

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 6 - TRANSPORT**

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

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney on Friday, 18 March 2022**

**The Committee met at 10:00 am**

**PRESENT**

Ms Abigail Boyd (Chair)

The Hon. Scott Farlow

The Hon. John Graham

The Hon. Don Harwin

The Hon. Taylor Martin

The Hon. Daniel Mookhey (Acting Deputy Chair)

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.



**The CHAIR:** Welcome to the fifth hearing for the inquiry into acquisition of land in relation to major transport projects. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay respects to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present and those who may be watching online. Today the Committee will be hearing from a number of stakeholders, including government officials, local councils and legal representatives. While we have many witnesses with us in person, some will be appearing via videoconference today, such as our first witness. I thank everyone for making the time to give evidence to this important inquiry.

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

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions taken on notice are to be provided within 21 days. If witnesses wish to hand up documents they should do so through the Committee staff. With reference to the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. Finally, I ask that everyone turn their mobile phones to silent for the duration of the hearing.

**Mr STEWART McLACHLAN**, Head Executive Director, Property and Place, Department of Planning and Environment, before the Committee via teleconference, sworn and examined

**The CHAIR:** I welcome our first witness. Mr McLachlan, do you care to make a short opening statement?

**STEWART McLACHLAN:** Yes, that would be great. Thanks for the opportunity to assist the Committee here today. I am looking forward to explaining the good work that the just terms valuation team has been doing at this busy time. In preparing for this hearing I have reviewed the transcript of the proceedings on 18 February. There were a number of questions at that time about the interactions between the Valuer General and staff on a personal basis. I am really keen to make sure I assist this Committee and provide all the evidence I can. Questions in relation to aspects between the Valuer General and some staff will necessarily include personal information that is protected by law. It may involve protections for people making complaints and likely also the expectations of people that these matters are addressed confidentially. I would like the Committee's understanding that if the Committee will be asking questions in relation to these matters, it is likely that I will need to take them on notice in order to ensure I comply with these other obligations in answering. Thank you.

**The CHAIR:** That is understood. Thank you. We will commence with questions from the Opposition.

**The Hon. DANIEL MOOKHEY:** Thank you, Chair, and thank you Mr McLachlan for your attendance today. It is Daniel Mookhey here. I wanted to first understand a few very basic questions. You are the executive director of the team inside the department, is that correct?

**STEWART McLACHLAN:** Yes.

**The Hon. DANIEL MOOKHEY:** How many people are in the team?

**STEWART McLACHLAN:** Depending on staffing and contingent work force it may vary, but at present for just terms valuations the amount of staff would be around 10 people.

**The Hon. DANIEL MOOKHEY:** Practically the 10 people are attached to the Office of the Valuer General, is that correct?

**STEWART McLACHLAN:** They are attached to Valuer General NSW, which is the department's agency name as such, yes.

**The Hon. DANIEL MOOKHEY:** So the employment relationship of the 10 is with the department, but the—

**STEWART McLACHLAN:** Correct.

**The Hon. DANIEL MOOKHEY:** —practical nature is that they are attached to the Valuer General's office to perform the valuations that they are required to under law?

**STEWART McLACHLAN:** Broadly speaking, yes. That team is essentially employed by the department to provide services or functions as required by the Valuer General.

**The Hon. DANIEL MOOKHEY:** And they are not direct employees of the Valuer General in any way, is that correct?

**STEWART McLACHLAN:** That is my understanding, yes, correct.

**The Hon. DANIEL MOOKHEY:** The employment obligations, including the obligation to provide a safe workplace, belong to the department. Do you agree with that?

**STEWART McLACHLAN:** Broadly, yes.

**The Hon. DANIEL MOOKHEY:** Of course, the just acquisitions team is 10 out of about, what, 220 or 240 people who, in general, work for the Valuer General's agency?

**STEWART McLACHLAN:** No. Valuer General NSW would have about 100 full-time equivalent employees but there would be a varied workforce, whether they be contingents or contractors.

**The Hon. DANIEL MOOKHEY:** Thank you, that is helpful. The Committee has heard evidence, in this proceeding and other proceedings of the Parliament, that a direction was issued to the Valuer General to channel communications through an executive director. Is that your understanding as well?

**STEWART McLACHLAN:** Yes, that is my understanding. It obviously occurred before my tenure with Valuer General NSW, but yes.

**The Hon. DANIEL MOOKHEY:** Can you give us the department's views as to the arrangements as they currently stand today?

**STEWART McLACHLAN:** In my opinion, the arrangements as they stand today are that communication between the Valuer General and Valuer General NSW needs to occur only between certain executive members, unless there is some ad hoc circumstance that may require some other sort of forum to be convened. But essentially how it works in practice is that the Valuer General communicates with myself on a day-to-day basis or as required, or with a colleague of mine, Sally Dale, who is another acting executive director in Valuer General NSW.

**The Hon. DANIEL MOOKHEY:** Under the existing arrangement the Valuer General is entitled to communicate directly with four executives?

**STEWART McLACHLAN:** I would need to take that on notice. But certainly, as I said earlier, he can communicate between myself and Sally for matters that relate to Valuer General NSW and he can obviously also communicate with my boss, Michael Wright, the lead Deputy Secretary for Property and Place that oversees Valuer General NSW, as well as Mick, the Secretary for the Department of Planning and Environment.

**The Hon. DANIEL MOOKHEY:** Can you give us your understanding as to why such an arrangement has been put in place?

**STEWART McLACHLAN:** My understanding is the arrangement was put in place as a result of complaints that occurred before my employment tenure with the department.

**The Hon. DANIEL MOOKHEY:** What was the nature of those complaints, as you understand them?

**STEWART McLACHLAN:** As I understand them, the complaints were in relation to alleged or potential behavioural issues between staff and/or the Valuer General during interactions.

**The Hon. DANIEL MOOKHEY:** Can we use the short term that there were allegations that broadly fall within the umbrella of bullying and harassment?

**STEWART McLACHLAN:** Yes, that is what I understand.

**The Hon. DANIEL MOOKHEY:** Of course, we have to respect the privacy of the complainants and the nature of the complaints, but those complaints arose from the just acquisitions team in large part, is that correct?

**STEWART McLACHLAN:** I think I would need to take that on notice to answer that correctly.

**The Hon. DANIEL MOOKHEY:** Okay, sure. Are you in a position to tell us how many?

**STEWART McLACHLAN:** I am not. I would need to take that on notice.

**The Hon. DANIEL MOOKHEY:** Can you tell us when the last complaint was received?

**STEWART McLACHLAN:** That is something I would need to take on notice.

**The Hon. DANIEL MOOKHEY:** I have asked this similarly of a person who had your role prior to you having it, in a separate parliamentary proceeding. How long have you been in the position of executive director? How long have you been in this current position?

**STEWART McLACHLAN:** I started in the last week of November 2021.

**The Hon. DANIEL MOOKHEY:** Congratulations. Have you received complaints since you started?

**STEWART McLACHLAN:** I have not received any complaints from staff that I am aware of, but I would need to take it on notice to make sure that that is a correct answer.

**The Hon. DANIEL MOOKHEY:** Okay. Have you received any concerns or expressions of concern from any member of your team about certain interactions they might have had with the Valuer General?

**STEWART McLACHLAN:** No, not since I have been employed in the current role in November 2021.

**The Hon. DANIEL MOOKHEY:** As I understand it from evidence that was given by one of the former secretaries of DPIE at a budget estimates hearing last year, there were investigations, were there not, undertaken into some complaints that were received as late as September last year?

**STEWART McLACHLAN:** Yes. There has been a WHS investigation. I think I would probably need to say that I am really keen, Mr Mookhey, to assist the Committee and provide all the evidence that I can. This question probably is going towards matters that are under active consideration, as I understand it, from another

committee. I am aware that the joint standing committee has now written to the department asking for a briefing on these matters and that the department is in the process of facilitating that briefing. As these matters are particularly sensitive for all involved and airing them in a public forum raises questions of personal information protected by law, as well as those protections I went through earlier, I guess I would have to defer to those obligations that I previously raised and need to take the matter on notice if pressed.

**The Hon. DANIEL MOOKHEY:** I appreciate that, but therefore I think you might need to take on notice the question about whether an investigation was completed. Are you okay to do that?

**STEWART McLACHLAN:** The investigation has been completed. I am happy to answer that. As I understand it, the joint sitting committee has written to the department to seek a briefing on that investigation and that is in the process of being facilitated. I also understand that it is imminently being provided, if it has not already been provided, to the Minister.

**The Hon. DANIEL MOOKHEY:** It has been provided to the Minister?

**STEWART McLACHLAN:** If it has not, it is in the process of being provided, but I can certainly follow that up this morning.

**The Hon. DANIEL MOOKHEY:** Thank you. I would appreciate that. Shortly I will pass to questions from my colleagues, but can I just say in respect to the just acquisitions team there has been at least three incidents that we have heard in which members of the valuation team have reached a certain conclusion about the value of a parcel of land. The Sydney Helicopters case study—are you familiar with that?

**STEWART McLACHLAN:** I am not familiar in detail, no.

**The Hon. DANIEL MOOKHEY:** In one instance we have heard that, in what I would now probably describe as a more high-profile matter, the valuations reached after failed efforts to jointly agree a value for a parcel of land from a company by the name of Sydney Helicopters—which operates a helicopter facility that assists the SES and others—the valuation team reached a certain value and then, without notice to them, the Valuer General intervened and reduced it substantially and triggered a dispute. To be fair to the Valuer General, he has made the point that he felt that that was (a) within his power and (b) he thought he applied the correct judgement and the valuation team was wrong. Do you have anything you can say about that? Or can you take it on notice for a response from the department or your team?

**STEWART McLACHLAN:** I can probably comment broadly on how the valuation or valuations of those matters occur. But certainly, in term of the specifics of the matter you mentioned, I would need to take on notice because I am not familiar with it. How valuations occur currently is that, when a valuation is received on behalf of the Valuer General of New South Wales, that valuation is quality-assured to ensure it complies with standards, procedures, guidelines, relevant legislation. At such time that, at present, I am comfortable that the relevant checks and balances have occurred, the matter is submitted to the Valuer General for either review and noting, if it is a preliminary report that has been issued to the parties for comment, or approval if it is a final determination. When that is submitted, on occasion or routinely there may be comments from the Valuer General. Those comments may lead to a change in value, or they may not lead to a change in value. But, as I understand it, that is certainly the Valuer General's discretion and his relevant provisions or powers as statutory officer facilitating the Act.

**The Hon. DANIEL MOOKHEY:** That is helpful, Mr McLachlan. But, at least in this specific instance and in others, the complainants about the Valuer General's conduct are not just the people who had lost their land in a compulsory acquisition. It is the actual members of the team that were valuing it, which is why it is quite startling for us as a Committee to hear that, within the valuation team itself, there are concerns about the Valuer General, for want of a better term, randomly intervening and reducing values. Have you heard such complaints yourself?

**STEWART McLACHLAN:** No, I have not. Every matter that the Valuer General reviews since I have been in the role is—that feedback has been provided to the team through myself, and the comments have been addressed or taken on board or explained in the appropriate manner.

**The Hon. DANIEL MOOKHEY:** How many valuations has the just acquisitions team completed in the last 12 months?

**STEWART McLACHLAN:** I would need to take that figure on notice.

**The Hon. DANIEL MOOKHEY:** I guess the valuations that I am specifically referring to are the ones—"determinations" is probably a better way of putting it—in which the property value has to be determined under the Act. Do you know that one?

**STEWART McLACHLAN:** Determinations, I guess, to pull to it a broad sense—any matter that is gazetted is a matter in terms of compulsory acquisition that needs to be determined. I am probably not following. How the matter comes to the Valuer General for—

**The Hon. DANIEL MOOKHEY:** Sorry. I guess the one I am specifically looking for is the valuations after the parties failed to reach an agreement. Do you have any idea as to how many numbers of that has been done in the last 12 months?

**STEWART McLACHLAN:** In the last 12, no, but certainly I can talk to during my time and certainly since the delegations have predominantly changed. I did do a couple of figures. If that is okay—

**The Hon. DANIEL MOOKHEY:** Yes, please.

**STEWART McLACHLAN:** Certainly, just analysing specifically a few periods. In the period 13 September to 3 December—a 12-week period—the team were able to issue 47 reports. That is either preliminary or final. I am pleased to say that, as a result of some further business improvements and realignment of resources, as well as other factors, in the period 6 December to 11 March—the subsequent 12-week period—the team has been able to issue 129 reports, either preliminary or final. In terms of output, we are at about triple the output at the moment to where we were in the former 12-week period.

**The Hon. DANIEL MOOKHEY:** That is because there was a bit of a backlog. Was there not, Mr McLachlan?

**STEWART McLACHLAN:** I do not think the amount of matters that the department is assessing or not assessing probably goes to the amount of output because we probably have more matters when we are achieving the smaller output than we do when we are achieving the larger output.

**The Hon. DANIEL MOOKHEY:** But I think the Valuer General's annual reports and others show that there was a significant deterioration in the ability of the Valuer General's office to complete these determinations within the statutory time periods. That has been established. In fact, we as a Committee have heard multiple complaints, not just of the outcome of valuations but actually the timeliness, which is causing more concern in many senses. That is a whole bunch of people have come to us and said, "Going to the Valuer General's office will take far longer than we were told, than we expected." We are hearing that from everywhere. Do you want to respond to that? We have heard that from residents in Orchard Hills. We have heard that from the Tigers club and the people who are developing their site. We have heard it from Sydney Helicopters and others. Almost every single person who has come before us to talk about their experiences have complained not just about the outcome but actually about how slow it is to get an outcome from the Valuer General's office. Do you want to respond to that?

