer. Our valuers have not been able to come to an agreement on a number of outstanding items. We, in fact, have retained a very experienced valuer that is often retained by the Government on a number of their high-profile acquisitions, and the fact that he cannot convince Transport's valuer on points that he is typically forced to consider when representing Transport himself has just added to the frustration that there has clearly been no real desire to progress a settled outcome here.

The Hon. MARK BANASIAK: We have received submissions and I think we have heard evidence that it sort of equates to almost like a war of attrition, not necessarily a process of lowering the property but a process of deprivation of that property right. Would you agree with that sort of sentiment that we have heard?

Mr WALSH: I would, yes. I think after 3½ years we have been worn down. We have tried to come up with creative ways of finding, I guess, a middle ground between both parties, and at every turn that we have made we have been faced with roadblocks from Transport. They may take away a proposal that we have put forward to them and spend three to six months considering it before providing us with any real response. And when we do receive a response, it is generally a negative one—that they cannot consider such a proposal—and we are back to the starting board. I would also add that when I say that we have put forward proposals, we are not here by choice, but it is a compulsory process. We were faced with the prospect of this acquisition, so we simply sought to try and reduce the impact on our business as much as possible.

The Hon. MARK BANASIAK: Thank you, Mr Walsh. Chair, that is all my questions. I will throw back to you.

The CHAIR: Just one last one before I ask the Opposition whether it wants to come back in. We have talked about the amount of cost that you have borne as a business. What about the time resources? Could you estimate how much of a distraction this has been from your other business?

Mr WALSH: I probably have spent on average a day a week on this acquisition for the last 3½ years. That is 20 per cent of my capacity in my current role, and my time is not compensable. That does not include involvement from the board at the CEO level. So our time is lost. The actual financial, I would love to put a monetary value to my time but I will not do that. The financial cost in terms of professional fees has come close to a million dollars. That is made up of legal, valuation, advice, specialist consultant advice, forensic accounting—all of these consultants that we have needed to understand the process and to consult with Transport. None of those costs are necessarily guaranteed to be reimbursed. Some of them most certainly will; others may not be considered that they in fact fit within the Act.

The time delay that we have suffered, that is a difficult one as well. As I mentioned, we paused critical development activities in January 2021 once it became clear to us that the site was needed, which we considered was when the EIS went on public exhibition. Transport will argue that we did not have a DA approval until September of that year and in fact then could not have proceeded with our development until that point. However, that is not how projects work; that is not how our business typically works. There is also no guarantee that we will make up that lost time. We are talking holding costs of circa $10 million a year all in. So every month there is a sizeable cost that we incur on this site, and I can assure you I am confident we will not wholly recover those.

The CHAIR: Thank you. Mr Mookhey?

The Hon. DANIEL MOOKHEY: I will just pick up from there. Insofar as you have financed this and financed the cost, has this affected your ability to access finance, or is there an abundance of lenders who are prepared to lend money against a site that the Government is about to take from you?

Mr WALSH: That is an interesting question. Typically there should be a long list of financiers looking to step in and provide debt on a government-backed lease, but this lease has a one-month notice-to-terminate clause, which means, regardless of whether it is three or seven years, there is no minimum term. The lease could commence tomorrow and be terminated the following month. No lender wants to lend with that much of what they call "exit risk", so we are now faced with the prospect of needing to refinance and restructure the existing debt component on this project either with further equity and capital raising on that front, or some alternative approach that we have not considered yet but will have to seriously consider now with the acquisition being gazetted. So that in fact probably comes close to tripling our finance cost just on our debt component.

The Hon. DANIEL MOOKHEY: You are describing what I think is termed a "stranded asset", is it not, effectively, financially and in your ability to use your capital invested here to borrow against? It sounds like you cannot and the asset is in fact stranded. Is that fair?

Mr WALSH: That is very fair. We cannot redeploy any of that capital unless we can unlock more debt, and we cannot unlock more debt without attracting a higher cost—as in, interest cost. Under the Act we are required to reduce our cost as a result of the acquisition as much as we can. So while we would love to take $60 million of equity out of this project for the next seven years, redeploy it so our business can continue to do what it does, that money is frozen there because we cannot raise any further debt against it.

The Hon. DANIEL MOOKHEY: I can only presume that you have been aggressively trying to reach some form of a resolution with Transport for NSW. I respect the fact that some of these negotiations might be on a without prejudice basis, but can you describe your dealings with them? Have they negotiated with you in good faith? Have they been responsive to the offers that you have made? Have they provided detail around why they are taking the positions that they are taking?

Mr WALSH: Look, definitely in our opinion they have not approached these negotiations in good faith. I think the protracted process and timing is an example of that. If Transport really wanted to acquire the site, they could have done so in under 12 months with or without negotiations in place. We have had multiple rounds of open and without prejudice discussions on how this leasehold acquisition may proceed. Transport has continuously stuck to their position and has, in my opinion, somewhat hidden behind their valuer's methodology and inputs into their valuation approach, and has simply refused to consider any of our unique inputs or situation when looking at this acquisition. This is not a typical acquisition. This is not a piece of industrial land that remains vacant where there are no plans to do anything with it for the next 10 to 20 years until it is rezoned into some highest and best-use alternative. This is a site that should be returning a strong annual project return, and that is just not captured in any of the offers or position put forward by Transport.

The Hon. DANIEL MOOKHEY: You made reference to the fact that you are intending to pursue now your right to have the Valuer General reach a determination. Are you considering any further action beyond that stage?

Mr WALSH: I believe the process is, the Valuer General provides a determination on compensation; if we are not happy with that compensation, we will go to court, and we are prepared to do that, such as I think [inaudible] did. However, at this point we have every faith in the Valuer General to look at this project and consider the unique elements of the site and consider the well thought-out positions put forward by our valuers and our legal team.

The Hon. DANIEL MOOKHEY: I know you probably cannot answer this—I can only presume you can speculate given you are the counterparty—but I cannot imagine that this process has been cheap for taxpayers on the Transport for NSW side either, has it? I mean, I presume it is not some junior clerk you are talking to. It is a lawyer, valuers—it is quite an expensive process for taxpayers in terms of who you are engaging with?

Mr WALSH: Very. I do not obviously have the numbers from Transport's end. Like I said, we have incurred simply a million dollars alone in professional fees. There will be compensation payable for the disturbance between when we ceased development activities up to the point of gazettal. The taxpayer will be left to carry that cost. From Transport's end, I believe they have a valuer who has been engaged for three-plus years, a very experienced legal team, I imagine some kind of senior counsel and they are now peer reviewing a lot of their valuation work, which would also be a costly exercise.

The Hon. DANIEL MOOKHEY: We heard evidence this morning that there has been a change in the demeanour of Transport since the Camellia matter was exposed, which, to be fair, I had a role in. Have you noticed such a shift?

Mr WALSH: I have. This is my personal opinion, based on the experience with Transport and the discussions, but it feels like or appears that Transport has become more cagey and reluctant to engage, to make any decisions since the last inquiry and I believe a lot of the media attention that Camellia attracted this time last year. No-one seems to want to make a decision in Transport because it is safer to stick your head in the sand and hope the problem goes away.

The Hon. DANIEL MOOKHEY: Look, for what it is worth, I indulged a little bit. I am slightly unapologetic for having brought to the attention the inability of that agency to follow the law, which led to a massive overpayment. But we have been told by the secretary and others that the procedures have now been cleaned up, policies are in place, that the review that the Minister ordered has resulted in changes to procedures, that therefore Transport can proceed with confidence and that the way in which they engage is now consistent with the law, which it was not before. But that is not your experience, is it?

Mr WALSH: No. The example I gave in the opening statement where Transport are supposed to engage or make a genuine attempt to negotiate at least six months before issuing a PAN is one example of that not occurring. Probably another would be—I think the just terms Act itself has these flaws where there are no time lines for Transport other than to issue an opening letter at some point and then, in theory, a minimum of six months later, to issue a PAN. Other than those two time lines there is nothing else in the Act from my knowledge that requires Transport to progress an acquisition within a minimum or even a maximum time frame. We are the perfect example of that 3½ years in. Our legal team, who have worked on many high profile compulsory acquisition cases, have said that they have never encountered such a prolonged acquisition in their entire experience. I would add our valuer to that as well.

The Hon. DANIEL MOOKHEY: Chair, I think our time might be up.

The CHAIR: It is, unfortunately. Thank you so much, Mr Walsh. It has been extraordinary to hear what you have been through and what your business has been through over the last few years—incredibly helpful for the inquiry. Thank you very much. I do not think there were any questions taken on notice, but if there were and if there are any supplementary questions the Committee secretariat will be in touch with you and you will have 21 days to respond to those.

(The witness withdrew.)

(Short adjournment)

JULIA FINN, Member for Granville, before the Committee

The CHAIR: Let us get started. We do not need to swear you in because you are of course a member of Parliament, but would you like to give a short opening statement to the Committee?

Ms JULIA FINN: Yes. In my time at Parliament I have dealt with many people affected by the compulsory acquisition process. I did not go into Parliament being someone unfamiliar with compulsory acquisitions. I was the lord mayor of Parramatta and a councillor on Parramatta Council for many years during the whole period of the acquisitions of the land where Parramatta Square is now being built. I was on the management committee for the acquisition and development of that site when Parramatta Council was taken to the High Court. I remember asking lots of questions of our legal advisers and property advisers, "Shouldn't we just try to negotiate?" and being told, "No, everything is fine. We've got legal advice." So I am very familiar with the just terms acquisition Act and how it has played out with different people over the last 20 years and what those changes to the Act have been.

If you like, I can go through this historically because I think for background it is good to hear about the WestConnex examples because there were those changes to the Act made by then Minister Perrottet, now the Premier, which were supposed to fix everything and I do not believe they really have. When I was first elected to Parliament, the first properties were being acquired for the M4 Widening project at the very start of WestConnex. They were a combination of compulsory acquisitions and then acquisition by negotiation of properties which were not on the site where the widening was occurring but were severely adversely affected: losing more than 50 per cent of their sunlight, huge noise impacts, cracking and disturbance—those sorts of issues. Back then they sort of had this good cop, bad cop approach; they would send two people out to the site. It seemed quite unfair at the time and there was a lot of adverse media about it. We would have hoped that that would have all been resolved by way of all those changes brought in afterwards and after the Russell review, but it seems that they were not. Things are far, far worse with the acquisitions done by Sydney Metro.

Just to give you an idea about how bad things were with WestConnex, for one of the compulsory acquisition properties a family that I know quite well and I still know—and I used to live very close by, so I actually knew them because I used to walk past their house all the time—had built an illegal granny flat in their backyard. They are not greedy people; they are a very, very large Lebanese family who lived in a very small fibro three-bedroom house where they had six kids. They built a granny flat in the backyard. When they tried to get it approved by the council, the only objector to having it retrospectively approved was the Roads and Maritime Services [RMS]. The only reason they gave for the objection was that it would increase their liability when purchasing the property. When it came time to purchase the property, they refused to give them any compensation for the value of the granny flat because they just gave up on trying to get it approved by council and council never make them demolish it, so they left it there until it was compulsorily acquired. Once the valuation was agreed on, they were given only a few weeks to move out even though it was over Christmas. It was not until I had them on Channel 7 that they got an extension, and they were going to be charged well over the market rate for renting what was essentially their own home until they found a new place.

With the ones done by negotiation, the biggest issue there was once they finally achieved what they thought was a fair value price for their properties, it was in the time of a really rising market and they did not end up getting their compensation usually for about six months after they had agreed to terms. Then you are looking now at what has happened with Metro West. I will start with the residential properties; they are a bit more simple. Everyone living in those properties in Westmead received a notice that they were going to be compulsorily acquired in about November or December of 2019. Under the new rules there is a six-month period of negotiation. This is what they were advised in their letter. Even though the Government claims that they have relationship managers to look after this and they will be constantly communicating with you, no-one spoke to any of them again until the following May, so about three weeks before the final deadline, and they received their first and final offer, which was a lowball offer in all cases.

Their explanations were terrible. They basically gave most people who owned a three-bedroom unit the value of a two bedder in Westmead. They used excuses like, "Your apartment block is old." If it is just terms compensation, it should be like for like; you should be getting the price of a three-bedroom unit for a three-bedroom unit. So they could buy a two bedder in Westmead or the closest three-bedroom unit they would be getting is maybe at Blacktown but probably at Mount Druitt. They were really, really bad lowball offers. The people who lived in freestanding houses got the value of offers at the value of the home in its current condition, not the maximum developable value of the land, which is what you are supposed to achieve under the just terms acquisition Act. Now, remembering that once the metro is built there are going to be high-rise units put on these properties, nobody achieved what they should have achieved. No-one achieved anything more than the

like-for-like replacement value, rather than the maximum developable value of their land or something that could achieve something in the neighbourhood. It was really, really difficult for all those landowners.

There were also some people who had commercial properties in the same area. One of them in particular had been offered—well, they thought they had come to an agreement about the value of the fit-out and then they came back with an offer at half that value. I am not sure how that ended up playing out, but they were shocked and surprised because they thought they had achieved an agreed value in that case. Then you get down to the other end of my electorate, around Clyde, where a whole lot of businesses who are leasing government land had their businesses acquired over a two-year period by Sydney Metro. Now, keep in mind the Russell review really set strong parameters about how this is all supposed to happen within six months and keep in mind that this area down in Clyde is only a couple of hundred metres from where the Government paid over the odds—the understatement of the year—for that property in Camellia and undertook all the remediation requirements in association with that property in Camellia at 4-6 Grand Avenue that they bought from Billbergia. Nobody else has been that lucky; everybody else has been treated in the absolute opposite way to that.

You will be talking to Mark Harrold from Sydney Helicopters later today. I have been dealing with Mark for the last two years. I reached out to Mark when the Parramatta Speedway first started making noise about them being kicked off their site. I know the helicopter site reasonably well. I have never flown in their helicopters but I do not live very far away and they fly over my house all the time, so I contacted him. He had been contacted by Metro and initially he thought that, even though they were going slowly, there was some goodwill there. They acknowledged that he has a unique service, that their business had been in operation for 25 years, that the relocation costs are not exactly like for like because planning laws have changed, that they would need a much bigger site now to be able to provide exactly the same service because there are rules about where you put fuel tanks in relation to take-off and landing zones, and that theirs is the only standalone helipad in the entire Sydney Basin, so their site constraints are quite difficult.

Going on for 18 months, I have written letters to many, many Ministers—mainly to Minister Constance, but to others at different times—and they really were not getting anywhere. They identified for themselves a suitable relocation site early in 2020 out at Penrith Lakes. It is zoned for tourism and within that tourism zoning helipads are allowed, so they have been quite keen to move there even though it does compromise part of their operations. So most of what their business does is actually contractual work for the New South Wales Government. A lot of it is firefighting, they do work for Sydney Water and a whole lot of different agencies, but they also operate tourist joy rides over Sydney Harbour. Being close to the headwaters of Parramatta River is a really good place to take-off and land. When they found the site out at Penrith, there was a lot of obstruction going on. Metro thought they should just move to Bankstown Airport despite Bankstown Airport being the busiest airport in Australia. The competitive advantage Sydney Helicopters has is that they do not have to spend money on waiting to take-off and land—competing in the airspace with other aircraft—so moving to Bankstown Airport would really put them at a huge competitive disadvantage.

There are other helicopter companies that operate out at Bankstown, and the real advantage that Sydney Helicopters has is that they do not have to wait and do fly-arounds or that sort of stuff before landing. So they found this suitable site, Metro was really difficult and then it went on until the start of this year when they were given a really pathetic offer for their business of about $800,000, then that got raised to $1.8 million for basically the business ceasing or $2.8 million if they moved to Bankstown Airport. They opted to go to the Valuer General; that process took months. In the meantime they were supposed to vacate the site by the end of August, but they had not actually received their valuation back from the Valuer General. In the last few weeks they have got that valuation back; it was half of what they were talking about in meetings. You will be talking to them more about that this afternoon, but the way they have been treated is absolutely appalling. It is not just them—it has been replicated with other businesses on that street who all were stuffed around, found it very hard to communicate with Sydney Metro, received low offers. I do not know where those ones are up to, but all of them have had exactly the same experience with dealing with Sydney Metro. It was certainly the absolute opposite of the commitment we were given by the Premier when he was the Minister for Finance, when he implemented changes to the Act in accordance with the Russell review.

Throughout this period I have asked for meetings with many, many Ministers and, to his credit, the Premier is the only one who has ever met me about this at any point in time. There have been so many Ministers, and Minister Constance has been the worst. Even in Parliament he said, "Come and see me." He still does not even reply to the correspondence himself. Everything goes to the Parliamentary Secretary, every response is completely dismissive and completely rude and pretty much in keeping with the attitude of Sydney Metro to all my constituents, which is just, "Ignore them until the very last minute and then insult them." The one other issue that I wanted to raise, and I raised in my further correspondence, was about the acquisition of land for a park by the planning department and the City of Parramatta Council. So six homes adjoin one another in the North Granville area, in the area covered by the Parramatta Road strategy. The whole area has been rezoned for high-

rise and this small parcel of land, it is 0.39 hectares, was identified back in 2016 as a site for a park in this area. At that time the planning department gave money to Parramatta Council for the acquisition of that land.

People from the planning department, together with council, gave presentations to the residents—all the surrounding residents but also residents of those properties—and indicated that, because they were being compulsorily acquired, they could not sell to anybody else. At the time developers were making acquisitions and putting forward or making offers to put options on properties all around this area and they missed out on all those—in some cases—absolute windfalls. In the meantime also Parramatta Council approved an upzoning of the property across the road—a very, very substantial upzoning from a floor space ratio [FSR] of 4½ to one to six to one. That was on the basis of an independent traffic study and also an incorporation of the affordable housing State environmental planning policy and a few other factors. But those things always have flow-on effects. If you suddenly decide that the traffic impacts are not as great as you thought and that this area can take higher development on one side of the street, there is always a flow-on effect. But there was always huge pushback about there being any flow-on effect whatsoever across the road to this parcel of land.

There was a refusal to consider anything until the Parramatta Road strategy's own traffic study had been completed. It is still not completed, even though throughout this whole parcel of land Parramatta Council had increased the FSR on multiple properties based on traffic studies commissioned by the proponents of those developments. Then, on the final day—so Parramatta Council sent out this very strange letter to people after I got involved in the process. It increased their offer by 10 per cent and they said that was sort of a goodwill offer. Nowhere did it say that they are withdrawing from the compulsory acquisition process that they had everyone locked into for four years. Then, on the afternoon where everyone had to agree to it, they were pretty much told, "If any one party does not agree, then it is all off."

Only at that point that afternoon are they actually saying verbally—not in writing—that the compulsory acquisition process, they have withdrawn from it and this is a take-it-or-leave-it offer. It was quite disgraceful. I have rarely seen anything like it in my life. I rang Minister Stokes. He did actually speak to me that afternoon and confirmed that, yes, there was a possibility that that money could be reallocated to find another bit of park somewhere else in that area, but they did not have anywhere in particular in mind and it did not have to be this site. But it has never been clearly communicated to those people that their properties were no longer part of the compulsory acquisition process. It was absolutely disgraceful. So that is a bit of a summary. Yes, if you have any questions I am very happy to answer them.

The CHAIR: Thank you very much for that comprehensive statement and evidence. I will start with the Opposition. Is that you, Mr Mookhey, or Mr Graham?

The Hon. JOHN GRAHAM: I might lead in with this question. You have really covered a lot of ground in that introduction and, by virtue of your electorate, you have really been in the middle of a number of these projects. The bit I would like you to just rewind to and give us that perspective, given how many of these cases you have dealt with, is the position you were putting that, after WestConnex, despite all those troubles, after the Russell review, dealing now with Sydney Metro, it almost sounds worse. Is that the case? What is your perspective, having dealt with all of these issues?

Ms JULIA FINN: Yes, it is absolutely worse. It is like the Russell review never happened, apart from the six-month parameter being adopted in relation to the comparatively simple acquisition of residential properties. The idea that you are supposed to have this contract manager and you are supposed to be kept in the loop—none of that happens. The communication is worse than ever. Now, in my experience communication was not really a problem with the RMS. They communicated with people; they just did not listen to them. But at least there was a one-way conversation—they talked at people. Metro does not even do that. They send you a letter, tell you your property is going to be compulsorily acquired and then they run away and then they come back at five minutes to midnight and give you a really bad offer. That is just a complete insult.