**STEWART McLACHLAN:** Yes. I would say that there is always room for improvement. But the numbers I previously referenced probably demonstrate that there has been significant improvement, particularly in the last three to six months. Our output is now at about three to four times the output it was, say, in August or September last year. So we are starting to—as a result of some structural and other business improvement initiatives we have put in place, as well as removing, where possible, duplicitous administrative processes, we have improved. In terms of the days taken, the days taken are still outside the statutory time frame. That is something we are well aware of and something we are working to reducing. We are working with the Valuer General to do that.

In terms of the process moving forward, which is something we have discussed with the acquiring authorities, as well as the standard for property acquisition, on 10 or 11 January this year, we implemented a new process, called just terms 21. Under that process, there are relevant drop dates for both the claimant and the acquiring authority—or drop-dead dates, as we call them—where information needs to be provided. In some of these matters, yes, it is less than ideal the time frame taken but, depending on the specific matter, I would need to investigate each and every one. But, at a broad sense, there is generally a reason why it has taken that time—whether we are awaiting experts or consultant reports, whether we are awaiting details from the claimant, which does occur a lot, or whether we are awaiting details from the acquiring authorities.

**The Hon. DANIEL MOOKHEY:** But, Mr McLachlan, are you not just ignoring the obvious elephant in the room here? Part of the reason why there is a delay is that the Valuer General is only allowed to talk to four people, arising from the way in which he has conducted himself? Is it not the case that we should conclude that an arrangement, which I describe as farcical, is resulting in people who are having to lose their property to the Government also having to then suffer interminable delays. Is that fair?

**STEWART McLACHLAN:** I would say for any process or approval process—this is not dissimilar to other approvals government does or does not issue or determinations—where you add multiple layers of parties

to review a matter, and in this instance if you add another layer being the Valuer General on all matters or in essence you have to communicate through certain channels, then that will increase the time taken to deliver the service. Yes, that is logical.

**The Hon. DANIEL MOOKHEY:** It is the case that landowners who have lost their home are also losing their rights under law because of the turmoil that is engulfing the Valuer General's office. Is that fair for us to conclude?

**STEWART McLACHLAN:** I am not sure whether I would put it in that sense, but I guess how you wish to conclude a matter is up to you. I guess in my opinion I just prefaced how I would probably conclude that there are certain factors that will delay matters regardless of whether you are in the Valuer General's office or not if you are adding a layer of review.

**The Hon. DANIEL MOOKHEY:** My final question is, of the 129 and 47 reports, or for that matter just beyond that, how many just terms acquisitions valuations settled by the Valuer General are currently before the Land and Environment Court, subject to appeal?

**STEWART McLACHLAN:** I would need to take that on notice.

**The CHAIR:** Mr McLachlan, can I just come back to that point about the limited communications channels with the Valuer General. What does that look like in practice in the work that the department does and the need for that to be funnelled through you or through others? I guess I am trying to get perhaps sort of a real-world example of how that might delay matters versus people being able to directly go to the Valuer General's office.

**STEWART McLACHLAN:** Sure. If we went through an example at a micro level, if you had a determination my team was looking at presently—and again I think I would preface any answer with the fact that I have only been in the role since November and obviously this is a process that I have been facilitating since November prior to that or prior to the reduced communications. I am unaware of the specific processes that used to occur but certainly how I think it would occur.

At present, a matter would be undertaken by either an internal valuer, although more likely an external contract valuer for the department. That matter would come to our team for review and quality assurance. When one of my senior managers or principal valuers is comfortable that it meets the relevant standards and has done the relevant checks and balances, it would be sent to me. How that then is provided to the Valuer General is I undertake a final review to make sure that the relevant feedback the Valuer General has given myself or the team previously is ideally being implemented or considered in this matter, and if I am comfortable that has occurred I send it to the Valuer General for review and noting if it is a preliminary, or review and approval if it is a final determination. In terms of the time frames taken, I would say for every matter that is being signed off, for want of a better word, from one of our principal valuers, the Valuer General would receive that within one to two business days of that sign-off, assuming I am comfortable.

**The CHAIR:** That is the current process.

**STEWART McLACHLAN:** Yes.

**The CHAIR:** How could it be improved or how would it be made more efficient if there were more communication channels then with the Valuer General?

**STEWART McLACHLAN:** The only layer you would probably skip is myself on matters where there are low-risk or smaller determinations, because obviously the larger the value, the higher the risk in terms of potential valuation adjustments, or other complexities in terms of expert reports may come into it and certainly you would require further review. It would probably reduce the time taken by one to two business days at least if those other matters I talked through were going directly to the Valuer General.

**The CHAIR:** Understood, so about one to two business days per low-risk sort of matter I guess. The understanding being that you would ordinarily be looking at those more complex matters. Is that what you are saying?

**STEWART McLACHLAN:** Certainly, yes, and I think, as I understand it, that did occur in the past. Obviously within departments or within State government agencies there are delegations, financial for procurement but also for determination. If you have matters that are—at present there are some—in the hundreds of millions of dollar, those matters would not just be going from a principal valuer to the Valuer General.

**The Hon. JOHN GRAHAM:** Mr McLachlan, I want to ask some questions about the operation of the Just Terms Compensation Act. One of the things the Committee is looking at is the evidence that we have received about how that could be improved. I am interested mainly in your observations or your team's observations about



how it is working in practice on some matters of fact. There are obviously some policy questions that you might not want to comment on, but I am more interested in what is factually going on at the moment. Can I just put some issues to you and then I am interested in your perspective about whether this is factually true. One of those things that the Committee has received evidence about is Sydney Metro being involved in valuations where the valuation offer does not increase by a single dollar, as it has been put to us, despite the fact that the Sydney property market has been rising quite rapidly over the past 12 months. Have you got any observations about whether that is factually the case in the instances you are seeing?

**STEWART McLACHLAN:** I think I would need to take that on notice specifically, and if you had specific matters I can certainly respond in detail. I would say that the acquisitions or determinations under the Act are done at the date of gazettal. It does not take into account the relevant rising market in my mind if the acquisition took eight months to determine.

**The Hon. JOHN GRAHAM:** One of the issues that has been raised with the Committee—again, this has tended to be about Sydney Metro—is that the relevant sales comparisons are often 10 to 15 kilometres away from the subject property. Is that something that you have seen in the cases you are dealing with?

**STEWART McLACHLAN:** I do not know if I could comment specifically on Sydney Metro, but certainly when we undertake valuations or my team undertakes the valuations or contract valuers, certainly there are cases where we are using sales that are at times quite afield from the relevant property being acquired. But as you can probably appreciate, if you are acquiring a property—and I am thinking of one more in regional New South Wales at the moment—the sales comparison may need to be 100 kilometres away because there is no other sale of that type that has occurred. That is just the nature of the valuation.

**The Hon. JOHN GRAHAM:** Understood. Sydney Metro's acquisitions will tend to be more in the urban areas. You would hope you would have to move less further afield. Have you seen instances of that in the city?

**STEWART McLACHLAN:** Not that I would consider significantly outside of the realm of the area, no. I can take on a specific matter if you have one at hand and look at the details.

**The Hon. JOHN GRAHAM:** Thank you. One of the concerns is that acquiring authorities will often issue letters two to three months into the six-month process. Even though the six-month process could potentially be long enough, this is really putting pressure then on the system. Does that evidence that has been given to us, in your experience, tend to be factually correct?

**STEWART McLACHLAN:** I am not sure, with respect, what you are referring to, what letter or which part of the process. Could you be more specific?

**The Hon. JOHN GRAHAM:** I think it is the letter of offer.

**STEWART McLACHLAN:** Okay. That would probably be a matter for the acquiring authority to probably respond to.

**The Hon. JOHN GRAHAM:** Correct. I agree with that. I am asking: Does that accord with what you are seeing, that this has often been issued two to three months into the process?

**STEWART McLACHLAN:** In terms of the Valuer General of New South Wales' role in the process—and this is broadly speaking, because I am not the acquiring authority in these matters—the acquiring authority undertakes negotiations with the relevant claimant or party at the time. During that negotiation period, if they cannot reach agreement, they issue a PAN—the proposed acquisition notice—to the relevant party to say essentially, "We are going to acquire your property via compulsory acquisition." At that time under the Act the acquiring authority is obligated to notify us—without having the Act in front of me—essentially as soon as practical, and that is when our role starts. What happens before that or if the acquiring authority takes a while to issue a negotiation, I would not be best placed to answer or respond to.

**The Hon. JOHN GRAHAM:** So you are not aware of how far into the process those PANs are being issued. That is your evidence?

**STEWART McLACHLAN:** Yes. The Valuer General of New South Wales is required to be advised under the Act once a PAN is issued.

**The Hon. JOHN GRAHAM:** Understood.

**STEWART McLACHLAN:** And generally that advisement would take, say, 10 days to come across.

**The Hon. JOHN GRAHAM:** One of the bits of evidence that we have received is that in some cases, issues were only raised by the acquiring authority through its submissions to the Valuer General—that is,

landowners are finding out for the first time about issues not in the six-month process, or not prior to that PAN being issued, but in subsequent submissions that are made to the Valuer General. Have you seen instances of that occurring?

**STEWART McLACHLAN:** That is probably best placed for the acquiring authority to answer, but I am certainly not aware of specific instances. What does occur when VG NSW facilitates a determination is that we are notified of the PAN. We then seek to procure services to undertake the relevant determination. As part of that we may identify issues that neither party has previously identified because we are undertaking a separate valuation. Whether or not there are issues that an acquiring authority or a claimant has advised the Valuer General that they have failed to advise during negotiations is probably a matter for them to respond to.

**The Hon. JOHN GRAHAM:** I will certainly be putting it to them, but this is referring to the part of the process that you are closer to. I am interested in whether you factually observe that this is occurring or in your experience is this not occurring?

**STEWART McLACHLAN:** From my understanding, I am not aware of specific instances where this has occurred, where something has not been raised with the claimant and then is raised by an acquiring authority. However, I would need to take it on notice to answer that appropriately.

**The Hon. JOHN GRAHAM:** That would be helpful. I am more trying to get to the facts of what you observe in your work, or your team's work, as you are dealing with these cases.

**STEWART McLACHLAN:** Certainly I have not observed that or turned my mind to the systemic issue.

**The Hon. JOHN GRAHAM:** That is helpful evidence for us. One of the concerns that has been put to us is that former owners or tenants have not received a draft determination from the Valuer General or an explanation for the delay for months or, in one case that has been put to us, 72 days since the date of gazettal. Is that something that you are seeing?

**STEWART McLACHLAN:** There were probably a few questions in there, with respect. I will do my best to answer and if I have missed a part, feel free to pull me up. When we are undertaking a determination from the date of gazettal, certainly, as I explained, there is a new process from 10 or 11 January this year where we have introduced drop-dead periods. For a draft determination at the moment, certainly 70 days would not be uncommon, and we are working to reduce that down to 45 days. I do not think that that sounds like what has occurred in this instance. If there are delays or inquiries, both the acquiring authority or the claimant can contact the Valuer General and are assigned relevant details to do that and we can talk through what is occurring on the matter. On a lot of matters there are expert reports that need to be procured. As I am sure you can appreciate, the market is quite constrained in all things that relate to valuations at the moment. The time frames we have been given—for instance, I am aware of a matter recently where we have issued it to 12 valuation firms and all 12 valuation firms that Valuer General would usually utilise that have the relevant expertise to undertake the work that we need have declined to quote. So there is an issue in terms of time frames, yes.

**The Hon. JOHN GRAHAM:** So that is one of the real pressure points that you are pointing to right there in the system.

**STEWART McLACHLAN:** Certainly.

**The Hon. JOHN GRAHAM:** What is the benchmark time at the moment? What is the average delay as you are measuring those and as you are trying to get it down to the 45-day mark?

**STEWART McLACHLAN:** I would need to take it on notice. I know the time frame has gone up. In my mind I know that, but I do not know the specific day. The reason the time frame has gone up is not because new matters are going up. We are actually getting through matters and some of them have gazetted in July last year. As I talked through before, we are working through the significant increase in output. Whilst we are getting through a significant output, if that matter has taken 200 days, the overall numerical number will go up but once we have clear that, the numerical number should go down.

**The Hon. JOHN GRAHAM:** Mr McLachlan, you have provided really useful context about why this is the case but this is a key benchmark: the 45 days. I am going to press you. You must have some sense of the average at the moment, with all the context that you have just provided.

**STEWART McLACHLAN:** I would need to take it on notice to get the specific days, but I would say that it is around 120, give or take. But, again, I would not know without taking it on notice to give you the specific number.

**The Hon. JOHN GRAHAM:** That is useful. So it is about 120 days and you are aiming to get it to 45. You have obviously lifted the work rates significantly, but that is still quite a big gap at the moment. You would agree with that?

**STEWART McLACHLAN:** Yes, it is a large gap. But, as I said, I would need to preface that as we lift these work rates and we lift the output from the VG NSW, which we are striving to continue to achieve, that number will have to go up before it comes back down, because we are getting through matters that are significantly longing in their nature.