The Hon. JOHN GRAHAM: Just one final question from my end before I hand to my colleague: Do you see that as a legal or a cultural question, or are there problems in both these spheres at the moment? Is there still more work to do on the law? What you are describing sounds very much like a deep cultural problem with the agency.

Ms JULIA FINN: I think there is a very deep cultural problem. I think they are trying to just barely comply with the law where the law is very specific, so referring to six months. The things that are not so clear in legislation they just skirt around. Yes, it is quite shocking the way they treat people, especially since there had been work done not very long ago to make this process better and fairer. They have completely lost the sense of looking at the maximum developable value of the land as what is the basis for just terms.

The Hon. DANIEL MOOKHEY: Ms Finn, one of the more novel points you have made, which we have not actually heard, is about what happens when powers of the Act are delegated to councils for councils to use. Do you have any sense that, when these powers are delegated to them, is any guidance provided to them about how the manifest discretion that is contained in the Act should be exercised? What do you think are the broader lessons from the experience of the home owners who have had to deal with the Parramatta Council, as you mentioned in your opening statement? How do you think we can improve it?

Ms JULIA FINN: I do not know if they have provided sufficient guidance. That said, the City of Parramatta actually does a fair bit of acquisitions. Most councils are familiar with the Act. Most of them have a very long list of parcels of land which have been identified for future acquisition, and people know that. When they want to move out, they are obliged to try to sell to council in the first instance, or council can consider a compulsory acquisition if they want to bring forward that process. That is usually how parks grow. I have a suspicion that the issue might be the same with both Metro and the council in that they had a certain bucket of money and due to factors—or maybe in Metro's case less beyond their control—such as that they did not want to go back and ask the Government for more money, they tried to behave in an unjust way in the terms that they offered people.

I mean, different parts of Parramatta Council—obviously the development approval arm—does not really think about the impact on the property section, where they are acquiring property under just terms compensation, when they have allowed upzoning across the road, which does, in the maximum developable value of the land, very easily demonstrate that that does have a flow-on effect. I suspect maybe with Sydney Metro paying so much over the odds for the property at 4-6 Grand Avenue in Camellia meant that they ripped off other people because they had a big leak in the bucket of money. Billbergia did really well and everybody else got stuffed over.

The CHAIR: Just on that point, it does seem that that Billbergia sale was an anomaly in terms of Billbergia being able to make a significant sum out of that to an extent that seems to be in sharp contrast with what the average experience of people is. Given your experience with these acquisitions and with your constituents going through these acquisitions, have you ever seen an initial offer and anything like a fair value? Or is it always that kind of lowball offer to begin with?

Ms FINN: The only one that was not completely lowball to begin with is perhaps the final VG determination issue with Sydney Helicopters. The amount they were talking about then got reduced—you will talk to them more about that this afternoon—from a number that they thought—I think it was about 6.7 million—was probably around fair value and certainly a starting point, and a reasonable starting point. Then all of a sudden to get half that in writing was a big shock to them. But, no, it is—the RMS offers were much closer to fair value five years ago than the offers made by Sydney Metro. Sydney Metro's offers are ridiculous. They are not just not buy in the same suburb. It is 10-kilometres-away kind of thing, rather than offers that are—you could buy in the same suburb but in the bits that are a lot further away from the train station, where the house prices are much lower. But it is still the same suburb.

The CHAIR: So, for the average home owner or small business owner, the initial offer is usually low.

Ms FINN: Definitely.

The CHAIR: Why do you think that is?

Ms FINN: I think it is because they are trying to stretch the bucket of money as far as possible. They come in low and just cross their fingers and hope people will accept it. It is really an appalling way to treat people when you are compulsorily acquiring their home. It is not like you turn up at an auction and hope there are no other bidders and put in a lowball offer. These are not willing sellers. It is not fair. One thing I did notice, looking at Billbergia's submission, is Billbergia actually managed to have a lot of meetings with Metro about the acquisition of their property. Metro do not talk to anybody else. Maybe this is why Billbergia got so lucky, because they are actually fortunate enough to be able to talk to people and convince them of the value of their property. They do not talk to anybody else. They just send them an insulting letter.

The CHAIR: Do you think that then evidences, at least, if we are being very generous, a more relaxed attitude towards the sort of average home owner or small business owner compared to big developers?

Ms FINN: Yes. I think they certainly think that they have less to fear through the average home owner or small business owner taking them to court.

The CHAIR: Thank you. I will just let the Government members ask questions if they want to. Is that a no from you?

The Hon. TAYLOR MARTIN: I am okay. Thank you.

The CHAIR: Thank you, Mr Martin. Back to the Opposition, if you have a final question.

The Hon. DANIEL MOOKHEY: Yes, I do. I was just going to ask you, Ms Finn, just in respect to the WestConnex issues which you have raised. Those properties were acquired in relation to the M4 Widening project. That is correct?

Ms FINN: Yes.

The Hon. DANIEL MOOKHEY: We were talking quite a few of them, weren't we? How many are we talking about? Do you recall?

Ms FINN: I did not deal with all of them, but there are about a dozen compulsorily acquired and another dozen acquired through negotiation.

The Hon. DANIEL MOOKHEY: You have kept in touch with some of those families? Or you are familiar with what has happened?

Ms FINN: Yes.

The Hon. DANIEL MOOKHEY: We have not actually heard—it is part of our terms of reference—what actually did happen to them after the acquisition, now many years hence. In your view, how are those families going as a result years after they lost their properties to that project in a compulsory acquisition?

Ms FINN: The ones that I am still in touch with—one of them that was compulsorily acquired, they bought another property a lot further away from the station and in a cheaper part of Granville. Their kids were at uni or TAFE back then. They are now out in the workforce. I think the youngest got married last year. They are doing okay. The ones that went through negotiation were pretty exhausted by the time that had all finished. All ended up moving further away, so I have not spoken to them in a long time but I have spoken to them since they moved out of the area. They are a bit bitter about the process. The thing that really stuck with them was how long it took to actually receive the compensation payment after it had been agreed upon.

Also, because it was the voluntary process, they did not get paid out their stamp duty or moving expenses, which is a lot of money in Sydney. There is nothing that voluntary about moving out of a home that is cracking around you and has all the pictures falling off the wall, and the RMS is paying for you to stay in a hotel because you just cannot sleep with all that work going on next to you or in a house that just does not have any sunlight to it. The RMS has since sold some of those properties that they acquired because of the sunlight issues. They have sold them at quite a loss once they finished the project. None of them were sold to owner occupiers. All are now rental properties. No-one is going to buy a house with no sunlight in the back yard to live in themselves.

The Hon. DANIEL MOOKHEY: I think our time might be expired, Chair.

The CHAIR: Yes. I am afraid so. That concludes this session. Thank you, Ms Finn. I do not think you took any questions on notice, but, to the extent there are any supplementary questions, the Committee secretariat will be in touch and you will have 21 days to respond. We will now take a break until 12 o'clock.

Ms FINN: Thank you very much.

(The witness withdrew.)

(Short adjournment)

MARK ANDREW HARROLD, Director and Business Owner, Sydney Helicopters Pty Ltd, Heliport Developers Pty Ltd, sworn and examined

ADRIAN McMILLAN, Associate, Slater & Gordon, affirmed and examined

The CHAIR: Mr Harold, could I invite you or Mr McMillan, if that is your choice, to make a short opening statement. If you could keep it to two or three minutes, that would be fantastic.

Mr HARROLD: Yes. I do have something I will mention, if you do not mind, as a statement. It is about three minutes or so long. Since 21 October 2019 we have been, I believe, lied to, our efforts to cooperate have been obstructed, and we have suffered enormous abuse of process within the Valuer General's department. I never expected to be sitting here speaking to you almost two years after we were advised of the acquisition, having received no compensation to date and essentially homeless, as we have had already to leave our property at Clyde. I was made aware of the acquisition on the morning of 21 October 2019, during the Black Summer bushfires. We had already been flying nonstop over two months and would continue flying for another five months on those fires. Our aircraft flew for a combined period of over 1,000 days, dropping 42 million litres of water, saving life and property throughout the State. I had no time to launch a media campaign like our neighbour's at Parramatta Speedway that ultimately saw Metro, as applicant, submit a development application, which was approved the following March, for a new facility at Eastern Creek, costing around $70 million. I instead believed in the process and believed in the lies that Metro representatives were telling me at the time.

Property representative Mr Huolohan said in a meeting on 23 October 2019 that we would be no worse off, Metro would meet all the compliance costs relevant to our operation in 2021, that we would benefit from the status of the Metro project being of State significance and that we would receive assistance with regard to the planning process, that Metro were committed to relocating us to property with the same characteristics as our current site. In that meeting I confirmed categorically that Bankstown Airport was not an option and would never be an option, having moved my operation from there in 2006 already. I was urged on many occasions by Metro to find an alternative site. I identified the Sydney Olympic Park area and Penrith Lakes Development Corporation [PLDC] site. Other sites were discounted by the then appointed Metro aviation consultant on the grounds of those not meeting standards and conventions.

The PLDC site in Penrith, although being some 30 kms further west of the current location, was identified in February 2021 and is the most appropriate site to which to move our operation. Metro approved the expenditure of required consultants to review that site, money that would later be paid through our compensation—which we are yet to receive. Metro were implicit in dealings at the Penrith site. The aviation consultant working for Metro, along with our appointed consultant, agreed on an equivalent facility that met all current planning, OHS, EPA and building standards. The Metro aviation consultant had taken the time to meet with me and take a brief on my operation. This consultant would later be removed by Metro once the report was tendered, replaced with a new consultant, who made no attempt to communicate with me at all; instead, taking a brief from Metro to relocate us to Bankstown. Once our claim was submitted to Metro, they abandoned all discussions on the Penrith site and instead moved to extinguish my business for $800,000—an amount of money, if accepted by me, would have bankrupted us and ended our operation altogether.

At a meeting held on 9 September 2020, almost a year after we were advised of the acquisition, senior Metro staff confirmed that they needed to review our case further and would not communicate with us for a further two months. That brought us up to December. Metro refused to respond to Department of Planning, Industry and Environment requests for additional resources to process our application for the heliport at the Penrith site, resulting in lengthy delays, and then later attempting to force us to go to Bankstown Airport—a site we had already discounted. The matter was then referred to the Valuer General in February 2021, as Metro had made no attempt to negotiate our claim and had rather adopted a dictatorial stance on where we should go or be extinguished. The Valuer General process was longwinded and far from fair. Ultimately the process for us would be summarised by the comments made by staff working within the VG department and telephone conversation with my solicitor following the final determination made by Dr Parker. A director of the just terms team wanted it known that he and the two valuers assigned to our matter had no part in the final determination. He believed that there had been an abuse of process and that Dr Parker had refused to listen to their reasoning for just compensation.

We had a strong and viable business with a long tenure remaining in our site, a site we developed as a commercial heliport, providing tourism and essential emergency services over 25 years. I feel like we have been treated like the enemy from the outset. We are now left in a financially fragile position due to the compulsory acquisition, with no base from which to operate our full complement of services. The hypocrisy of the Government has been overwhelming, opting to rather shut us down entirely only months after the State was ravaged by the worst bushfires on record.

The CHAIR: Thank you very much, Mr Harrold, for that opening statement. I am going to start with questions from the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. Can I thank the witnesses for making the time to appear with us this morning. Mr Harrold, did you create your business? Did you establish it?

Mr HARROLD: I purchased the company and the right or the interest in the land in 2006. The business then was a small tourism charter helicopter business operating a couple of helicopters. I had previously been operating aircraft and supplying those to other operations since 2000. I then opted to purchase the Sydney Helicopters group in 2006 because effectively the heliport was the jewel in the crown, as far as I was concerned. It was a point of difference. It gave us the opportunity to then develop a very unique business, which we have done since 2006. Developing the business from one aircraft through to now nine and operating across a range of different services, including emergency services, search and rescue, fire, flood and a range of other land management contracts that we have and services we provide, as well as continuing our tourism and charter activities, which has been, obviously, very difficult during the last 12 to 18 months with the COVID situation.

The Hon. DANIEL MOOKHEY: I was asking questions of Metro yesterday about your case. I have equally asked questions about your case in budget estimates. One point that Metro made to us yesterday was that they had provided you with a consultant to assist you, and this, I guess, was offered as evidence of a spirit of cooperation or attempted cooperation on their part. You have just said to us that they have gone through—two consultants, is it?

Mr HARROLD: Yes. Which consultant are they referring to?

The Hon. DANIEL MOOKHEY: A relocation consultant.

Mr HARROLD: A relocation consultant?

The Hon. DANIEL MOOKHEY: To assist you in the process of finding an alternative site.

Mr HARROLD: We were offered a project manager—which we appointed—in Colliers Project Leaders, a chap by the name of Scott Anderson. Those fees, though, are ultimately coming out of our compensation, whatever that may be, at the end of the day. But we certainly did appoint them to assist us with a search for property.

The Hon. DANIEL MOOKHEY: But you had an initial consultant, did you not? I think, from your submission, Mr Lavis?

Mr HARROLD: He was not our consultant, no. He was Metro's consultant.

The Hon. DANIEL MOOKHEY: What did he have to do with this?

Mr HARROLD: Warren Lavis was appointed by Metro as their aviation consultant. Warren Lavis took the time to meet with me and also our aviation consultant—a chap by the name of Steve Graham, from AviPro. Warren took a detailed brief, if you like, from me on how it evolved, what my business was, how it operated, the revenue streams that we derive. He then, obviously, went through a process of his own to then determine what sites would be applicable for us and liaised with our aviation consultant at the same time. Mr Lavis did come up with a couple of alternatives that he himself actually at the end of the day discounted due to those issues in relation to compliance with aviation regulations and planning.

It is my understanding that Mr Lavis completed his report once he had finalised discussions with our aviation consultant as well, on what would consist of an equivalent facility in today's terms—so, if we were to move our operation today. His report was then, I believed, tendered to Metro. We were then surprised to find that he had been removed as the aviation consultant for Metro and replaced with another individual, that made no attempt to meet with me, no attempt to visit our site or that of the Penrith site and, I believe, was given a brief to only consider Bankstown Airport as a viable option for Metro.

The Hon. DANIEL MOOKHEY: When did Mr Lavis' involvement cease?

Mr HARROLD: It would have been around August, September of 2020.

The Hon. DANIEL MOOKHEY: Is that when you began to perceive that Sydney Metro's attitude towards your claim was changing?

Mr HARROLD: Yes, it was, because we had received a letter from Ashurst, the lawyers acting for Metro, at the beginning—I think it was 7 September 2020—doing a complete about-face on the preceding discussions, if you like, around Penrith. They opted to extinguish my business for $880,000.

The Hon. DANIEL MOOKHEY: You said in your opening statement you met with Sydney Metro last September. What was the purpose of that meeting? What happened at that meeting?

Mr HARROLD: Once we received the letter from Ashurst in relation to the extinguishment offer, I justifiably was—I hit the roof. I was very upset. I contacted Tom Huolohan at Metro. He was our representative that would be there the whole process, hold our hand the whole way, apparently, according to him in his opening email to us on 21 October 2019. I spoke to him. I advised him—how could they take this stance? That we had entered into an agreement to purchase the land at Penrith. Metro had been implicit in those discussions since February or March of that year, being in some meetings with DPIE in regards to furthering the planning aspects of that particular site.

It was only then that I received another letter from Metro, withdrawing that offer of $880,000 because I had made it known to them that I was in a contract to acquire the Penrith site. I was then invited to come to a meeting and meet with Rebecca McPhee of Metro, their in-house solicitor, and Ashurst lawyers, who was their external solicitor. Mr Huolohan was there as well. The meeting was to, basically, hear my side of the story, I thought. At the conclusion of that meeting, Rebecca McPhee advised me that we would not hear from them again for a couple of months. They would cease all communications with us whilst they went away and did some homework on our matter—which I found completely and utterly unacceptable, given that the passage of almost 12 months had elapsed.

The Hon. DANIEL MOOKHEY: I just want to skip forward to the part where the engagement in your story with the Valuer General is. As I understand from some of the public comments you made, there was an initial valuation that was undertaken by the Valuer General's valuers to the tune of—$8 million, was it?

Mr HARROLD: It was $6.7.

The Hon. DANIEL MOOKHEY: After the intervention of the Valuer General, that was written down to what?

Mr HARROLD: I think it was $3.34 from memory.

The Hon. DANIEL MOOKHEY: Did you have the opportunity at any stage to talk directly to the Valuer General?

Mr HARROLD: I never spoke to the Valuer General himself, no. I was never given that opportunity to speak to him.

The Hon. DANIEL MOOKHEY: You made the point in your opening statement that some members of the Valuer General's staff then got in touch with your lawyer, Mr McMillan. That is correct?

Mr HARROLD: Correct.

The Hon. DANIEL MOOKHEY: I might now turn to Mr McMillan so he can give us some evidence on this. Mr McMillan, what did the Valuer General's staff contact you to say?

Mr McMILLAN: They contacted me to give me a heads-up that the determination was arriving that evening because we had been waiting many months for it to arrive. We received the preliminary report at the end of May. We met with the contract valuer and a member of the just terms team at Tuggerah in mid-June. It was not until 14 or 13 September that we received the determination. The call was a heads-up to say it was coming. That person then said, "Mark is not going to be happy" and proceeded to set out that there was discontent within the just terms team, the contract valuer and the Valuer General's office with how Dr Parker had intervened in the valuation.

The Hon. DANIEL MOOKHEY: Have you ever been contacted in any like circumstance in any other matter, Mr McMillan?

Mr McMILLAN: Never. I have never known a public servant to make a call or send correspondence to that effect.

The Hon. DANIEL MOOKHEY: Correspondence was also sent to that effect?

Mr McMILLAN: Not to me. Correspondence was sent to Mr Harrold, setting out that—sorry. It is not my evidence to give. It is Mr Harrold's.

The Hon. DANIEL MOOKHEY: Mr Harrold, did you receive correspondence from any member of the Valuer General's staff alerting you to what they perceived to be shortcomings from the valuation?

Mr HARROLD: Yes, I did. I received an email from one of the valuers within the Valuer General's department that had been managing our matter. May I mention what was in the email?

The Hon. DANIEL MOOKHEY: Without naming the person.

Mr HARROLD: I will not name the person, no. I will just pick out a couple of the salient sentences here. He said, "The process from your end [or our end] could not have been better run or managed. From our first meeting at Clyde to our last meeting at Tuggerah, you and your experts could not have documented or articulated your case any better. My personality does not allow me to stand in silence and watch events unfold in a way I believe is unfair or unreasonable. I have had my say and voiced my opinion at the highest levels, but in this case at the end of day the Valuer General has total control of this process. I agree with you, Mark. Credibility is everything, as is reputation. With that in mind, I withdrew my support to how this was being managed some time ago, when I could see my thoughts and opinions would be dismissed without even proper discussion." So there is a couple of points there that he made known to me.

I was very concerned about receiving an email like that from someone who clearly has a lot of experience in this area. I do know that this gentleman was involved with the Valuer General's department for a long period of time and was a very experienced valuer. Coupled with the other comments made to Mr McMillan from the other gentleman, it leaves me with absolutely no faith in the system whatsoever—a system that at the end of the day we need to trust as citizens of this State. We need to feel that there is a process that should be followed. In my opinion, it has not been followed at all, when you have got three gentlemen working on our case at a very detailed level being dismissed for the views of one individual who has had limited involvement with our matter.

The Hon. DANIEL MOOKHEY: My time has expired, but I was just going to ask if it is possible if you could table that on a confidential basis for the Committee or forward it to us or consider doing so on notice. That would be helpful. Chair, I was going to lead with a question but I will not now. The question was going to be to Mr McMillan, about whether or not the law permits business compensation, how it is working in this particular case, which you might wish to ask in your time, Chair, if you do find it within your grace.

The CHAIR: I may come back to you, Mr Mookhey. I just wanted to circle back on this issue with the valuation. What date was that email sent to you?

Mr HARROLD: On 17 September.

The CHAIR: What action have you taken, if any, in relation to that in terms of speaking with—what are you options for complaining or for taking this to a higher level?

Mr HARROLD: Chair, I do not know. My understanding is that the only avenue left for us is now to go to the Land and Environment Court, which is a very daunting prospect for us. When you consider that two years ago we were operating normally, this was not even on the horizon for us and I am sitting here now, having already spent many hundreds and hundreds and hundreds of thousands of dollars that I have not been reimbursed for and will not be reimbursed for, even based on the current appalling determination from the Valuer General. I now need to go, I believe, to the Land and Environment Court to have my case heard further. I do not know that there is an avenue for us to appeal the Valuer General's determination. Maybe Mr McMillan can comment on that.