**The Hon. JOHN GRAHAM:** How much higher could that number go?

**STEWART McLACHLAN:** I would need to take that on notice.

**The Hon. JOHN GRAHAM:** In the meantime, while those owners and businesses are waiting, you would agree that they are continuing to pay loans. They are often paying rent to the acquiring authority. Often shortly they will have no premises to operate out of. That provides other business pressures. These are all very real pressures as people wait that 120 days or more. Do you agree with that?

**STEWART McLACHLAN:** Sure. Yes, I do. I would say that that is probably a matter for the acquiring authorities, but I am aware that there are avenues whilst they await determinations in terms of prepayments from the acquiring authorities.

**The Hon. DANIEL MOOKHEY:** Do you also accept that as each day goes by, certainly in the last year, property has become more expensive? In terms of the ability for a person to purchase an alternative property, their actual spending power is going down at the same time as they are incurring all these additional costs. Is that fair?

**STEWART McLACHLAN:** That is reasonable, yes.

**The Hon. JOHN GRAHAM:** You referred to those payments. Again, I want to acknowledge up-front that this is more an issue for the acquiring authority, but I am interested in your observation about whether the evidence that we have received is factually accurate. The acquiring authority does not need to pay former owners and businesses any money until 28 days after receiving all the necessary paperwork. Some of that paperwork will take a couple of months for the bank to approve. These are all adding to delays for when owners receive money. It could be that former owners of businesses are taking up to five to six months after gazettal before they are receiving money from the acquiring authority. Does that evidence that we have received accord with what you see in the system at the moment?

**STEWART McLACHLAN:** I think that is going well outside my knowledge of what the acquiring authorities can or cannot facilitate, so I would not want to answer.

**The Hon. JOHN GRAHAM:** I appreciate that.

**The Hon. DANIEL MOOKHEY:** Mr McLachlan, is it your understanding that the Act's purpose is to facilitate a joint agreement between the acquiring authority and the landowner? Is that correct, that the first preference of the Act is that the two parties reach agreement?

**STEWART McLACHLAN:** Certainly, yes. The desired preference is always an agreement between the two parties, and that is in any matter of negotiations, in my mind.

**The Hon. DANIEL MOOKHEY:** And you agree that people come to the Valuer General's office predominantly for a final determination in the event that they cannot reach an agreement?

**STEWART McLACHLAN:** Yes, I agree.

**The Hon. DANIEL MOOKHEY:** Do you agree that to the extent to which your processes in the Valuer General's office are seen as fair and timely impacts on how a party will conduct themselves in the first round of negotiations?

**STEWART McLACHLAN:** Sorry, you might need to put that to me again.

**The Hon. DANIEL MOOKHEY:** Do you accept that a person's behaviour, be it the acquiring authority or the landowner, is affected by how they perceive they will go if they were to go through a Valuer General process?

**STEWART McLACHLAN:** I am not sure I could put myself in the mind of a person or the acquiring authority in how they behave, sorry.

**The Hon. JOHN GRAHAM:** It is a reasonably commonsense proposition though, is it not Mr McLachlan? I would not see that as contentious.

**The Hon. DANIEL MOOKHEY:** That is not contentious, is it, that a person—

**STEWART McLACHLAN:** I am not saying it is contentious but I do not think I can go to whether a person would or would not behave differently. In my opinion, if there is a process there, and I was either of the parties, I would follow the relevant processes.

**The Hon. DANIEL MOOKHEY:** Sure, but some of the evidence that we have heard is that there is a perception amongst landowners that they will fare poorly in a Valuer General process and that, therefore, they are more inclined to accept a reduced value offer from the acquiring authority because fundamentally they are far more fearful of your office having to decide the value of their land. That is what the Committee has heard in multiple instances. Are you aware of that concern?

**STEWART McLACHLAN:** I am not aware of that, but certainly I could not talk to whether people are fearful or not. The role that we play is essentially to issue a final determination. So the only avenue post a Valuer General determination is to take the matter or proceedings to court to challenge that determination. Certainly any determination we issue takes into account the relevant policies, procedures and requirements of the Act, so I am not sure.

**The Hon. DANIEL MOOKHEY:** Equally, complaints have been raised—I accept these are complaints about acquiring authorities—about whether or not an acquiring agency is, in fact, negotiating in good faith. There is a view that they are not because acquiring agencies think that they will always prevail in a Valuer General process. Do you have any insight into that? Do you want to respond to that concern?

**STEWART McLACHLAN:** I think that is a matter for the acquiring authorities, with respect.

**The Hon. DANIEL MOOKHEY:** There is equally a view that has come through loud and clear, that there is a resource, a symmetry, between a landowner and an acquiring authority. One of the concerns is that the acquiring agency then conducts themselves in a way in which they do not negotiate in good faith; they are not a good source to resources of their counterparties. Is that a concern you have heard?

**STEWART McLACHLAN:** I have not heard that concern but again we are not really involved in that front-end part of the process so it is probably unlikely something I would hear in any event.

**The Hon. DANIEL MOOKHEY:** But the concern continues on in that only a few people have the level of resources required to bring a challenge to a Valuer General's determination in the Land and Environment Court. In fact, given that that is an expensive process, there is a real concern that the system is just stacked in favour of the acquiring agencies, not in favour of the landholder or, at least, even in a position to put the two on an equal bargaining framework. Have you heard that concern?

**STEWART McLACHLAN:** No, but again that is not really a matter that the VGNSW looks after. We are there to provide the relevant determination. Whether or not someone has the resources to challenge that determination is not really a matter that would be discussed with us in any event.

**The Hon. DANIEL MOOKHEY:** Do you accept, therefore, given that the average of the Valuer General is 120 days, as opposed to the 45 days that it is meant to be, that that delay is equally contributing to landholders feeling, first, the system is stacked against them and, second, that their resources are being exhausted, especially as the Valuer General's office is now close to three times over what it should be doing by law? Do you understand that that is one of the factors that might be contributing to that perception?

**STEWART McLACHLAN:** It may be, if that is the evidence you have heard. It is not something that I am familiar with or have heard. But as I said earlier though, certainly it is around the 120 days. We are striving to reduce that to the 45 days. The evidence I have already given is that the output from our team and the relevant contingent and contract workforce has significantly improved of the order of three or four times that of what it was, say, six months ago.

**The CHAIR:** Unfortunately that is all we have time for. I thank you for attending and answering those questions for us. To the extent that you took questions on notice, you have 21 days to respond. The Committee secretariat will be in touch to make arrangements about those.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Ms BALLANDA SACK**, Special Counsel, Beatty Hughes & Associates, affirmed and examined

**Mr DAVID NEWHOUSE**, Partner, Newhouse & Arnold Solicitors, sworn and examined

**The CHAIR:** Would either of you like to make a short opening statement?

**BALLANDA SACK:** We both would. This submission is made on behalf of Beatty Hughes & Associates. It is based on our experience acting for dispossessed owners and resuming authorities for over 25 years, primarily in New South Wales but also in Queensland, South Australia and Victoria. For many home owners and businesses the compulsory acquisition of their land is a devastating and alien ordeal. Government has a responsibility to conduct this process fairly, transparently, respectfully and in a manner which does not lead to arbitrary outcomes.

We have identified three key problems with the compulsory acquisition process. Firstly, at the point they are served with an opening letter or offer of compensation, owners are put at an enormous information and financial disadvantage. Secondly, the resuming authority, who is frequently the agency responsible for constructing the project and paying for it, has little incentive to make a genuine effort to reach agreement with owners. Thirdly, there are inadequate statutory protections for owners if the land to be acquired changes or the acquisition is ultimately abandoned.

Rules for calculating compensable losses are arcane and often do not match how the land or business owners value their interests in land. The resuming authority's offer letter bundles compensation into a lump sum that is not supported by information identifying how that amount was reached. Owners are then required to incur expense up-front in engaging experts to assist them understand the process and their legal entitlements. This is unfair. Over the past few years the compulsory acquisition of land has devolved into an adversarial contest in which the resuming authority presides as judge, jury and executioner. This leaves little scope for dispossessed owners to participate meaningfully in a process which is likely to have life-changing consequences.

In our view, a resuming authority ought not be wedded to its own valuation and fail to or refuse to consider the dispossessed owner's valuation. Instead, the resuming authority's valuation ought be the starting point of the negotiation not its predetermined end point. The resuming authority ought not conduct negotiations in a perfunctory manner and dictate the terms and conduct of any discussions, including not letting owners speak or refusing to allow experienced experts to meet unsupervised. The resuming authority ought not dismiss the views of experienced valuers out of hand if they are acting for dispossessed owners, noting that often the same valuers are used by a government in other matters. The resuming authority ought not ignore its duty to resolve doubts in favour of the dispossessed owner, and in instances where there are contiguous parcels of land or large strata acquisitions it ought not pick the owners off one by one or directly contact the owner when they know that they are legally represented.

In our written submissions, we have suggested measures to better ensure that resuming authorities make a genuine attempt to acquire land on just terms by agreement. Our full recommendations are, firstly, to provide access to funds up-front so that owners can obtain expert advice and also to require the resuming authority to provide its valuation report with its offer. Our second recommendation is that there ought to be an opportunity for alternative dispute resolution early before a PAN can be issued—for example, allowing for peer review of expert reports or conducting negotiations in the presence of an independent mediator.

Thirdly, owners ought be reimbursed for incurred costs in circumstances where a compulsory acquisition process is commenced but the acquisition is ultimately abandoned. Fourthly, the negotiation period ought be extended in circumstances where the area or location of land to be acquired has changed materially during the negotiation phase. A final comment is that to address the arbitrary nature of the application of the just terms Act, consideration should also be given to reviewing the Act as it relates to stamp duty on replacement property, as the current approach has led to arbitrary and unfair outcomes.

**DAVID NEWHOUSE:** Madam Chair, Deputy Chair and Committee members, I have been practising in the land acquisition space for over 20 years and have acted for the New South Wales Government as a barrister at the beginning of my career and for members of the public as a solicitor for the last 14 years. I have seen both sides of the fence, and the process for land acquisitions has never been so problematic. The evidence and submissions that you have heard are only a tip of the iceberg. We have seen a consistent policy of stonewalling by acquiring authorities in recent times. Some authorities are clearly not making genuine attempts to acquire land by negotiation, which means that more and more matters will go and are going to the Valuer General or owners are worn down by the process to just accept the low offers.

All Committee members should be concerned about the acquiring authorities taking advantage of the elderly, those from culturally and linguistically diverse backgrounds, minority groups and the disabled, and those

who just do not know how to get help. These are just some of the people you have not heard from throughout this inquiry. I have many stories but there is one that I will never forget: a single mother with a disabled daughter who said, "The process has worn me out and it is just easier to accept the low offer." That young mother and her disabled daughter had to move out of a supportive community and rebuild their lives with less resources in a different part of Sydney, all because this process has allowed acquiring authorities to take advantage of these families.

I have countless stories of owners who are in the same position—some we could help, but others were worn out by the process and just accepted the low offers. For these families, it is more than just money. They have a history in their home, a loved one's ashes spread across the garden, a horse or a dog buried in the backyard, children's height charts on walls. I was told late last year that a child died in the lounge room. These are real people with real stories who are impacted by the Government's proposed project. The Act ignores these stories and the acquiring authorities treat them like a statistic, often with no empathy. With the amounts that are being offered, they cannot buy back in the same market and their assets are being diminished with the delays in getting a final answer, whether it be from the VG, which you are aware takes three to six months, or through the court process, which can take one to three years, putting these families even further behind financially and emotionally.

Even earlier this week I watched a hardworking family in the Hunter Connection who works from 5.00 a.m. till 5.00 p.m. at night every day, meet with Sydney Metro, who essentially demanded they just accept their valuation with a take-it-or-leave-it attitude. The process is seriously unjust. When the acquiring authorities choose not to genuinely participate, there is nothing more we can do when this happens but to allow the Valuer General to make his decision, which is now costing the taxpayers even more money. As I understand, the acquiring authority must pay the Valuer General around \$20,000 each time a matter goes to him. Just remember that these families did not ask to sell their properties or force these businesses to move. They have been living or working there for years—and in some instances, decades—and it is the Government forcing them to leave under the Government's terms, which supports a one-sided process which will wear these families down to accept a lower amount of money.

One last example of the one-sided approach was Sydney Metro's acquisitions for the Westmead station. At the time of the announcement, there were numerous sales in the same street ranging between \$550,000 and \$580,000 for a typical two-bedroom unit. These units in the street were all originally built by the same two developers. They were all very similar in nature, but Sydney Metro's original offers were typically 10 per cent below these sales in the street. It took nine months and countless meetings to resolve these matters before common sense prevailed when in the very last week of the acquisition process around a dozen of my clients resolved their claims with sales within that range in the street. They had to wait nine months to receive fair market value. Why couldn't Sydney Metro offer that amount in the first place? It would have eased the pain that these families went through and allow them to buy back in the same market. At the same time there were countless letters to politicians and Ministers, who merely referred them back to the department for answers. By the time they received their money the market had gone up nearly 10 per cent, forcing them to repurchase in other areas in Sydney.

I have set out some of the key reforms in my submission. However, since my submission I have tried to work out if there could be a better system. The problem clearly arises because every agency—whether it be RMS or Transport for NSW, Sydney Metro, local councils and other government departments—have all different internal procedures. There appears not to be any consistent approach across any government department. We have matters on the South Coast which have been going on for nearly three years. These road-widening projects have now been completed, yet the council refuses to issue a PAN and compulsorily acquire the property.

We have had matters with a western suburbs council, where the opening letters were issued in May 2018. The properties were gazetted in October 2021—a 3½-year process; normally, there would be a nine-month process. Final determinations of the Valuer General came back a few days ago, nearly four years later when they were first notified. The council in those matters did not increase their initial offers, despite the market moving upwards in the 3½ years and there is ample sales evidence of increases. We have had similar approaches where not a single dollar more was offered by Sydney Metro in Burwood, and the CBD Metro station projects are becoming to take a similar vein. We have been told that there is a new Metro internal policy not to deviate from the valuation reports unless there is new evidence provided. You cannot have genuine negotiation under these terms.

We have another matter against a council in north-west Sydney, who have provided offers of compensation for a strip of land to build a new roundabout. We provided our reports to council, only to be told that the project is stopped and then two days later the same council now wants to negotiate purchasing the whole of our client's property for the project but not under the Act. From our experience, we are generally achieving a higher success rate to those agencies, like Transport for NSW, who have dedicated employed acquisition staff to deal with the acquisitions daily, as opposed to the Sydney Metro contractor model or councils who have property

officers who deal with one or two acquisitions a year. The solution here is for all New South Wales acquisitions to be assisted or determined by the Centre of Property Acquisitions, who should utilise employed and experienced acquisition officers, like the Transport for NSW model. This could alleviate the different internal approaches and procedures so one agency determines all acquisitions in New South Wales.

**The CHAIR:** Thank you very much. If I could just pick you up on that last bit before I hand over to my colleagues, I think that is a really interesting idea, and I was about to ask you which of the agencies do it better in your view. As you have said, it is the ones with the better experience, I guess. But what makes the Transport for NSW team better? Is it because they have a dedicated team or is it also kind of cultural? Is there anything in the manner of their approach that is also different?

**DAVID NEWHOUSE:** If I can interject, I think there are two issues. One is they are using employed staff who are there seeing this on a day-to-day basis. They typically have valuation experience, and the most important thing—

**The CHAIR:** Apologies. Could you move the microphone just slightly closer to you.

**DAVID NEWHOUSE:** Do I need to repeat that?

**The CHAIR:** No, that is fine. Thank you.

**DAVID NEWHOUSE:** So they use employed staff, typically with valuation experience. They are there on a day-to-day basis. Most importantly, there is a process in Transport for NSW that if you do have a grievance, you can escalate it up the chain—until recently. The new director unfortunately refers matters back to the same officer, but until previous matters we always had the ability to go to people like Bernie Mills, Awindra Prasad and those people and at least have a sensible discussion with them with valuation evidence. They would then pick at peer reviews, and they would look at the process and come back to you. We would not always agree, but at least there was a process. With Sydney Metro and others, there is no process. You cannot go up to senior management and have those discussions. You are left with the contractors at the ground level, and you cannot have those negotiations. You cannot have those sensible arguments. You cannot present that information to show them the differences.

**The CHAIR:** If you had a separate agency that was doing all of this for all of the acquiring authorities, would that also take away the inherent—what am I trying to say here? If an acquiring authority is doing this process themselves, they obviously have a very strong interest in trying to get the lowest price possible, which is perhaps part of the problem and is perhaps leading to the stonewalling and the game playing because they know that they can go to the Valuer General at the end. If every acquisition was actually undertaken by a separate agency, is it your view that would sort of remove that approach or incentive to perhaps give low offers and be a bit tougher?

**DAVID NEWHOUSE:** You would hope that they would provide independent market valuations, which is all we are trying to achieve.

**BALLANDA SACK:** Another point is this sense that you are dealing with a resuming authority that has skin in the game and wants to get the price down as low as possible. There is no sense, when you are going into a negotiation, that it is like a mediation, a meeting of equal parties or that there is an independence to it. You have this stonewall of, "It is my way or the highway. Walk out." That is extremely distressing for owners because they have, in a way, this false hope of a process that is fair and that they will get just compensation, yet the first time they see the resuming authority face to face, it is very clear that this is not a negotiation. I have even been in negotiations where the first words coming out of the resuming authority's mouth is, "This is not a negotiation." And you are like, "Hello? Why are we here?" An independent voice early in the process is important, whether it is by way of a dedicated agency or, we have suggested, having an opportunity for a mediator. That is lacking at the moment, and that drives the outcomes.

**The CHAIR:** The Act is based on the assumption that we have fairly equal parties coming together to negotiate the agreement whereas in practice we have a huge power imbalance. Your recommendations, Ms Sack, are around trying to rebalance that power and to make it more of a fair negotiation. Is that correct?

**BALLANDA SACK:** Just to make the negotiation more fair so that you can, as an owner, come in with experts but also have a sense that the process is independent. That seems to be what is lacking at the moment—this sense of an independent voice through the process.

**The CHAIR:** I have one final question, and then I will hand over to the Opposition. Do you think that there is a case to be made that we should really have a different type of process when we are dealing with homeowners and small business owners versus property investors and large businesses?

**BALLANDA SACK:** Our experience is largely with businesses or larger corporates. David is more on the other side, so we are coming at it from slightly different experiences. I think there is a difference between the approaches. I suppose David might have—

**DAVID NEWHOUSE:** I think the difference is from the smaller mums and dads and the smaller businesses, they are more readily going to accept the low offer because they cannot afford to go to court. The larger businesses have the money to go to court. There is more at stake.

**The CHAIR:** The emotional aspect as well, I guess. We have heard from a lot of people who have had their homes acquired or about to be acquired, and they spoke a lot about the distress that causes when you are having to move home to a completely different place. It is the uncertainty, it is the cost and it is everything else. It is not having the immediate resources to know what you are supposed to do in the process. Clearly, that is a very different situation to someone who is sitting in a big corporation and maybe invested in some property that has no home on it. There is no emotional connection for that person. Should there be a different process for dealing with those?

**BALLANDA SACK:** One thing that is important is even though they may be larger businesses or corporates, one should not underestimate the amount of energy, effort and emotional commitment that those businesses have made, especially in the Sydney area where land is so tightly held and such a premium. These businesses have been on these sites for a long time and are making the most of every single bit of that site. Unravelling that when an acquisition comes through is something where—it sucks resources out of the business for years, trying to manage and go through the process of compulsory acquisition, that they never get back. There is no mechanism for compensation for the fact that you will have to have two dedicated staff in your business that are basically spending all their time managing the acquisition process. There are differences. There are significant impacts.

It may be, in a way, less emotional, but the impacts are still significant. The sums of money are larger, so I think the egregiousness that David talks about—you can see that mean-spiritedness is a real issue at the residential owners' level. We have got a lot of clients that are heavily invested and committed in their locations and things. They need to be in that location because that allows their business to operate and, all of a sudden, you suck them out of that location and the business can collapse because they do not have that network for their market.

**DAVID NEWHOUSE:** Just very quickly—I know you want to move on. The solatium in section 60 only goes to owners who live in those properties. I do not understand why that does not go to anybody. It is supposed to be for the inconvenience that is caused. It is a nominal statutory amount. It has gone up. I am not going to quibble with the amount; that is a matter for Government. But that should go to everybody who gets a knock on the door by two acquisition officers.

**The Hon. JOHN GRAHAM:** Firstly, thanks for your submissions. They have both been really helpful because they talk about some real solutions to the issues. We have had quite good evidence about what the problems are, but both of your submissions go to some of the potential answers and in real detail. Thank you for that. I do want to touch on some of the problems briefly first though. These are important powers. They have been used more, given some of the big projects that are underway in Sydney. There have been improvements, though, to how some of this works. That has been part of the case that has been put to us in the Government submissions. I am interested in your view though. Has the process of compulsory acquisition improved at all or do we still have a major problem?

**DAVID NEWHOUSE:** If I could say, we have a major problem when you have got internal policies saying they are not going to deviate from the valuation reports. Valuation is an art; it is not a science. It is not black and white.

**BALLANDA SACK:** I have had the same experience. I feel like at the moment it is actually worse than it was several years ago. It may be the fact that there are larger projects and there is more happening, but it definitely feels worse than it was.

**The Hon. JOHN GRAHAM:** Thank you for that perspective. Looking at some of the specifics here, there are a range of properties being acquired by a range of different agencies. But you have highlighted the difference between, for example, the former RMS, which was doing a lot of acquiring, and what is going on with Metro. We have had evidence that there is a cultural issue on the Metro side. That is where some more of the evidence seems to be coming from. Is that a fair observation, as you look across the system? Firstly, Mr Newhouse?

**DAVID NEWHOUSE:** My concerns are you have contractors running the Metro project. So where I am seeing the problems is not just the Metro project; it is local councils as well. So when there are people who



are not invested on a day-to-day basis, whether they be contractors or acquisition officers, property officers, who do one or two a year, you are not getting the same consistencies as Transport for NSW.

**The Hon. JOHN GRAHAM:** Great, okay. Thank you. Ms Sack?

**BALLANDA SACK:** I would echo that, that the difference in approach does come from, I suppose it is kind of contract mercenaries, but that is the feel that you get in the approach, and certainly the matters that we have had with councils, you see that they just do not deal with this regularly, and it is challenging for them as well as being challenging for the owners.

**The Hon. JOHN GRAHAM:** Thank you. One final question on the problems. One of the issues potentially is that the Sydney Metro team is issuing a valuation range rather than a valuation offer. Do either of you have any observations about whether this is occurring?

**BALLANDA SACK:** I think the important thing is that valuation is sort of part art, part science; there is not a clear number. A valuer is required to put themselves in the shoes of a hypothetical purchaser and postulate an amount that that hypothetical purchaser would pay at an arbitrary nominated date for the property. So experienced valuers always provide a range. An indication of whether you have got a good valuer or not is that if they provide a range they know what they are doing because they know it falls within the range, and the court accepts that it falls within the range. That is part of the reason why there is a very clear, right from the High Court, saying if there is doubt and it falls within a range and the range is reasonable, then those doubts ought be resolved in favour of the dispossessed owner, so one ought go to the higher side of the range rather than low balling.

**The Hon. JOHN GRAHAM:** Mr Newhouse?

**DAVID NEWHOUSE:** What we are seeing, exactly on that issue, is we are seeing agencies like Sydney Metro having a range but for some reason picking the lower end of that range, which is causing a lot of frustration with my clients and other owners and businesses when they are seeing a range and they are saying, "How come they are giving us the lower end?"

**The Hon. JOHN GRAHAM:** Just turning to the solutions, to touch on some those, because you have set out quite a lot, Mr Newhouse, in your submission you have said that you believe the six-month period is sufficient if the acquiring authority is making genuine attempts.

**DAVID NEWHOUSE:** Yes.

**The Hon. JOHN GRAHAM:** Ms Sack, do you agree with that evidence? It could be sufficient if there is a genuine attempt?

**BALLANDA SACK:** It would be sufficient if there were genuine attempts. It has been sufficient in the past, but now it feels like there is not a genuine attempt. Speed is important because you want to be able to buy back into the same market and not—

**The Hon. JOHN GRAHAM:** You have both said having access to funds up-front would be important, or that a portion should be paid. That seems like a commonsense solution. Do either of you want to speak to that matter?

**DAVID NEWHOUSE:** Just very quickly, in the sense of when the gazette date—if you do not reach agreement and your property is gazetted you still have to keep paying your mortgage and then the acquiring authorities start charging you rent on top of your mortgages. So if you had access to those funds at least they can go to the banks and stop that bleed. They do get interest but it is at about 2 per cent at the moment, so it is very minor.

**BALLANDA SACK:** I think that it is important to get the money up-front. It is costly and as an owner you are served with this document that has this number that makes no sense. I think it is important as well that you get the resuming authority's valuation report as well, so that you have some confidence that there is a reason for the number—

**The Hon. JOHN GRAHAM:** You have both agreed on that.

**BALLANDA SACK:** —and then you are going to have to engage experts to help you, and that is an out-of-pocket up-front expense.

**The Hon. JOHN GRAHAM:** Let me just put to you the view that others would put though, which is of course you would say that, that money should be there for advice, because often you are providing the advice and you are paid for that advice. How much of a difference does it make to be able to pay for that advice? What happens if that money is not there and someone cannot afford to pay for that?

**BALLANDA SACK:** If you are thinking about a small business, for example, and there is a lease as well—so there is a number of different interests—they are looking at \$10,000-plus out-of-pocket straightaway. They have just had a knock on the door and said they are losing their land and they are required to fork out money to understand what is going on in the process. It just seems entirely unfair.

**The Hon. JOHN GRAHAM:** Mr Newhouse, what are you saying?

**DAVID NEWHOUSE:** My view is that if you do not offer that, people will just accept the low offers and move on because they will not know what to do.

**The Hon. JOHN GRAHAM:** And in some ways that is more likely with residential people, with people who have got less power.

**DAVID NEWHOUSE:** That is correct.

**The Hon. JOHN GRAHAM:** I might stop there and turn to my colleague.

**The Hon. DANIEL MOOKHEY:** Again, to both witnesses, thank you so much for the submissions that you have put together, they were both excellent. Mr Newhouse, I wanted to ask you about some of the case studies you made reference to in your submission.

**DAVID NEWHOUSE:** Sure.

**The Hon. DANIEL MOOKHEY:** At the time that you wrote this, which was May last year, you said that you were aware of Sydney Metro having had more than 70 property and business claims referred to the Valuer General as an agreement could not be reached. That is on page 2 of your submission.