The CHAIR: Please, if you do not mind.

Mr McMILLAN: Thanks, Chair. Mr Harrold is right. The recourse is to the Land and Environment Court. We have issued an appeal pursuant to the legislation there and the directions hearing is on 15 October. But that comes at a great cost. Any litigation is expensive. There is no recourse to the challenge—apart from seeking a merits review in the Supreme Court, which would be lengthy, risky and costly, there is no way to provide any feedback to the Valuer General. We have not been sent a survey or anything of that nature. Legally, the Land and Environment Court is the way to go. That is where we have gone.

The CHAIR: There is no provision to request a new valuation or some other sort of process that you can avail yourself of just to confirm?

Mr McMILLAN: That is correct. The Valuer General in very limited circumstances can change determinations. But that is at his discretion.

The CHAIR: Mr McMillan, when you received the communication you received from the valuer, alerting you to, I guess, an alleged interference by the Valuer General in the process, what was your response to that? Is that something you have ever seen before? Have you had any previous inkling of that sort of behaviour occurring in the Valuer General's office previously?

Mr McMILLAN: Never, Chair. I was shocked. Yes, "shocked" is the only way to put it. Just to give you a quick outline of the process, we received a preliminary report at the end of May. That was for a figure of $6.7 million. The contract valuer had assessed that Mr Harrold was entitled to relocation expenses to Penrith but that he was only entitled to replicate what he currently had at his current site. We then met with them, with the

contract valuer and a member of the just terms team, at the contract valuer's office at Tuggerah to explain to them where we think they got the aviation evidence wrong. The aviation evidence is very complicated. Aviation regulations are very complicated. We felt we had a good hearing at that meeting. It went for about four hours. Following that meeting, the correspondence we got from the contract valuer and from the just terms team was that they had revised their valuation and that it was being sent to the Valuer General for his approval. We then got some correspondence that the Valuer General was seeking counsel's advice, which is not uncommon in my experience. That led us to believe that the revision was a significant one in our favour by the contract valuer and the just terms team.

Then a period of some months passed, where, despite repeated correspondence to the Valuer General's office and the executive director at the Valuer General, we were hoping to speak with him, we were hoping to explain the very complicated evidence to him, none of those offers were ever taken up. We then received the call—I received the call. Then we received the determination, the final report with that $3.34 million figure, in which the contract valuer or the Valuer General had said that Mr Harrold was entitled to relocate to Penrith but a whole range of reductions had been made, which did not make any legal sense to me. I have not been able to find precedent that supports those conclusions.

The CHAIR: I will pass over to Mr Banasiak in one minute. I just want to ask one final question. I will start with you first, Mr McMillan. Was there anything in your negotiations or discussions with the Valuer General's staff prior to this notification alerting you that there was an interference by the Valuer General—was there anything in those previous discussions that led you to believe there were any cultural problems in the Valuer General's office?

Mr McMILLAN: Not from the contract valuer or the just terms team, no.

The CHAIR: Thank you.

Mr McMILLAN: I have read the reports in the media, but they have not been expressed to me by those two people.

The CHAIR: Thank you. Mr Harrold, is that the same response for you as well?

Mr HARROLD: Yes. Neither of the two valuers that we met with had let us know that there were any issues within the Valuer General's department. However, I was certainly aware of the issues that were made public in relation to Mr Betts, I think it was, who was banning him from discussing in person with his other valuers in the department. My understanding was that there was a directive for the Valuer General not to speak to certain members of the valuation team, only to speak to a certain handful. That was known to me, but those gentlemen did not let us know.

The CHAIR: Just to be absolutely clear, your impression from the communications you then had from the Valuer General's staff were not motivated by any sort of malice or previous disagreements. They were genuinely concerned with the process.

Mr HARROLD: Absolutely. In fact, at the meeting in Tuggerah, the two gentlemen—because, you know, I asked the question. I said, "Well, what happens here? How does this get progressed?" This is the second meeting we had with these two gentlemen—obviously the first meeting following the preliminary draft report. They made it known straight away that there was no limit on what they could provide us in relation to compensation; it would be on its merits. I left that feeling somewhat buoyed by the situation that finally, finally, after 18 months or 20 months, someone was actually listening to our situation, rather than dictating to me where I should take my business—my business that I developed, that I know intimately, that I know how operates, and yet I was told that I had to go to Bankstown or effectively shut up shop.

So I was quite buoyed by the situation with the Valuer General's involvement that time. I felt that the two valuers gave us a good hearing and—actually, I was just reading the email that I am going to tender with you later on that this particular gentleman even said in his email that the meeting at Tuggerah was not in vain and "our attendance at that meeting was not to tick some form of a box but rather to give you and your team a genuine opportunity to convince us to change our position on the matter." The reality is that meeting was not initially in vain, but you know how the story ended.

The CHAIR: Thank you. Mr Banasiak?

The Hon. MARK BANASIAK: Just one question, Mr Harrold. In your submission you say that the process or the negotiation process is not really fit for purpose in matters such as yours. So if we were redesigning a process that was fit for purpose for commercial property acquisition, what would it look like, in your view, based on obviously the deficiencies that you experienced?

Mr HARROLD: Sure. Funnily enough, my background, I have actually done a bachelor of business and land economics. I was a valuer. That was my training at university. I spent quite a bit of time around the property market over the years, as well as running a helicopter business. My concern in regards to the way in which the Valuer General operates is that it is very limited. It has a very narrow view of how compensation is to be addressed, notwithstanding the fact that my business is very, very unique anyway. I mean, there is no other heliport in Sydney. There is no standalone heliport facility in the Sydney Basin at all. The only aircraft that operates in the Sydney Basin operates from either Bankstown or Mascot or Camden airports. So it is a very unique situation.

I believe that there needs to be an ability for the Valuer General's office to determine the effect on business and how business is disturbed so that income streams coming to the business or not coming to the business as a result of the relocation—potential relocation, if you like. It needs to consider the different interests in land. We had a leasehold interest in the land, we owned all the improvements and we got the DA for the heliport. So all of that was created by us. Unlike, say, an office tenant that might occupy airspace within an office building, they do not own the capital improvements, they do not own the building. They basically rent an office space. So determining a comparable in that example or situation might be a lot easier than something along my line of work.

I think that we were very much caught up with a cookie-cutter approach, potentially, with regard to the valuation of our interest and the valuation of our relocation. There needs to be a far greater emphasis on drilling down into the specifics of the business and the operations of the business, I believe, to provide adequate compensation. As it stands right now, the determination handed down by the Valuer General has left me short immediately of about $500,000 or $600,000 just on fees alone, professional fees alone, that I have had to incur as a direct result of Transport for NSW acquiring my interests in my site. Okay? Now, that has got to come out of somewhere. That has got to come out of my pocket. That money should be otherwise invested back into my business. It should be there to ensure that I have a viable business with all my employees and we can provide the services that we were providing pre-21 October 2019.

So, Mr Banasiak, I think there just needs to be a much greater emphasis on compensating a business for business loss. That is to do with time and inability to trade. Right now we are actually without a home, and I have got no business disturbance whatsoever from this valuation. Nothing. It is an absolute kick in the teeth. You know, I mean, I just ask all of you to try and stand in my shoes for a minute—running a business, paying taxes, employing employees, investing in equipment that has a significant payback period, right, providing essential services and also tourism services, particularly in a climate like now when you have got COVID that has ravaged the tourism industry. Just think about what it is like for us to try and navigate this situation that was never, ever contemplated by me two years, three years, four years or five years ago when I was making business decisions.

The Hon. MARK BANASIAK: Thanks, Mr Harrold. I will throw back to you, Chair.

The CHAIR: Mr Mookhey, I think we have time for your last question, if you like.

The Hon. DANIEL MOOKHEY: Thank you. Do we have time for a few questions, Chair?

The CHAIR: I think you could squeeze at least two in, if you do not finish in the time.

The Hon. DANIEL MOOKHEY: The first question is to you, Mr Harrold. In questioning Ms McPhee yesterday, she made the point that they had offered you assistance in relocating to Bankstown Airport. I am not an aviation expert and I know that this is a complicated matter, as Mr McMillan has said, but can you just explain in really simple terms why you have to go to Penrith and not to Bankstown.

Mr HARROLD: Okay. As I sort of alluded to in the beginning, my business, when I first bought the heliport interest and Sydney Helicopters, it was very much a one-trick pony. It was a small business. It was a charter tourism operation. I believe that the site itself being positioned where it was, which was pretty much smack bang in the middle of the geographical centre of Sydney, would be a site that in years to come would become more and more important with regards to the movement of people around the Sydney Basin. I actually wrote a business case for buying that particular interest in land back in 2006. It is funny, I pulled it out only about six months ago and pretty much everything I wrote was quite prophetic—it has come true.

The benefits for being located at Rosehill as opposed to Bankstown were autonomy—the ability to operate outside controlled airspace. So no delays flying in to and out of our base, which can be significant. If you were flying into a controlled aerodrome or out of a controlled aerodrome, you can be held up at the boundary airborne coming in, which translates to many, many hundreds and hundreds and hundreds of dollars in costs; and, likewise, you can be held up on the ground before you are getting a clearance to depart the zone. So being outside controlled airspace is a very significant factor with regard to the way in which my business operates. Having good, sort of, transport links to the site were important and Rosehill, as is with Penrith, has railway and road connections that are good. Both those locations sit within demographics that are using our services and are readily accessible—

in and around the Parramatta area, the Hills district and so forth and obviously inland to the inner west. My thoughts were that the Penrith site in time would also, sort of, be similar in that respect, given the push sort of out west for Sydney.

There is the ability to manage our own fuel resources; we have onsite fuel storage at Rosehill. I am buying fuel in bulk, which is saving me somewhere between 40c to 50c a litre, which is significant when you are burning six or seven litres a minute in an aircraft. Those issues were significant. And also the amenity and the feel of the place, the ability to have your own identity and your own feel at the heliport was significant. You cannot generate that at Bankstown. Bankstown is an old aerodrome with essentially support infrastructure there, support services—no maintenance avionics, the odd flying school, mainly fixed-wing operations, and the helicopter operations are sensibly government related and no commercial consideration whatsoever with regard to attracting clientele. Running a tourism operation out of a Bankstown facility would be impossible to the level that we were running it out of Parramatta and that I believe we could ultimately run it out of Penrith.