**DAVID NEWHOUSE:** That is correct.

**The Hon. DANIEL MOOKHEY:** That is an incredibly high number, is it not?

**DAVID NEWHOUSE:** It is a very large number, and I had about a dozen, which is the most I have ever had in all my years of practice.

**The Hon. DANIEL MOOKHEY:** Were they coming from a particular line that Sydney Metro was building?

**DAVID NEWHOUSE:** They came from three areas: Five Dock, Clyde, from what I understand, and Burwood.

**The Hon. DANIEL MOOKHEY:** This was really for the construction of the western Metro, which is the Westmead to the city connection. That is correct?

**DAVID NEWHOUSE:** That is correct.

**The Hon. DANIEL MOOKHEY:** And you told us about this. In the submission you tell us about what was going on in Burwood, Concord, Clyde and Five Dock. Do you want to take us through that? What happened?

**DAVID NEWHOUSE:** From my side of things, what I was seeing, Sydney Metro drew a line in the sand and were not willing to give a dollar more on the valuations. The Valuer General did come in and assess independently market valuations and all of my clients that went to the Valuer General came up significantly, sometimes double.<sup>1</sup>

**The Hon. DANIEL MOOKHEY:** Double?

**DAVID NEWHOUSE:** Yes, there were.

**The Hon. DANIEL MOOKHEY:** And that is after the Valuer General process?

**DAVID NEWHOUSE:** That is through the Valuer General process. When you are advising your client and they have the time and ability, because most of these were small businesses and they had the time and ability, they allowed that process to go through to the Valuer General and have an independent umpire have a look at it.

**The Hon. DANIEL MOOKHEY:** After the Valuer General determination did Sydney Metro provide you or your clients with an explanation as to how they got it so wrong?

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<sup>1</sup> In [correspondence](#) to the committee dated 23 March 2022, Mr David Newhouse, Partner, Newhouse & Arnold Solicitors provided a clarification to his evidence.

**DAVID NEWHOUSE:** No.

**The Hon. DANIEL MOOKHEY:** How many of those matters are still currently subject to dispute?

**DAVID NEWHOUSE:** There are three matters of mine that are in the court process.

**The Hon. DANIEL MOOKHEY:** So they have gone to court?

**DAVID NEWHOUSE:** Yes.

**The Hon. DANIEL MOOKHEY:** Are there any other instances since the submission around Sydney Metro that affects that part of the line that you think we should know about?

**DAVID NEWHOUSE:** No, but I am aware that a number of matters still went to court, particularly in the Five Dock area. They are not my matters

**The Hon. DANIEL MOOKHEY:** Fair enough. Can you take us through the point you are making as well around how Sydney Metro engages lawyers and town planners to identify technicalities?

**DAVID NEWHOUSE:** The process says what a hypothetical purchaser does. When you and I go to a property, we do not go and get town planners and lawyers looking at all these ins and outs of nuances to try to get the valuation down. What we do is we look at it, sometimes you might have somebody do some calculations on the back of an envelope, we might look at some leases. But that is generally what we do and that is what a hypothetical purchaser does. The process has gone completely skewed towards relying heavily on experts, planners, to say what is going on. I think you saw it in Orchard Hills as well, that suddenly we are so reliant on these experts where that is not what a hypothetical purchaser should be doing. So the agencies are now engaging more and more experts to try to assist their case.

**BALLANDA SACK:** I think the other thing in terms of technicalities is that a lot of very fine distinctions are being made. It is a fairly typical occurrence that you will have a single-director company that operates the business or owns the land and in those circumstances there are these fine distinctions being drawn which says that in this circumstance you do not get stamp duty, but the place next door, which is almost identical, they get stamp duty because they have arranged their legal affairs in a slightly different way even though it is all the same sort of interests. So I think it is this kind of nitpickyness around the way it is being approached, and I appreciate some of that is being driven by the courts, but certainly the acquiring authorities are leaping onto that with great enthusiasm.

**The Hon. DANIEL MOOKHEY:** When you say the "acquiring authorities", is that Sydney Metro who is doing it?

**BALLANDA SACK:** The majority of our matters are currently with Sydney Metro. I believe that is the experience that we are having. Obviously we have had that a little bit from RMS previously, but I think that is where the majority of our matters are coming from at the moment. That is what we are seeing and what we are responding to. The issue of stamp duty is a really egregious one. I am constantly having to explain to owners and say, "No, sorry. I know it is unfair but you will not get stamp duties. You will not get costs of replacement property." But, hey, if you had a broom cupboard in that place as landlord, we are off and running and you will get your stamp duty. But no broom cupboard, you get nothing. It is that type of issue.

**The Hon. SCOTT FARLOW:** Will you explain to the Committee what that legal distinction is? How is it worked out?

**BALLANDA SACK:** The issue is that you get stamp duty if you have an active use of the land. It is the way the legislation has been drafted but it is also the way it has been interpreted. You need to have an active use of the land. The courts have then drawn this distinction between a passive investor, so if I own and rent, and I am a landlord, then I am a passive investor. I have no active use, therefore, I am not entitled to stamp duty or cost of a replacement property. What that means for my smaller clients where they had previously operated a business out of that property but they are now leasing it out, they have a CGT benefit. They want to and they will buy a replacement property because that is what they will do, but they get no stamp duty, they get no costs of replacement property. It is that kind of distinction. It then becomes where you have people are relying on properties for their superannuation and everything but all of a sudden they are 50 grand out of pocket if they buy a replacement property which is unjust.

**The Hon. SCOTT FARLOW:** I take it when you say about the broom closet, an example there, if they retained a broom closet on the site that they use themselves then they would be able to qualify for that stamp duty? Is that correct?

**BALLANDA SACK:** Yes.

**DAVID NEWHOUSE:** My solution there is just a credit. The Government should not be handing out the money unless you repurchase another property. My view is for the same period of time, when you have got to elect to pay capital gains tax, which is one to two years, if you buy a property in that time you should get a credit on the stamp duty. If you do not, you do not get any money. So it only benefits those people who re-buy a property. It is not handout.

**The Hon. SCOTT FARLOW:** It is making good, effectively.

**BALLANDA SACK:** Yes. We act in other jurisdictions. For example, in Victoria we recently reached agreement on one matter and the arrangement there is that you get a stamp duty rebate but it is reimbursed if you buy within 12 months and the value of the rebate is for an equivalent property. That is the way that arrangement works, which seems more fair—because there will be instances, for example, that a business owner will get stamp duty and costs of a replacement property. They get that money upfront but then they decide not to buy a replacement property and, instead, to lease somewhere else. So they have had a windfall and yet you have got other people who do not get anything.

**The Hon. DANIEL MOOKHEY:** You take the Committee through another example in which Metro draws distinctions between people who have long-term leases on paper and those who are operating on month-to-month leases despite having long-term histories of occupancy. That seems overly arbitrary and incredibly mean-spirited that a person who has been in a place for 10 to 15 years can be thrown out just because their lease happens to be a continuing lease. Am I wrong?

**BALLANDA SACK:** It is mean-spirited, but this has come from the courts where they have said it is about security of the tenure. There are instances, for example, if you have a business, you are owner, you have a single director company that runs the business but you do not have a formal lease arrangement in place because you are effectively leasing to yourself. In that circumstance, some of the businesses are cut adrift because they have no security of tenure because they are on a month-to-month handshake arrangement with, effectively, themselves.

**The Hon. DANIEL MOOKHEY:** Mr Newhouse, you then go on to talk about those who then do seek access to the Valuer General processes and the massive delays that they are experiencing in getting a result. Will you take the Committee through that?

**DAVID NEWHOUSE:** I think that was unique to those 70 matters hitting the Valuer General. To be fair, though, the Valuer General, we understood, was having meetings—they did stop when we raised this issue—with the acquiring authorities like Sydney Metro every week to know what was going to be referred to the Valuer General. We raised that and said, "Can we attend those meetings?" They did stop, which is good, but we understand 70 matters came along. They just did not have the resources, we expect, to deal with so many matters. You have also got to remember that the Valuer General is receiving, generally, more complicated matters. The easier ones generally will not go to the Valuer General. I have got one still with the Valuer General that is very complicated at the moment—out at Kemps Creek—and it has well exceeded the time frame. But they are complicated matters.

**The Hon. DANIEL MOOKHEY:** You made reference to this before about what is going on with Hunter Connection. Are you representing people who are in Hunter Connection?

**DAVID NEWHOUSE:** Yes, I am.

**The Hon. DANIEL MOOKHEY:** Ms Sack, you as well?

**BALLANDA SACK:** Yes.<sup>2</sup>

**The Hon. DANIEL MOOKHEY:** How is that going? Can you give us an update from your perspective because this one, as you rightly point out, was notified last year and is live now.

**BALLANDA SACK:** Obviously we are in a without prejudice negotiations phase. We need to be very careful about anything that we say, but it is a process that our clients have found very difficult. We are part way through a process. There are some complexities around it because, for us, we have the nature of the business interests. These are the negotiations that are not really negotiations. They are more "Here is what we are prepared to offer"—walk away. The problem with that approach also is that it just encourages people to sit it about and wait for the VG, which then adds to the backlog on the VG.

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<sup>2</sup> In [correspondence](#) to the committee dated 5 April 2022, Ms Ballanda Sack, Special Counsel, Beatty, Hughes & Associates mmittee provided a clarification to her evidence.

At the moment if you are in a situation when the Valuer General looks at it—I mean, in our case I suppose we have got very large interests, so percentages make a difference. But when we are looking at 15 to 20 per cent uplift when the Valuer General looks at it, you have got to say there is something wrong with the process. David has larger uplifts but smaller quantum. But it just indicates there is something broken earlier on if you are consistently getting significantly larger amounts from the Valuer General. The problem is you have just got to wait for so long to do that.

**DAVID NEWHOUSE:** From my side of things, I did some very successful workings with Sydney Metro and St Marys. The reason we had success there was—we had our quantity surveyor reports; we had our differences. They are usually around the contingencies and the mathematics behind those reports. Sydney Metro agreed to get them peer reviewed. That process was excellent because we walked out of those and I got 12 out of 12 after that peer review. We used the same experts—brought those St Marys into the Hunter Connection and all those areas—and we are being told that those rates are not being accepted, yet they were peer reviewed in St Marys where those rates were accepted.

What I am trying to say is Sydney Metro got it right in St Marys. I would love to see it happen in the Hunter Connection where there was some sort of peer review because it is not black and white. The experts got together and understood where they were all coming from and we got those resolutions. But at the moment we are getting the take-it-or-leave-it approach.

**The Hon. DANIEL MOOKHEY:** I can only imagine that insight is creating turmoil for your clients?

**DAVID NEWHOUSE:** It is very distressing because at the moment they are finding it very hard to find where to go. Sydney Metro's position is engage a tenant representative so we can confirm there is nowhere to go. They know there is nowhere to go but they want every client to engage now a tenant representative to prove that fact; I cannot see the justification.

**The Hon. DANIEL MOOKHEY:** Quite a few businesses are affected by the Hunter Connection?

**DAVID NEWHOUSE:** I understand there is 120.

**The Hon. DANIEL MOOKHEY:** It is a large amount in just one building. Is that fair?

**DAVID NEWHOUSE:** Yes, and they are small mums and dads who work very, very hard.

**The Hon. DANIEL MOOKHEY:** And very fine businesses which I personally am a fan of. Mr Newhouse, is there any evidence of any behaviour change on behalf of the acquiring authority—in this instance Sydney Metro—which would disturb the view that they effectively acting like bohemians who are beyond the law because that is the impression we are getting?

**DAVID NEWHOUSE:** As I said to you, we are getting these reports. There is a range. They are picking the lower end of the range and they are not budging at this stage. Again, we do not know where it is going to head, but at this stage they have made it very clear there is—we have been told there is an internal policy not to deviate from their valuation reports unless there is new evidence. Now that is not what this is about, because it is not black and white.

**The Hon. DANIEL MOOKHEY:** So your evidence is that the idea of genuine bargaining is foreign to the way they are behaving?

**DAVID NEWHOUSE:** Yes. If they had that peer review, like St Marys, we would get a solution.

**The Hon. DANIEL MOOKHEY:** Ms Sack, is that your view too?

**BALLANDA SACK:** The same thing, that I think a peer review process just gives an opportunity for the experts to do what they do best rather than feeling that everything is being, I don't know—I find it really difficult that the court requires experts to separately go and meet and try to seek to reach agreement on what they can agree on, what they cannot agree on, that the experts are to be independent, yet when these experts are acting for the resuming authority, they are being micromanaged and sat on and cannot meet unsupervised with the other side or anything. It just seems so foreign.

**The Hon. DANIEL MOOKHEY:** Much in the solutions vein, my colleague asked you a number of questions about how the Act could be improved. One question that I am interested in is, Do you think the resuming authority needs to be able to publish the reasons for why it needs to acquire property in the first place and set out its rationale?

**BALLANDA SACK:** When you value land, you have to disregard the public purpose, so you disregard the uplifts associated with the public purpose. If I am living somewhere that is about to have the benefit of a major—

**The Hon. DANIEL MOOKHEY:** Like Orchard Hills, which is about to get a massive railway station that is likely to see property values surrounding the station skyrocket.