I do not want to speak poorly of Bankstown, but it does not have a feel about it that is actually very inviting at the airport itself. I do know a lot of operators there that are also discontented, and they are training schools, they are not tourism operators. You have got a couple of training schools and you have got the police air wing and you have got national parks and you have got NSW Ambulance operating there and CareFlight. So there is no-one like us. We are not a one-trick pony, as I said before. We have multiple facets of income coming in from where we are based and I believe that the Penrith standalone facility—a heliport, not an airport, that is comparable—is the way to go for us. And it was outside controlled airspace. The Penrith site is outside controlled airspace, zoned to tourism and it already has permissible uses of helipads under the planning instrument.

The Hon. DANIEL MOOKHEY: I was going to ask Mr McMillan if he wished to comment on whether or not leasehold businesses are entitled to compensation in his experience, but I am at your discretion, Chair, as to whether we can fit this in or whether Mr McMillan should be invited to take it on notice.

The CHAIR: In fairness, we should ask him to take it on notice. We have gone five minutes over. It has been a very useful discussion with you both. Thank you very much for coming and giving evidence. To the extent that there are supplementary questions or any questions taken on notice, the Committee secretariat will be in touch and you will have 21 days to respond. That ends this session. We will be back in five minutes for our final session of the day. Thank you.

Mr HARROLD: Thank you very much, appreciate it.

(The witnesses withdrew.)

(Short adjournment)

DAVID PARKER, Valuer General of NSW, affirmed and examined

The CHAIR: Welcome to the final session of the day. Can you hear me, Mr Parker?

Dr PARKER: I can hear somebody else as well.

The CHAIR: Is there perhaps a live feed in the background?

Dr PARKER: I think there probably was, but I think I have fixed it.

The CHAIR: I invite you to make a short opening statement, if you wish.

Dr PARKER: Thank you, Chair. As Valuer General, I am an independent statutory officer appointed by the Governor of New South Wales to oversee the State's land valuation system. I report to the Parliament through the Joint Standing Committee on the Office of the Valuer General. As Valuer General, my role is to be independent of government and of the dispossessed and to be fair to the parties. I am required to determine compensation to be paid to the dispossessed in accordance with the Land Acquisition (Just Terms Compensation) Act, court precedent and Valuer General policy.

It is important to note that before a compulsory acquisition matter gets to me, there has been nine months of negotiation between the parties, being the statutory six-month period followed by the further three-month period. So there has been a long period of time in which the parties can reach agreement if they are able to do so. When agreement cannot be reached and the compulsory acquisition is gazetted, the matter is referred to me to make a determination. Now, I stress that is a determination. It is not a mediation or a reconciliation between the parties. It is an independent determination. To do that, I make a de novo valuation, I assess the disturbance claims of the dispossessed and I assess the other heads of compensation. I do that with regard to the provisions of the Act, court precedent—of which there is quite a lot—and Valuer General policy. I read the claims submitted by the dispossessed and the issues list submitted by the acquiring authority and we exchange that information between each party so that there is no risk of adverse information.

When completed, a preliminary report is provided to both parties for consideration before I finalise my determination. There are a series of conferences for the parties during the process and it is very common for my determination to differ from the claim made by the dispossessed or the offer made by the acquiring authority. If the dispossessed is unhappy with my determination, they have a right of appeal to the Land and Environment Court. But the action in the court is between the dispossessed and the acquiring authority and it does not involve me. I am advised by the department that within 2020-21 five matters were determined by the Land and Environment Court, so matters going to court are relatively few. In 2021 there were 88 determinations, so that is a pretty low percentage. I am told by the department that 65 per cent of determinations were issued within the statutory 45 days, with an average time taken to issue a determination of 81 days.

Since I was appointed, as the members of the joint standing committee would know, I have made a variety of changes to the management of the compensation determination process, with a view to speeding up the time in which determinations are issued. When I arrived, the average was 177 days and I am advised by the department that last year the average was 88 days. So the average time is falling. Since I arrived, I personally intervened to clear up over 3,000 substratum determinations for railway tunnels and, significantly, eight claims by Indigenous groups for cultural loss that had been lodged from around 2015. Last year and then again this year I proposed initiatives to the joint standing committee for restructure and speeding up of the process in order to maintain procedural fairness but avoid doubling up on the section 34 conference process in the Land and Environment Court.

These changes are currently underway and the department has recently appointed an executive director of business performance to oversee business improvements and the transformation of systems and processes to support me in meeting my statutory obligations. I am aware of community interest in issues such as my independence, conflict of interest, stamp duty, relocation, Sydney Metro, Orchard Hills, Riverwood and Sydney Helicopters, and I am happy to address each of those if the inquiry wishes. But in terms of an opening statement, probably not for the moment. I am happy to attempt to answer any questions from members.

The CHAIR: Thank you very much, Mr Parker. We will start with questions from the Opposition. Mr Mookhey?

The Hon. DANIEL MOOKHEY: Thank you, Chair. I will be short, sharp and pertinent, Mr Parker. Good to see you again.

Dr PARKER: And you, Mr Mookhey. Good afternoon.

The Hon. DANIEL MOOKHEY: The last time Mr Farlow and I had the opportunity to talk to you was at the standing committee. At that time you alleged you were subjected to political interference by the Government and reported that you had been ordered by the then secretary of the Department of Planning and Environment to only speak to four of your 120 staff. Is that order still in place?

Dr PARKER: I might just clarify that it was not political interference from the Government, it was administrative interference from the department; and, yes, that order is still in place. It was recently widened to include a range of directors. So it is not that number now.

The Hon. DANIEL MOOKHEY: How many people can you now communicate with?

Dr PARKER: Off the top of my head, I think we would have gone up to eight.

The Hon. DANIEL MOOKHEY: Eight out of 120 staff.

Dr PARKER: Yes.

The Hon. DANIEL MOOKHEY: Have you since cancelled any of the delegations that you have made to your staff?

Dr PARKER: I have withdrawn delegations to the just terms team and brought all just terms valuations to come before me for review prior to issue.

The Hon. DANIEL MOOKHEY: So no-one in your office other than you has the authority to finalise a determination. Is that the result of your decision, in layman's terms?

Dr PARKER: No. There are two other parties—the Deputy Valuer General and, I think, the director of valuations. Both have a delegated authority to make determinations.

The Hon. DANIEL MOOKHEY: When did you make that decision?

Dr PARKER: It would have been—I can check the exact date for you and come back to confirm, but it would have been a couple of months ago. Two or three months ago.

The Hon. DANIEL MOOKHEY: How many members of the just terms team are there in the office?

Dr PARKER: I think, from memory, there are six valuers and three administrative staff.

The Hon. DANIEL MOOKHEY: So 8 per cent or 9 per cent of the office.

Dr PARKER: Roundabout, yes.

The Hon. DANIEL MOOKHEY: And they have lost the authority to complete determinations.

Dr PARKER: No. They still complete determinations. They have had the authority withdrawn to issue determinations.

The Hon. DANIEL MOOKHEY: Right. Answers to questions that I asked the Minister for property on notice reported that from 2020 to 2021 you completed 4,000 or 3,909 compulsory acquisition determinations. Does that accord with your experience too?

Dr PARKER: The number sounds broadly correct. I think some 3,200 of those would be substratum acquisitions for railway tunnels.

The Hon. DANIEL MOOKHEY: So it is about 700 which are not substratum, thereabouts. Is that fair?

Dr PARKER: In which year was that, sorry, Mr Mookhey?

The Hon. DANIEL MOOKHEY: It was in 2021.

Dr PARKER: I was advised by the department that in 2021 there were 88 determinations issued.

The Hon. DANIEL MOOKHEY: They told me that in 2020 to 2021 you had 3,909, and you have just said that 3,200 of them were substratum. The implication that I draw is that one of us has been given the wrong figures by the department.

Dr PARKER: That would be a reasonable inference to draw.

The Hon. DANIEL MOOKHEY: I am working off the assumption that the answers that have been given to me by the Minister would imply that there were 700 that year, which is up from 128 the year previous and that 128 would also include substratum. My only point in all this is, given that you have withdrawn the delegations, shouldn't we be really worried that if you are the only person who can issue a determination, then every business and every resident that is going to be coming to you is going to experience pretty significant delays?

Dr PARKER: I do not think you necessarily should be concerned. The large bulk—if there are substratum in a year and, of course, that depends which acquiring authorities are building tunnels—are a single letter. So the approval process for that is measurable in seconds. The other determinations are currently coming in at a rate of two to three a week. We have myself, the Deputy Valuer General and the Director, Valuation Quality Assurance all with authority to issue them. So there should be no reason why we could not finalise three properly prepared determinations each week.

The Hon. DANIEL MOOKHEY: My last question before I pass to my colleague is: Why did you make such an extraordinary decision to withdraw the delegations to the members of your own staff?

Dr PARKER: Because I started reviewing valuation reports and became extremely concerned at the level of—let's use a nice term—issues arising.

The Hon. DANIEL MOOKHEY: What issues are you talking about? You do not need to be diplomatic, Valuer General. Be blatantly straight with us; you were last time we spoke to you. What issues arising led you to withdraw legal authority to the just terms team to issue determinations?

Dr PARKER: The extent to which determinations were not compliant with Valuer General policy, court precedent or the Act.

The Hon. DANIEL MOOKHEY: I pass to my colleague.

The Hon. JOHN GRAHAM: Thank you. I might turn to a specific issue. Have you released a final determination for the Five Dock Pharmacy?

Dr PARKER: No, I have not.

The Hon. JOHN GRAHAM: Why has that matter not been finalised?

Dr PARKER: Because the matter raises an issue over whether or not a buyout premium is compensable under United Petroleum. I am taking advice from the Crown Solicitor, I have taken further advice from the Solicitor General and we are currently doing some further research to form a view prior to me finalising the determination. It is an amount of approximate magnitude of $400,000, so it is a significant amount for both the claimant and for the acquiring authority.

The Hon. JOHN GRAHAM: Did the advice that you were provided by the Crown Solicitor indicate that it was or was not compensable?

Dr PARKER: It indicated that the decision was mine and should rest on the particular characteristics of the individual matter.

The Hon. JOHN GRAHAM: While it left the decision with you, did it give any indication about whether it was likely compensable?

Dr PARKER: It gave a view that based on the information that had been supplied it was likely compensable. We are now in the process of clarifying whether the information supplied was [audio malfunction].

The Hon. JOHN GRAHAM: In relation to the Solicitor General's advice, did it indicate that it was likely compensable or not?

Dr PARKER: Yes, on a case-by-case basis and, again, on the basis of the information with which the Solicitor General was supplied, it was his view that it would be compensable, so we are clarifying and confirming that information.

The Hon. JOHN GRAHAM: Given that you will make this final determination, is it currently your view that this matter is compensable?

Dr PARKER: There is an argument that based on the unusually long lease that the claimant had in his original premises there would be a basis for compensation. It is still unclear whether other existing vacant shops could have accommodated the claimant and that is what we are clarifying at the moment.

The Hon. JOHN GRAHAM: That sounds like you are much less convinced that this matter is compensable. Is that a fair statement?

Dr PARKER: No, I am concerned that it is $400,000 of public money that I wish to be sure we are correctly spending before I make the determination.

The Hon. JOHN GRAHAM: How long has this process taken so far?

Dr PARKER: It would have been with me for approximately two months.

The Hon. JOHN GRAHAM: That is with you. How long has it been with the Office of the Valuer General altogether?

Dr PARKER: I would have to take that on notice.

The Hon. JOHN GRAHAM: When will you be issuing the final determination so that this claimant actually has some certainty?

Dr PARKER: When Department of Planning, Industry and Environment [DPIE] staff furnish me with the information I requested late last week.

The Hon. JOHN GRAHAM: When do you expect that to be?

Dr PARKER: The DPIE staff are managed by DPIE and are the responsibility of the executive director in DPIE, so I have no control over the DPIE staff.

The Hon. JOHN GRAHAM: Finally, I might ask, in your time you would have certainly recommended that some valuations be reduced. Have you ever recommended an increased valuation?

Dr PARKER: I have not yet made any changes to matters of judgement where the increase in value is more likely to arise. I have been more dealing with compliance with the statute, precedent and policy, which generally is whether or not something is compensable or not. If it is not, the amount would go down, but at the moment we have not started looking in detail at the individual valuation judgements.

The Hon. JOHN GRAHAM: Have you ever added to the list of matters that are compensable?

Dr PARKER: No, because the claimant provides in their claim what they consider should be compensable to them.

The Hon. JOHN GRAHAM: I will hand to my colleague.

The Hon. DANIEL MOOKHEY: Dr Parker, can you update us as to the status of the allegations of bullying and harassment that have been directed against you?

Dr PARKER: I was unaware of any allegations of bullying and harassment.

The Hon. DANIEL MOOKHEY: We went over this matter quite extensively when you appeared before the joint committee—

The Hon. SCOTT FARLOW: Point of order: I do not think the nature of Dr Parker's role is within the terms of reference of this inquiry. Of course, Mr Mookhey and myself both were engaged in the Valuer General committee and I think it is a fair question there, but I do not think it is really a fair question for this inquiry.

The Hon. DANIEL MOOKHEY: Can I just rephrase then, perhaps, to bring it within the terms of reference. Valuer General, at the committee that Mr Farlow just made reference to, you made the point to us that you were subjected to allegations of bullying and harassment from the just terms compensation team. We spent some time exploring whether or not that was in response to the reforms you were making. Can you give us any update as to how that process has resolved?

Dr PARKER: The just terms team are employees of the department and they are managed by the executive director of the department, so I have no contact with the just terms team.

The Hon. DANIEL MOOKHEY: Okay. Equally, you made the point then that some of the matters that were raised by the just terms team were then going to be subject to a meeting that you were going to have with the Minister at the time—or shortly thereafter our hearing. Can you give us any update on whether that meeting did take place and what the outcome of that was?

Dr PARKER: The meeting did take place and the Minister was very supportive.

The Hon. DANIEL MOOKHEY: Equally, you made the point that you did not think your decision to revoke delegations would lead to any delays because, I think, as you just put it, two to three days you get a letter and that is usually it. I struggle to reconcile that, Valuer General, with the evidence that the Minister has provided us this year, which says that the average time for compulsory acquisition determinations made by the Valuer General in 2021-2022 to date, which was a date as of 16 August 2021, was 118 days. That is well outside the statutory limit and an increase, according to the Minister, of close to 40 days since last year. I just struggle to reconcile how your claim that this—for want of a better term—"strike" in your office is not impacting on businesses and residents, when the data that we have shows that the time it is taking for your office to determine matters has gone up by 50 per cent.

Dr PARKER: Well, it is not my office—

The Hon. DANIEL MOOKHEY: Okay, well to be fair—

Dr PARKER: The staff are DPIE staff managed by DPIE. However long they take to produce the determination to give to me to review is a matter for DPIE to manage. It is beyond my control.

The Hon. DANIEL MOOKHEY: Valuer General, the Minister said in her answer:

> (3) Of the compulsory acquisition compensation determinations made by the Valuer General, the average number of days to process the determinations was:
>
> (d) 2020-21: 81 days
>
> (e) 2021-22 to date: 118 days

It is clear that these are valuations that you are making. Is it your evidence that you are being delayed because DPIE staff are not handing you the information you need in a timely way?

Dr PARKER: In essence, yes.

The Hon. DANIEL MOOKHEY: What steps have you taken since to resolve that?

Dr PARKER: I proposed a restructure program and DPIE have appointed an executive director to implement that restructure program.

The Hon. DANIEL MOOKHEY: Did that take place with your consent or was that against your wishes?

Dr PARKER: No, that was my proposal that DPIE is implementing.

The Hon. DANIEL MOOKHEY: Yet we are still in a circumstance where you are only capable of talking to eight members of staff who are attached your office—

Dr PARKER: Can I just clarify that they are not attached to my office; they are DPIE staff managed by a DPIE executive director. I have no staff. I am reliant on DPIE staff managed by DPIE executive directors.

The Hon. DANIEL MOOKHEY: Prior to your engagement as Valuer General these staff were seconded, effectively, to you—to the Valuer General's office. Is that correct?

Dr PARKER: It is.

The Hon. DANIEL MOOKHEY: Since you have become Valuer General the secondments have been terminated.

Dr PARKER: The rearrangements resulting from the secretary's letter of 10 May have the effect of me having no control over the staff. So I have no control over the timing with which things are delivered. That is entirely a matter for the department and the relevant executive director.

The Hon. DANIEL MOOKHEY: Sure. I will leave it there.

The CHAIR: Can I just pick up on that? Just to clarify, you said before that there were six valuers who were previously delegated to issue determinations. Is that correct?

Dr PARKER: That is correct.

The CHAIR: Are they all DPIE staff?

Dr PARKER: They are.

The CHAIR: Is it within your role or within your power to suggest improvements to the quality of the work of those valuers?

Dr PARKER: It is within my power, and under the secretary's letter of 10 May 2021 I raised concerns with the deputy secretary. The deputy secretary may take action, if any, as he considers appropriate.

The CHAIR: So what steps have been taken then, to date, since you took the delegations away from those six valuers to get the situation back to what it was? How far away are we from you being able to issue that delegation again to those six people?

Dr PARKER: I do not know how far we are away. All I can repeat is: "The department has recently appointed an executive director, business performance, to oversee business improvements in the transformation of systems and processes to support me in meeting my statutory obligations."

The CHAIR: The issues that you identified in the determinations of those valuers that you spoke of before, is there scope for different interpretations of that work or is it very clearly—I guess, can you very clearly state that those valuations did not meet quite transparent obligations on those valuers to consider?

Dr PARKER: In the majority of cases, it would be straightforward, black-and-white. I accept that there are a minority—particularly the United Petroleum and, more recently, the Eureka decision—that leave an area of interpretation. Usually in that circumstance I invite the just terms team, through the executive director, to basically put their case as to why in this circumstance they feel this should be paid.

The CHAIR: In those circumstances, what ballpark percentage of times would you accept that explanation? If you have identified that there is something that is perhaps open to interpretation and you ask for that explanation to be put to you, in what percentage of those occurrences would you then say, "Okay, I understand that. I accept your interpretation", versus the one that you have drawn?

Dr PARKER: Probably pretty close to all of them, from memory—thinking over the past couple of weeks.

The CHAIR: Okay, and longer than that?

Dr PARKER: I have only been reviewing reports for about three months and it has taken a little time for reiterations to come back to me.

The CHAIR: In the case of Sydney Helicopters, from your evidence before can I surmise then that the reason why that valuation was lower than what had been originally suggested is because there were items in there that you viewed as not being compensable that had been viewed as compensable by the primary valuer?

Dr PARKER: Yes. There were two strands of issues. One was the fundamental way in which the claim had been treated and the other was the nature of compensable items. I finalised that claim in association with the contract valuer. Essentially, the claimant was dispossessed of a 570 square metre light industrial building with some helipads, taxiways and fuel storage area. He was compensated for a 570 square metre light industrial building with helipads, taxiways and fuel storage area.

The CHAIR: Just to clarify, in that case were you aware that there was a disagreement with the contract valuer? Did that come down to an interpretation issue as opposed to a hard rule?

Dr PARKER: I think we probably need to be clear here that the contract valuer, in the sense of the valuation contractor—the independent party who does the work for the Valuer General—and I were of the same opinion. The valuer contracted to work for the just terms team was of a different opinion.

The CHAIR: I see, thank you. I will hand over to the Hon. Mark Banasiak.

The Hon. MARK BANASIAK: Thank you. Noting the seemingly convoluted relationship you have with DPIE staff at the moment—I tried to put that politely—what is your understanding about their previous experience in doing this work, in particular whether they have worked in the private sector doing evaluations on compulsory acquisition?

Dr PARKER: I am unaware of the previous employment history of the staff in the just terms team.

The Hon. MARK BANASIAK: Okay. What is your understanding of the level of training that is provided to them as part of the just terms team, noting that you have put forward a suggested reform process to improve their performance? What is your understanding of their level of training in this area?

Dr PARKER: They should be the State's leading specialists on compulsory acquisition valuation. They should have a Bachelor's degree or equivalent, given that some may have joined the public service when things prior to the Bachelor's degree were in force. So they should be academically qualified valuers. There is certainly a lot of experience. They are members of their relevant professional body, and there are a variety of levels with differing levels of responsibility for differing levels of complexity of work.