**BALLANDA SACK:** Yes.

**DAVID NEWHOUSE:** You have to ignore that.

**The Hon. DANIEL MOOKHEY:** You have to ignore that.

**BALLANDA SACK:** You have to ignore that. The problem then becomes, well, what is the public purpose? For example, you have had instances where you have had road-widening projects, but they have then gone, "Actually, the public purpose is urban renewal and rezoning." You go, "No, no, you are doing a road. That's your public purpose, not urban renewal." So I think there is a danger or there is a need for care in the way that the purpose or reasons for the acquisition are expressed because obviously it is in the acquiring authority's interest to express those reasons as broadly as possible—for example, for Sydney Metro to say, "Actually, the public purpose, the reason for our acquisition, is Metro stations anywhere in Sydney."

**The Hon. DANIEL MOOKHEY:** I know I did say "final question" but a follow-up to that: One of the things which is unique about Metro as opposed to other acquiring authorities is that they are equally a developer. There seems to be evidence that, in a way, that might be colouring their outlook on these matters, given that they are the ones who benefit more from the skyrocketing value, rather than necessarily Transport acting in this place.

**BALLANDA SACK:** It is very evident that the land that is going to be acquired will be up-zoned for a different purpose in the future and that the Government is intending to reap the benefits of that and use that money to pay for its infrastructure projects.

**The Hon. DANIEL MOOKHEY:** That is what we used to term "plunder". It was a government agency who plundered a community for its value in order to extract the wealth and take it for itself. Is that incorrect or is it too extreme a description of what we are hearing here?

**BALLANDA SACK:** That is the reality. Projects need to be paid for, but I think it then becomes incredibly difficult for owners.

**The Hon. SCOTT FARLOW:** I think "value capture" might be another term.

**DAVID NEWHOUSE:** Can I comment on that one comment? What the biggest issue for my clients—and no doubt Ms Sack's—is when they see the public purpose and they see these big towers going in these glossy brochures and then they are offering a lot less and they are offering these low amounts, that irates them. I know the public purpose is to be ignored, but when they see those glossy brochures or those videos on the websites, it does cause a lot of havoc. They are saying that they are going to put a 20-storey tower on this block.

**The CHAIR:** Sorry, we are out of time but I do want to pick up on that public purpose point. The public purpose is decided by the acquiring authority, but then it presumably can be reviewed as part of the Valuer General process, or is it a point of negotiation?

**BALLANDA SACK:** It just is.

**The CHAIR:** It just is?

**BALLANDA SACK:** In order to compulsorily acquire property, an agency can only acquire property in accordance with its powers of acquisition. For example, under the Roads Act, there are powers of acquisition in relation to roads; under the Heritage Act, there are even powers of acquisition in relation to heritage. They have to be careful about the way they frame their public purpose, but it is something that a valuer is instructed to disregard. There is a statutory disregard for the public purpose, so it becomes important to try and pin down what is in the public purpose and what is happening that is not part of a public purpose.

**The CHAIR:** If, ultimately, there is a dispute over what the public purpose is though, how does that get resolved? Do you need to actually—

**The Hon. DANIEL MOOKHEY:** Is it disputable, is the other question.

**The CHAIR:** Is it disputable, yes.

**BALLANDA SACK:** It has been disputed in the past, coming back to whether that acquiring authority had the power to make that acquisition. There have been cases in relation to that which look at, What was the public purpose in that instance. That was where we had instances where we have an urban renewal project starting to be a part of the public purpose of building a road. But it is something that you would need to go to the court.

**The Hon. DANIEL MOOKHEY:** It is highly technical, is it not?

**DAVID NEWHOUSE:** Very.

**The Hon. DANIEL MOOKHEY:** I failed many an administrative law essay on that point about ultra vires.

**The Hon. SCOTT FARLOW:** You had to do it a couple of times.

**The CHAIR:** Unfortunately, we are out of time. Thank you so much for coming along today and giving us the benefit of your evidence. To the extent of questions taken on notice—I am not sure that there were—you have 21 days to respond. The Committee secretariat will be in touch with any supplementary questions. Thank you very much.

**(The witnesses withdrew.)**

**Mr MATTHEW PEARCE**, General Counsel, Inner West Council, affirmed and examined

**The CHAIR:** Welcome, Mr Pearce.

**MATTHEW PEARCE:** Thank you, Madam Chair.

**The CHAIR:** I understand that Councillor Byrne is a late apology.

**MATTHEW PEARCE:** He is an apology, yes.

**The CHAIR:** Thank you. Would you like to begin by making a short opening statement?

**MATTHEW PEARCE:** I do have an opening statement prepared. Thank you for allowing Inner West Council to appear before the Committee today. Council has made a written submission to the inquiry, dated 14 July, expressing its concerns about the conduct of Transport in the acquisition of land for the major projects in its local government area. I will generally be speaking to those submissions.

Inner West, as an amalgamated council of Ashfield, Marrickville and Leichhardt, has been impacted by a number of projects associated with WestConnex, the Sydney Gateway and the western harbour tunnel. The acquisition process of the main transport projects has involved compulsory acquisition of council's freehold land, compulsory acquisition leases over parks and reserves for construction compounds, road acquisitions for road widening, land acquired where council is the Crown land manager over Crown lands. There have been various impacts as a consequence of the acquisition process on council and its community.

The impacts have generally involved the reduction of open space. As a consequence, as it stands at this present point in time, there has been a removal or reduction of nine parks or reserves in the LGA and, therefore, the loss of recreational open space for the community. There has been direct and indirect financial impacts on the council's financial resources and, of course, there has been this near endless series of construction projects with associated noise, dust and traffic congestion adversely affecting the amenity of the community. The conduct of Transport during the acquisition process, and the associated negotiations for these major transport projects, can only be described as inconsistent, unfair and lacking transparency. When I have spoken to some officers about their experiences, they have described the negotiations as brutal.

As a consequence of the conduct of Transport, and council's experience in this acquisition process, it is clear to council that Transport takes advantage of the acquisition/compensation legislation—that being the just terms Act and other Acts. The unfairness, when it comes to Transport acquiring council's parks, reserves and freehold land, is twofold. Under section 10A of the just terms Act, the acquiring authority is required to make a genuine attempt to negotiate acquisition over a six-month period before the compulsory acquisition process begins—in other words, the serving of the property acquisition notice, or PAN. The council's experience is that the genuine negotiations really never happen with Transport, as it refuses to meet or exchange valuations to genuinely attempt to negotiate a reasonable outcome.

Under section 56, the relevant provision in terms of market value, Transport takes the view that it negotiates only on section 56 (1) and nothing else. The council's position is that section 56 (3) of that provision is relevant because the circumstances are that there is really no market value for open space land and, therefore, section 56 (3) applies. The purpose and the reason is that it is an important provision for council because it is not a greenfield council. There is no other space available. The council says its position to Transport on each occasion is that it is only plausible, if there is going to be replacement land, the council has to purchase private land. Transport disagrees with that. They just say it is simply the case of the willing buyer and the willing seller and, therefore, the market value is based on that.

There are other unfairness issues that have come to light during the acquisition process with Transport. This concerns section 206 of the Roads Act. That particularly relates to compensation when Transport decides to acquire council roads for road widening. The issue here is that, when Transport steps in and seeks to acquire roads for widening for its major projects, the council insists that the compensation, as required by section 206, must be based on some other process other than what 206 requires in that Transport insists that we have to provide to Transport the cost of construction of these roads. As you know, the inner west is a very old council area. We have no records of the construction costs of these roads. It is an impossible scenario that council has to deal with, but Transport continually insists, when it comes to road widening and the acquisition of the local roads, that we have to provide this particular documentation as evidence for the necessary compensation.

The fallout of all of this is that, unnecessarily, councils have to take legal proceedings. There have been at least two instances where council has taken Transport to court. When we go to court, all of a sudden, Transport folds like a stack of cards because they do not want a judgement out there in the public which may well go against the particular way they approach acquisition. There are recommendations in the written submission. In summary,



the recommendations from the Inner West Council are that the legislation needs to be reviewed so as to create a level playing field for property owners and council whose lands are being acquired by State entities, like Transport. There needs to be proper planning by Transport for the delivery of major projects to reduce impacts on the community—in other words, not continuous major planning projects going on endlessly over a number of years. In terms of the inner west, this has been occurring for at least five years. The community is basically over it.

Transport should look at alternative sites for construction compounds that are the subject of compulsory leases rather than relying upon the council's parks and reserves as the automatic default option. One issue that has come out in the actual series of negotiation matters that we have dealt with is that, for each compulsory acquisition, we deal with a different Transport team. We find that everything is completely inconsistent. One team will take one type of procedure, another team will have a different way they approach the compulsory acquisition negotiations and there will be a third team that will not even stick to the model at all. We have one team at council. We deal with multiple teams over a number of years, and it is completely inconsistent. There does not seem to be any set procedure within Transport that the council can comfortably deal with.

More importantly, there is this whole notion of more transparency and open negotiation during the six-month period, as required by section 10A of the just terms Act. What we have found is that Transport just goes through the motions. In some instances, it refuses to meet at all. In nearly all instances, it refuses to exchange any valuations with council, so we really do not know how they reason their market value for the land they wish to acquire. That is a serious problem. The council's position is that Transport does not make a genuine attempt to negotiate an outcome over the six months. As a consequence, the council's general position is, if the six months comes and goes and we are not satisfied with any outcome that results from the negotiation process, we will just refer it to the VG. Whatever we get back from the VG, if we accept that, fine. If not, we will just go to court. That is our position.

**The CHAIR:** Can I just clarify one point before I hand to Mr Mookhey? When you said that you have taken Transport to court twice, and that they then just folded to avoid a judgement, does that mean that they then gave you a better offer? What did that look like in practice?

**MATTHEW PEARCE:** The one related to section 56 (3) of the just terms Act. Transport basically said, before we went to court, it is not worth anything. The Valuer General came back and said it is not worth anything in terms of replacement land to be reinstated. We got to the hearing. By the third day, Transport realised that things were not going well, and they decided to open up the negotiations while the hearing was continuing. Then what happened was the offers started to flow from Transport. The initial offer started with—it is a confidential agreement—a six-figure number. By the end of the negotiations in totality it was 10 times that.

**The CHAIR:** But how much did it cost council to take that court action or to begin that court action?

**MATTHEW PEARCE:** Putting aside the time, which was unmeasurable, the legal costs were in the vicinity of about \$60,000 to \$70,000.

**The CHAIR:** So \$60,000 to \$70,000 to make Transport for NSW be reasonable which, obviously, council has some access to, but the average person would find that very difficult.

**MATTHEW PEARCE:** Correct.

**The CHAIR:** Mr Mookhey?

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Pearce, for your evidence and the submission of your council. Basically, you are telling us that Transport is lawless and the system is broken, is that fair?

**MATTHEW PEARCE:** I will just clarify that. What I am saying is that Transport does not make that genuine attempt over that six-month period as required by the Act.

**The Hon. DANIEL MOOKHEY:** So they are lawless?

**MATTHEW PEARCE:** In one respect they are lawless. I should point out that I suppose they were even more lawless because section 10A was not inserted into the legislation until 2016-17, and before then what would generally happen is that we would just get served with a PAN—that was it. Now they have to go through the six-month period. But the process that they adopt generally is that we get a letter, and the letter basically says, "We have decided to acquire your land." No explanation why. They have identified this particular parcel of land and then say, "Give us an offer." We have to go off and negotiate generally, and then we give them a valuation. We say to them, "Here is our valuation, here is the offer based on the valuation", and then we say to them, "Well, can we have a copy of your valuation?" They say, "No". We say, "Okay, well, so do you accept our offer?" "No", and they will come back with a low-ball offer, obviously. Then we say to them, "Well, okay, under section 10A let's start negotiating. Let's get together in a room and start talking." "No." We say, "Well, okay, if you don't want

lawyers present or council officers present, what about the two valuers get in a room and try to work out an agreement of some kind in terms of compensation?" They say, "No."

**The Hon. JOHN GRAHAM:** Which is quite extraordinary.

**MATTHEW PEARCE:** It is. And, as I said, council officers have explained it to me that the process, from what they are experiencing, is a brutal process.

**The Hon. DANIEL MOOKHEY:** Just to be clear here, Inner West Council represents how many people?

**MATTHEW PEARCE:** I cannot tell you that, I am sorry. I think it is probably about 180,000 to 200,000.

**The Hon. DANIEL MOOKHEY:** And your revenue as well?

**MATTHEW PEARCE:** No, I cannot. I would have to take that on notice.

**The Hon. DANIEL MOOKHEY:** Can you give us a range? Is it \$100 million-plus?

**The Hon. SCOTT FARLOW:** I think he said he would take it on notice.

**MATTHEW PEARCE:** I will have to because I will just say this: I only started at Inner West Council back in November.

**The Hon. DANIEL MOOKHEY:** My point being if they can treat you like this, then what hope does a resident or a business have?

**MATTHEW PEARCE:** Obviously no chance.

**The Hon. DANIEL MOOKHEY:** What properties were they acquiring? Was it open space properties—

**MATTHEW PEARCE:** They were acquiring parks—large parks, small parks.

**MATTHEW PEARCE:** Which ones? Can you give us some examples?

**The Hon. JOHN GRAHAM:** I think they are listed in the submission.

**MATTHEW PEARCE:** Yes, it is in the submission. But one issue that is coming out of it is that—

**The Hon. JOHN GRAHAM:** Can I just confirm that? At point 12 you list a range of the parks, nine parks or reserves. Are those the parks which you are referring to?

**MATTHEW PEARCE:** Yes.

**The Hon. DANIEL MOOKHEY:** And Transport, how did they end up using them?

**MATTHEW PEARCE:** Most of the parks have been used for construction compounds through their compulsory lease acquisition process.