The Hon. MARK BANASIAK: We heard yesterday—I think it was through questioning from the Government—Peter Regan said that they still have to work to a budget or they have a budget for these compulsory acquisitions for projects. Does the compulsory acquisition team to your knowledge get notice of what these budgetary restrictions will be, and how much of an impact or effect does knowing what those budgetary restrictions are play in a valuation?

Dr PARKER: I was unaware there were any budgetary restrictions. My understanding was that in my preparation of my determination I would spend whatever was required to make that determination and it would be reimbursed by the acquiring authority.

The Hon. MARK BANASIAK: That is your position. What is your understanding of the just terms team and their knowledge of a budgetary cap for overall projects?

Dr PARKER: I cannot answer that.

The Hon. MARK BANASIAK: Okay.

Dr PARKER: But just on my part, it would be an anathema to have any form of budgetary constraint because I could not exercise my independence if I was limited in any way so I could not afford to take advice that I thought was necessary to complete a valuation. So it would be simply unacceptable.

The Hon. MARK BANASIAK: Would it concern you if you heard that these DPIE staff that are acting, as a satellite to you, are taking into account some sort of budgetary cap for an overall project?

Dr PARKER: It would be a matter I would wish to raise with the deputy secretary, yes.

The Hon. MARK BANASIAK: That is pretty close to my time. I will throw to the Government.

The Hon. SCOTT FARLOW: Just to pick up from Mr Banasiak's point there, I guess it was all a case of hypotheticals, but is that something you have any actual knowledge of or any suspicion of, so to speak?

Dr PARKER: No, I do not. I was unaware of it until Mr Banasiak raised it.

The Hon. SCOTT FARLOW: Okay, fair enough. I just wanted to cover that off. Dr Parker, with respect to some of the evidence we have heard today, I think the Law Society was saying earlier this morning that one of their concerns—not necessarily from an institutional basis but from their own personal experience—has been the delay in terms of valuation periods. One of their suggestions was valuations really need to be relevant to the time period and even in this environment a delay of three to six months in a valuation would be quite pivotal in terms of the true market value. Was that something you would share that opinion of?

Dr PARKER: The valuation is as at the date of the gazettal. I can fully appreciate that if there is a gap between gazettal and determination the market may have moved. For example, if a house owner's property is gazetted on 31 March, they receive the valuation as at 31 March. If they do not receive the determination until 30 June, then the market may have increased and they may be able to buy less house at 30 June than they could at 31 March.

The Hon. SCOTT FARLOW: So your suggestion largely there is that it is not necessarily the property itself that is the challenge, but then what you can use that money for in the market as the market moves. Is that correct?

Dr PARKER: Yes, I mean that is a fundamental challenge in compulsory acquisition, in that government acquires an item from a party with no regard to where the party is going to go next. I read in the submissions there is a regular consequence that people have their houses acquired, they receive X dollars and they cannot buy a house close to where they live for X dollars. That is one of the unfortunate consequences of the current approach to compulsory acquisition.

The Hon. SCOTT FARLOW: Dr Parker, I know that prior to entering this role you had a very broad experience and just looking at your LinkedIn profile I see your international experience, so to speak, as an expert on this topic. Not necessarily with your Valuer General hat on, but with your prior experience, are there systems that have been undertaken by other governments or other regulatory regimes in place that have perhaps captured that challenge?

Dr PARKER: Not that I am aware of. Pretty much every regulatory regime generally across Commonwealth—because they are the easiest ones to compare with—have some more advantageous features than ours and some more disadvantageous features than ours. Regrettably, there does not seem to be a system anywhere in the Commonwealth that everybody says, "That bit works really well, we should do it that way." Unfortunately, no.

The Hon. SCOTT FARLOW: The Committee has also heard a lot of criticism in terms of those whose properties are being acquired with respect to market value and the definition under the just terms Act, under section 56, that it is at that point in time and does not anticipate the future value improvement that may be captured if, for instance, there was a metro station to be built on a particular property. I am just interested in your perspective. If that were to be amended, is that something that would be possible for the Valuer General's office and yourself to be able to fully capture that sort of uplift in the market if there was some sort of definitional change or is that a huge impediment in terms of the process of valuations?

Dr PARKER: No, I issued a report last year on the impact of rezoning potentiality on value. We now take into account rezoning potentiality consistent with half a dozen Land and Environment Court cases. As with

any aspect of the legislation, if the Government is of a mind to implement that then we will find a way to deal with it. There are some broader policy issues of enrichment and things like that, but basically the fundamental tenent of compulsory acquisition which is to disregard the scheme, they could be worked around in the legislative process.

The Hon. SCOTT FARLOW: With respect to the reforms that you have said in terms of the acquisitions team, when do you think you will see them fully realised? I imagine that question comes back to DPIE as well with that staff under DPIE, but do you have any expectation as to when those reforms will be fully enacted and in place?

Dr PARKER: Unfortunately not, no. I can repeat the paragraph again that DPIE gave me: "The department has recently appointed an executive director, business performance, to oversee business improvements in the transformation of systems and processes to support me in meeting my statutory obligations." It is a matter for DPIE when that is done.

The Hon. SCOTT FARLOW: Thank you, Dr Parker.

The Hon. JOHN GRAHAM: Can I just ask, in relation to the Sydney Metro project—some of those properties—have you or any of the staff met with Sydney Metro before the gazettal?

Dr PARKER: I issued instructions that the valuers were to cease meeting with acquiring authorities on individual matters but that the director of the just terms team could meet with acquiring authorities on a periodic basis to understand the extent of projects that will be coming up. So there should only be a periodic meeting between the director of just terms and the acquiring authority in terms of impending workload, and the only interaction between the acquiring authority and my staff should be through the conferences that are part of the acquisition process.

The Hon. JOHN GRAHAM: Can I just ask about two particular determinations? The Any Shapes Plastic business in Clyde is still waiting for a final determination since 19 March 2021. Is there a date for final determination and also for the hospitality 2020 business in Clyde?

Dr PARKER: I thought—and I may be wrong—for the Any Shapes Plastic all the preliminary determinations had been issued and therefore we will be waiting to hear back from the claimant. I can make further inquiries about that just to find out what is going on.

The Hon. JOHN GRAHAM: If you are able to take those on notice that would be helpful.

Dr PARKER: Yes.

The Hon. DANIEL MOOKHEY: I was going to ask you a question, Valuer General, about the Sydney Helicopters matter, which I presume you may have seen the evidence that they gave?

Dr PARKER: I did, yes.

The Hon. DANIEL MOOKHEY: They read to us from a rather extraordinary email that was sent by one of the contract valuers or valuers in your office, and then reported on a phone conversation that was had with them, too. It is highly alarming when we have witnesses telling us that they have been contacted by people, for want of a better term, at least under your control—

Dr PARKER: [Disorder].

The Hon. DANIEL MOOKHEY: —or at least involved in the process that you are who are alleging that you interfered. Equally, that same person is telling us that he never had the opportunity to talk to you directly and he cannot see any process by which you tried to understand the individual circumstances of his business. Do you wish to respond to that?

Dr PARKER: Yes, let us perhaps deal with those sequentially. In terms of interference, as I am the Valuer General and the Valuer General issues the determination there can be no interference. In the minds of the just terms team they may be the view that they issue the determinations but the Act is very, very clear: I issue determinations. Therefore, the process is entirely up to me. In terms of the comments made by Mr Harrold, I will wait for the transcript to be published and refer it to the deputy secretary to take further within DPIE. I agree they are remarkable allegations.

The Hon. DANIEL MOOKHEY: Dr Parker, what about Mr Harrold's claim that he never had the opportunity to speak to you or could not see any process that you had engaged in independently of the work of those who you are now effectively implying perhaps were exceeding their authority to determine the individual circumstances of his business? He said that he feels like he was the victim of a cookie-cutter process by you, given that you issued the determination. Do you wish to respond to that?

Dr PARKER: Yes. The just terms team will meet with claimants in conferences. That is our established process. I have not since I have been appointed met with any claimants or with any acquiring authorities on particular compulsory acquisition matters. I was unaware of any attempt by members of the just terms team to seek meetings with me to raise issues. They have the ability to do so under the secretary's letter of 10 May 2021, where they can be accompanied by the executive director. I was unaware of any of them seeking to do so.

The Hon. DANIEL MOOKHEY: But Dr Parker, from the perspective of Mr Harrold and his business, it just seems like he has been caught up in an internal battle of some form that is taking place in your office that has nothing to do with him. As a result, it seems like he had a valuation written down by half by a person who he has never had the opportunity to talk to. Can you understand from his perspective why he might see that there are deficiencies in the process?

Dr PARKER: I understand that Mr Harrold spoke to the independent external contract valuer who did the valuation that I relied on.

The Hon. DANIEL MOOKHEY: But disagreed with. The preliminary—

Dr PARKER: No, just to clarify, the independent contract valuer agreed with me.

The Hon. DANIEL MOOKHEY: [Disorder].

Dr PARKER: The internal contract valuer, I believe, was the one referred to in *The Daily Telegraph* and *The Sydney Morning Herald*.

The Hon. DANIEL MOOKHEY: Look, Dr Parker, he says that the preliminary determination he received from your office had his compensation at $6.7 million and the final determination which followed your intervention was written down by half. Can you explain what additional information you had access to that led you to write down the value from the preliminary determination that was given to him and the final determination that was given to him?

Dr PARKER: Well, it was not written down, it was probably incorrectly stated at $6.—whatever. I simply had regard to the facts that were provided in the independent contract valuer's report, the case law as it stands and the requirement of the statute, and applied those to the circumstances of this matter. The answer that came out was in the order of $3 million.

The Hon. DANIEL MOOKHEY: Chair, I think the time might have expired.

The CHAIR: Yes, I think it has, but can I just clarify that one little point because it comes back to a question I asked previously? Are you saying then, Dr Parker, that that was because there were certain items that you viewed as not being compensable but had been viewed as compensable by the DPIE-employed valuer—

Dr PARKER: Yes.

The CHAIR: —or did you value those items differently?

Dr PARKER: No, it included items that I considered not to be compensable based on case law and Valuer General policy. It also had concerned a different approach to the valuation.

The CHAIR: Okay, thank you very much. Unfortunately, that is all we have time for today. Thank you very much for making yourself available, Dr Parker, we really do appreciate that. To the extent there were questions taken on notice or if there are any supplementary questions, you have 21 days to respond. The Committee secretariat it will be in touch. That ends our hearing for today.

(The witness withdrew.)

The Committee adjourned at 13.36.