**The Hon. DANIEL MOOKHEY:** Is this for the WestConnex projects?

**MATTHEW PEARCE:** WestConnex, generally for WestConnex, but also for the Sydney Gateway.

**The Hon. DANIEL MOOKHEY:** So rail projects?

**MATTHEW PEARCE:** Yes.

**The Hon. DANIEL MOOKHEY:** So there were two specific rail projects we are talking about?

**MATTHEW PEARCE:** Yes, exactly. In terms of the Sydney Metro project, the Sydney Southwest Metro project, there were lots of roads acquired.

**The Hon. DANIEL MOOKHEY:** Did you see a difference between Transport and Sydney Metro?

**MATTHEW PEARCE:** I cannot answer that. I was not part of the process.

**The Hon. DANIEL MOOKHEY:** Can you take that on notice and see whether or not your council officers thought there that there was a distinction?

**MATTHEW PEARCE:** Yes, I will.

**The Hon. JOHN GRAHAM:** Partly because we have had evidence that it varies very much agency to agency.

**The Hon. DANIEL MOOKHEY:** And equally the time that people were having their properties acquired added another variation. In respect to these particular parks, you made the point that there were no like-for-like sales, for want of a term, to actually get the valuation to benchmark. Was that the point that council was making?

**MATTHEW PEARCE:** Yes.

**The Hon. DANIEL MOOKHEY:** And you are saying that Transport refused to acknowledge that reality?

**MATTHEW PEARCE:** That is correct. And in that instance we have had to take them to court and eventually the issue was forced where we did a commercial-in-confidence agreement in terms of the compensation payable.

**The Hon. DANIEL MOOKHEY:** Was it enough for you to be able to build nine replacement parks?

**MATTHEW PEARCE:** I will have to take that question on notice. I do not have an answer for that.

**The Hon. DANIEL MOOKHEY:** It is the case, right, that it is not easy to build a park in the inner west, is it?

**MATTHEW PEARCE:** No, and that is because—

**The Hon. DANIEL MOOKHEY:** Dense.

**MATTHEW PEARCE:** That is right, dense population. There has always been a limited number of parks in and around those three council areas, and the loss of parks and the ability for council to use that compensation money to find other open space land is an impossibility. We have to buy private land, and that is obviously a costly exercise.

**The Hon. DANIEL MOOKHEY:** And a timely one as well, is it not? It is not quick, is it?

**MATTHEW PEARCE:** Correct.

**The Hon. DANIEL MOOKHEY:** Otherwise you would have to issue self-start compulsorily acquiring properties, would you not?

**MATTHEW PEARCE:** That is right.

**The Hon. DANIEL MOOKHEY:** And have you had to compulsorily acquire properties?

**MATTHEW PEARCE:** Not at the moment, no.

**The Hon. JOHN GRAHAM:** Can I go to those parks? You list them in point 12, some of those nine parks or reserves. What is the total space that has been acquired between those? I am happy for you to take that question on notice.

**MATTHEW PEARCE:** I will have to take that question on notice.

**The Hon. JOHN GRAHAM:** Obviously, some of these will be part of the promise—and you refer to this later—that some of these will be returned to the community as part of these projects.

**MATTHEW PEARCE:** Yes, that is correct.

**The Hon. JOHN GRAHAM:** How does that amount of land that is being promised to be returned, or has been returned, because in some cases there is a gap, compare to what has been taken?

**MATTHEW PEARCE:** Obviously less, because what is returned to us are what are called pocket parks. They, obviously, in terms of size are less.

**The Hon. JOHN GRAHAM:** I am very comfortable for you to take this on notice but it actually would be helpful. I am not sure that it is obviously less in that there are some large spaces which will be returned, for example around Rozelle, to public parkland.

**MATTHEW PEARCE:** Correct.

**The Hon. JOHN GRAHAM:** So I think that head-to-head comparison, which I think it would be unreasonable for you to provide now, would be helpful. If you are able to tell us what of these nine parks—and I have not seen this all put together before—what is the space here, and when all of this is returned, acknowledging that is some significant way down the track, what is the space that will then be returned?

**MATTHEW PEARCE:** That is fine. The before and after.

**The Hon. JOHN GRAHAM:** Yes.

**The Hon. DANIEL MOOKHEY:** But, equally, whether it is like for like too, because there is other evidence as well about it is nice to have a park but if it is sitting under a motorway it might not be as airy as if there was not a motorway on top of it.

**MATTHEW PEARCE:** Correct.

**The Hon. SCOTT FARLOW:** I think in Rozelle it is the other way around, is it not, that the park is on top of the motorway?

**The Hon. DANIEL MOOKHEY:** True, but the St Peter's Interchange, for example.

**The Hon. SCOTT FARLOW:** Fair enough.

**The Hon. JOHN GRAHAM:** Can I just ask about two other elements of your submission? You make that point, that often these will be coming back as pocket parks. In all but one instance council is going to be expected to manage it, but the ownership is going to remain with the State.

**MATTHEW PEARCE:** That is correct.

**The Hon. JOHN GRAHAM:** And no money is being transferred—

**MATTHEW PEARCE:** That is correct.

**The Hon. JOHN GRAHAM:** —from the State to the council to manage it.

**MATTHEW PEARCE:** That is right. Transport insists upon care, control and management agreements, and they say to us, "Well, if you want to have use of these parks, here they are, but you must sign this agreement", which is care, control and management. But there is no maintenance costs that go with that.

**The Hon. JOHN GRAHAM:** So residents will pay for these parks to be maintained, but the council will not own them?

**MATTHEW PEARCE:** That is correct.

**The Hon. JOHN GRAHAM:** Decisions about how they are built, not up to the council.

**MATTHEW PEARCE:** That is right. And the issue is that some parcels of land that are suggested by Transport to be given back to us under these care, control and management agreements, some of those parks are contaminated.

**The Hon. JOHN GRAHAM:** Yes.

**MATTHEW PEARCE:** And council sees that it should not be bearing the cost of remediating it to make it available for public open space.

**The Hon. JOHN GRAHAM:** For these nine parks, for the land that will be returned, do you have an estimate of what those maintenance costs might be over time?

**MATTHEW PEARCE:** No, I do not. I will have to take that on notice.

**The Hon. JOHN GRAHAM:** If you could I think that would helpful, to give us some sense of even the scale of what we are talking about by way of maintenance.

**The Hon. DANIEL MOOKHEY:** And on notice can you give us details of the parks or the lands that you will be responsible for managing that may have been contaminated?

**MATTHEW PEARCE:** I can do that, yes.

**The Hon. JOHN GRAHAM:** I want to turn to one of those, which has been the subject of significant public discussion, that is, the one at St Peter's Interchange, as a result of WestConnex. That has been the subject of considerable dispute by the council for exactly that reason: the concern about the remediation costs of this land, the remediation responsibilities that go with this land. Can you give us just more of an update about where this sits today, given it has been the subject of a public arm wrestle?

**MATTHEW PEARCE:** I will just have a look at this table that I have, otherwise I might have to take that on notice as well, I am afraid. It would appear there have been negotiations and that the matter has been referred to the VG for a consideration. We have a particular claim. Transport obviously has got a lower claim and we were waiting for the Valuer General to determine it. It is going to take a bit of time because of the fact that the Valuer General is inundated with other matters.

**The Hon. JOHN GRAHAM:** Sure. When was it submitted to that Valuer General's process?

**MATTHEW PEARCE:** It was submitted early December 2021.

**The Hon. JOHN GRAHAM:** Do you have any expectation about when that process will conclude?

**MATTHEW PEARCE:** None.

**The Hon. DANIEL MOOKHEY:** Did you elect to go to the Valuer General because you had no confidence in reaching an agreement with Transport?

**MATTHEW PEARCE:** Correct.

**The Hon. JOHN GRAHAM:** Obviously there are significant issues here. This is a case where the site has been subject to significant slippage. There is a question over whether it is stable. There are also questions about contamination, and this would go to the heart of your concerns about care, control and maintenance arrangements.

**MATTHEW PEARCE:** Correct.

**The Hon. JOHN GRAHAM:** But no maintenance funding.

**MATTHEW PEARCE:** Correct.

**The Hon. JOHN GRAHAM:** Even worse, significant liabilities. Are all those matters in the scope of the Valuer General's assessment? There are some very significant issues. Will they all be dealt with in that process or do some of them sit really outside of the jurisdiction of what might be settled?

**MATTHEW PEARCE:** It sits outside. The Valuer General will only be concerned about the compensation, not the ongoing maintenance.

**The Hon. JOHN GRAHAM:** Yes, so all that may still be the subject of a separate arm wrestle?

**MATTHEW PEARCE:** Correct.

**The Hon. JOHN GRAHAM:** What is the process for settling that?

**MATTHEW PEARCE:** At the present moment, Transport is telling us to accept this care, control management agreement without compensation. We are saying to them, "Happy to take on board the care, control and management but we need to settle on the costs of maintenance, rehabilitation, putting in infrastructure as well, landscaping. We are not going to take it on at no cost.

**The Hon. JOHN GRAHAM:** Separately, secondly, the issue about who is paying for that contamination to be cleaned up, I imagine, is a separate secondary issue?

**MATTHEW PEARCE:** That is correct.

**The Hon. JOHN GRAHAM:** And a substantial issue?

**MATTHEW PEARCE:** Yes, and no doubt there will be a long-running dispute about that.

**The Hon. JOHN GRAHAM:** And that is not settled at the moment?

**MATTHEW PEARCE:** Not that I am aware of.

**The Hon. JOHN GRAHAM:** And it will not be settled by the Valuer General's process?

**MATTHEW PEARCE:** As far as I am aware it will not be settled by the Valuer General's process.

**The Hon. JOHN GRAHAM:** I invite you on notice to provide any additional details that the council feels are helpful to the Committee in dealing with that issue. It has been contentious publicly but in some ways it is the most symbolic of the other issues that you are referring to. Finally, I draw attention to the elements of your submission—this is really just to draw attention to item 36—where you say, incredibly, "There are generally no meetings between the acquiring authority, council and their respective valuers in the negotiation phase." You have given us evidence on that. I will simply repeat my view that it is astonishing that that is the case. Thank you for that evidence. Secondly, your observation that there is a power imbalance during every stage of the acquisition negotiation and post-project processes. Again, I acknowledge my colleague's view that if the council, one of the largest councils in the State, is telling us that, what hope does a resident have in the face of what is a complicated legal process? I will not necessarily ask you to comment. You are welcome to comment but I will not press you to comment.

**MATTHEW PEARCE:** I will just make an observation. One thing that has occurred to council is that with the loss of open space in the council's local government area, and problems of trying to, despite the fact that we might be given back some land—it might not be freehold but we might get back, care control and management—the issue is that we have the Sydney commission, having a district plan for central Sydney which includes the inner west.

**The Hon. DANIEL MOOKHEY:** I was about to ask you about this.

**MATTHEW PEARCE:** The concern is whether or not, at the end of the day when all these transport projects are completed, council is going to be compliant with the Sydney District Plan in terms of the available open space inside the government area, in terms of walkability, access and things like that. Then I suppose that may well cascade down into the soon to be gazetted design and place SEPP—the State environmental planning policy—which also may have an impact upon development in the inner west, in terms of developers having to provide open space and matters like that. It is just a thought in the back of some of the council planners that, you know, in another couple of years, how is it going to look?

**The Hon. DANIEL MOOKHEY:** What is Inner West Council's housing target currently?

**MATTHEW PEARCE:** I will have to take that on notice, I am afraid.

**The Hon. DANIEL MOOKHEY:** It is a couple of tens of thousands, is it not, or a 100,000?

**MATTHEW PEARCE:** Yes, it is high.

**The Hon. DANIEL MOOKHEY:** Presumably you are expecting quite a large increase in your population over the next decade?

**MATTHEW PEARCE:** Absolutely.

**The Hon. DANIEL MOOKHEY:** And presumably people like parks?

**MATTHEW PEARCE:** Of course.

**The Hon. DANIEL MOOKHEY:** Your existing park network is highly frequented, including by my children?

**MATTHEW PEARCE:** It is.

**The Hon. DANIEL MOOKHEY:** Are you aware that there is such a desire for more open space in the inner west?

**MATTHEW PEARCE:** Always.

**The Hon. DANIEL MOOKHEY:** Across all of Sydney—the outer west as well?

**MATTHEW PEARCE:** Yes, always.

**The Hon. DANIEL MOOKHEY:** Do you agree with that?

**MATTHEW PEARCE:** Yes.

**The Hon. DANIEL MOOKHEY:** And this has compromised your ability to meet the expectations of your residents?

**MATTHEW PEARCE:** Correct.

**The Hon. DANIEL MOOKHEY:** Equally, it has impacted on your funding and your financial base and your asset base?

**MATTHEW PEARCE:** Yes, I agree.

**The Hon. DANIEL MOOKHEY:** And that has then impacted on your ability to borrow and all the other matters that are associated with a higher asset base versus a lower asset base?

**MATTHEW PEARCE:** Yes, that is right. There will be ongoing financial implications that the chief financial officer has to deal with.

**The Hon. DANIEL MOOKHEY:** As it is you are still managing the financial consequences of forced amalgamation, are you not?

**MATTHEW PEARCE:** Yes, that is definitely true.

**The Hon. DANIEL MOOKHEY:** To the extent to which the State Government lowers what it pays you, your council's ability to absorb that financial loss is limited. Is that fair?

**MATTHEW PEARCE:** It is limited and depending on what happens over the next couple of years, it is going to be quite finite.

**The Hon. DANIEL MOOKHEY:** How many authorities are trying to acquire right now in the inner west?

**MATTHEW PEARCE:** Transport, Sydney Metro—

**The Hon. DANIEL MOOKHEY:** Western Harbour Tunnel, presumably?

**MATTHEW PEARCE:** Yes, the Western Harbour Tunnel. That has not necessarily kicked off but it probably will soon happen in the next couple of months.

**The Hon. DANIEL MOOKHEY:** You dealing with the Metro West project, the Western Harbour Tunnel project, the continuing impact of the WestConnex project particularly the M4 and M5 leading to the Rozelle interchange—

**MATTHEW PEARCE:** Correct.

**The Hon. DANIEL MOOKHEY:** The Sydney Gateway?

**MATTHEW PEARCE:** Yes.

**The Hon. DANIEL MOOKHEY:** These pretty major projects basically all have their geographical nexus in your council area?

**MATTHEW PEARCE:** Correct, and it has been going on for four to five years.

**The Hon. JOHN GRAHAM:** On that point, do you think it is a little bit unique that the inner west is impacted so heavily? Are you aware of other councils that you believe will be experiencing similar pressures or not?

**MATTHEW PEARCE:** I can say this. Prior to coming to Inner West I was at Penrith and there was the pressure about the airport line and City Metro. Prior to that I was General Counsel at North Sydney Council.

**The Hon. JOHN GRAHAM:** So similar pressures there?

**MATTHEW PEARCE:** The same pressures with Sydney Metro there although most of that was underground. But there was still lots of building work going on and acquisitions happening, substratums as well.

**The Hon. JOHN GRAHAM:** Yes, thank you.

**The Hon. DANIEL MOOKHEY:** Are you noticing any improvements in behaviour by Transport or Sydney Metro in the coming acquisitions versus the past acquisitions?

**MATTHEW PEARCE:** It is consistently poor.

**The Hon. DANIEL MOOKHEY:** Is it getting worse?

**MATTHEW PEARCE:** It is constantly poor. As I said, in my past experiences in other councils, whenever we have to go into negotiations with the acquiring authorities, you have to put your suit of armour on and get ready for it. It is a tough, long, drawn-out process—a war of attrition.

**The Hon. DANIEL MOOKHEY:** Are you winning the war?

**MATTHEW PEARCE:** Sometimes.

**The Hon. DANIEL MOOKHEY:** Again, if you are facing yourself at the risk of being—for want of a better term—conquered and/or plundered, what hope is there for your residents and businesses?

**MATTHEW PEARCE:** It makes it difficult for everyone, particularly for the community and their amenity impacts. In particular for inner west, always there is a shortage of open space. There are always demands for the community to have more open space, and what is happening now is we are losing open space at the moment. What we get back is open space which we will not own in most instances. Then Transport will say, "Enter into this care control management agreements."

**The CHAIR:** It is extraordinary, then, that we have a situation where there are so many acquisitions occurring between Transport for NSW and council, but from what you are saying it does not appear that you have a relationship with Transport for NSW. Is that correct? They are not the same team?

**MATTHEW PEARCE:** Correct. Each acquisition process we go through is with a completely different team. As I have said, they have different procedures and different ways they approach the negotiations over the six months, but constantly it has always been that general procedure I told you about: We get the letter, we give them a valuation, they give us a number but they will not give us their valuation and so forth. It is constantly—when we know there is an acquisition coming through, we simply wait to see what team we get.

**The CHAIR:** If it was the same team, presumably then there would be some learnings and some benefits of having an ongoing relationship in terms of perhaps making it a quicker process, do you think?

**MATTHEW PEARCE:** Yes, and it would make it more consistent.

**The CHAIR:** Yes.

**MATTHEW PEARCE:** We would know what to expect, how to deal with it.

**The CHAIR:** Thank you.

**The Hon. JOHN GRAHAM:** In relation to this issue about the parks and the care control and maintenance, which agencies are you specifically dealing with in relation to those?

**MATTHEW PEARCE:** Transport.

**The Hon. JOHN GRAHAM:** Thank you.

**The Hon. DANIEL MOOKHEY:** And Metro?

**MATTHEW PEARCE:** Sorry?

**The Hon. DANIEL MOOKHEY:** And Sydney Metro, I presume.

**MATTHEW PEARCE:** Not that I am aware of. At the moment now it is just Transport.

**The Hon. JOHN GRAHAM:** Thank you.

**The CHAIR:** Thank you so much for coming along and giving us the benefit of your evidence. I am still a little bit shocked that that is the experience of someone like yourself in council; as my colleagues have said, you just imagine what it is like for a home owner. That concludes the morning session. We are going to take a one-hour break and we will be back at 1.30.

**(The witness withdrew.)**

**(Luncheon adjournment)**



**Mr PETER REGAN**, Chief Executive, Sydney Metro, on former affirmation

**Ms REBECCA McPHEE**, Deputy Chief Executive, Sydney Metro, on former affirmation

**The CHAIR:** Welcome back to the afternoon session of today's hearing. I welcome our next two witnesses. Apparently they both have been previously sworn to this inquiry.

**PETER REGAN:** We are return offenders.

**The CHAIR:** Did you want to make an opening statement?

**PETER REGAN:** No, Chair, we are fine to proceed.

**The CHAIR:** Very good. Thank you very much. Go ahead, Mr Graham.

**The Hon. JOHN GRAHAM:** I am not going to disagree with your first observation, Mr Regan—an entertaining one. Thanks for reappearing in this forum. Firstly, the Committee has now received broad evidence about the operation of the Land Acquisition (Just Terms Compensation) Act and some real community concerns, so there is a set of policy issues there. There are also some specific concerns that have been raised about the culture in Sydney Metro when it comes to acquisition, and I want to put those to you directly. The first of those is that, of the agencies, we are seeing a worse culture in Sydney Metro and that might be due to the fact there are more contractors used. In putting that, I acknowledge these are important powers and they are necessary to do the work you are trying to do to drive this project along. Firstly, do you want to respond to that idea that, in the course of doing that important work, it is creating real stresses and pressures that are being faced by business owners or residents and they are saying to us, "This is worse with Sydney Metro"?

**PETER REGAN:** Let me see if I can attempt to address that. Certainly, as we have indicated previously to this inquiry, the approach that we take and the need to acquire property for our infrastructure projects is not something that we, in any way, take lightly. In fact, we do acknowledge that it can be a very stressful and difficult process and time for affected property owners. We certainly do our utmost to minimise, at the outset, the amount of property that does need to be acquired. But, as we have discussed previously, in order to build some of this infrastructure, we cannot entirely avoid the need to acquire property.

**The Hon. JOHN GRAHAM:** Sure. That is understood.

**PETER REGAN:** Once we are sort of through that hurdle of minimising the amount of property, within the constraints of the legislation and within the constraints of the powers that we have, we absolutely do our best to try to reach agreement and reach agreement in a positive and collaborative fashion with as many owners as we can. In that regard, I think the record does speak for itself that we have reached agreement. It is a difficult space because—we do get lots of feedback that is positive.

**The Hon. JOHN GRAHAM:** Mr Regan, can I perhaps put some specifics to you? I will just put some very concrete issues to you that have been raised with us, then I might hand to my colleague before I raise one other issue that I am keen to get to.

**PETER REGAN:** That is fine.

**The Hon. JOHN GRAHAM:** I might just put these specifics to you and then give you the opportunity to respond to them. One view that has been put to us in evidence is Sydney Metro was involved in valuations where the valuation never moved, the offer never moved; not a single dollar more was offered to landholders, despite the fact that the property market is going up so dramatically over this period. What is your view on that evidence?

**PETER REGAN:** Taking that as a very general question, I can only respond to that in saying that through the process, wherever we are able to get further information that our valuers take on board, we do adjust our offers. Obviously, there will be specifics around certain circumstances where that may not have happened and may not have happened for a good reason. It is difficult to answer, in the generality. Certainly, where there is evidence of market movement and where there is evidence of changed circumstances, it is our approach to, wherever we can, take that into account to do so.

**The Hon. JOHN GRAHAM:** The second is issue this—and I will let you respond to it—Sydney Metro valuers were often ignoring their own planning advice and relying on sales 10 to 15 kilometres away from the property. That might be understandable in the bush but in the city where you are acquiring property, it is less understandable. How do you respond to that suggestion?

**PETER REGAN:** Again, it is a general proposition that you are making. Our valuers, and the approach that we take, are intended and required to take into account all of the relevant factors. I do not think there is any

suggestion, and I have certainly heard nothing to suggest, in any circumstances, that we would deliberately ignore properties in the proximity and look further afield. I do not know the specifics, Mr Graham, of that one. That is certainly not the intent. Our intent is to try to find an evidence base and, where possible, if the market is moving, to try to find evidence to support that, that allows us to still meet our contrary obligation to also ensure that we are spending public money appropriately. The hard part of this process is that we have to find that balance.

**The Hon. JOHN GRAHAM:** I think that is a very strong point. There is a balance to be struck here. The question we are grappling with is: Is that balance right at the moment? I will put one final specific to you, and then I will pass to my colleague. This evidence has been given not just in relation to Metro but other acquiring authorities. One of the things compounding the way the Act works in the six-month process—the six-month process is probably long enough, is one view that has been put to us, if it is a genuine negotiation. What is putting pressure on that, in part, is the issuing of letters of offer two to three months into the process, which means there is not the full six months in practice.

**PETER REGAN:** That is one that I would say we understand the concerns in that area. A little bit of context—there is good reason why it can take time to get that initial offer out, and it is actually to try to assimilate as much market information, planning information and sales information as possible. When these processes start, we do not necessarily have all of the information that we would need to be able to make an offer. We do at times try to work through to take as much of that on board before making an offer. There are also circumstances where—

**The Hon. JOHN GRAHAM:** How quickly could you do it? One suggestion has been to do it within seven days. Is that realistic? Maybe not, given what you are suggesting.

**PETER REGAN:** I think it is case by case. To use an example, where there are a large number of properties in close proximity to each other, it is clearly easier to look at those macro factors more quickly and to do that once. Where the properties are more bespoke, where there are smaller numbers or they are of differing mixes of tenure or use, that is going to be more challenging. Although it is important, we do not then also necessarily adhere strictly to a six-month limit and say, "That is it." There are plenty of times where we will take a longer period, either to give parties more chance to negotiate—certainly, I do understand the concern around the time frames. We are working within the time frames and the constraints that we are given. Sometimes more time helps; sometimes I do not think it does.

**The Hon. DANIEL MOOKHEY:** Thank you, Mr Regan and Ms McPhee, for your appearances today. I should continue on with my colleague in putting to you specific scenarios that have been put to us and allow you to reply and provide some context. Did you hear this morning's evidence from Mr Newhouse by any chance?

**PETER REGAN:** No, I have not.

**The Hon. DANIEL MOOKHEY:** Mr Newhouse is a solicitor who represents multiple people who have been in dispute with your agency. He says that his clients have appealed matters to the Valuer General for determination. I probably should not use the term "appeal". His clients have elected to proceed to the Valuer General for determination. The Valuer General in instances has ordered Sydney Metro to pay double what it had originally offered, which is astounding. Do you wish to respond to that claim?

**PETER REGAN:** Again, you are asking—to be clear, that is a very general question. What I would say is we do our best to get, with the evidence available to us, to a value. As we have talked through before, any property owner does have the right, if we cannot reach an agreement, to go to the Valuer General. The Valuer General then makes that determination as to the value. Sometimes that determination is very similar to where Sydney Metro was, sometimes it is very similar to where a property owner was, and sometimes it is completely different. That is something that the Valuer General determines. That is what the process is there for, so that the Valuer General, independent of both parties, can form a view. There may be specifics where that has happened, but I think there would also be specifics where the opposite has happened, where the Valuer General has not reached the same view that Sydney Metro has.

**The Hon. DANIEL MOOKHEY:** Can I invite you to take on notice if you can provide any further specifics to substantiate either of those two scenarios that you have just described, that would be helpful.

**PETER REGAN:** I will have to see what I can provide. We do not go into the specifics of individual transactions. I do not think that it is appropriate, without the agreement of an individual property owner, for us to be disclosing that information.

**The Hon. DANIEL MOOKHEY:** Mr Regan, at this point in time I appreciate that. We have a claim from a solicitor who is deeply experienced in the area who is saying that his clients are proceeding to the Valuer General and the Valuer General is ordering you to pay double what you otherwise offered. I am inviting you to respond in whichever way you see fit.

**PETER REGAN:** We will be very clear that once the Valuer General has made a determination, we will honour that determination, as we are required to do, unless the owner does not wish to accept it. It is a process element. The Valuer General will sometimes reach a different view to what the parties who are negotiating did. You may have received specifics, but I am not aware of exactly which properties you are talking about.

**The Hon. JOHN GRAHAM:** Do you accept if the value doubles by the time the Valuer General has looked at it, that it was a low-ball offer to start with?

**PETER REGAN:** No, not necessarily. There are a number of factors that could result in the Valuer General coming up with a different view. For example, there can be particular elements of approach to the valuation, as to what is taken into account and what is not, that the Valuer General may form a different view on to what our valuers have formed. It is not an effort to low ball. We have nothing to gain by low balling and the process taking longer. Our preference is to reach a commercial agreement on a basis that is value for money for the Government.

**The Hon. DANIEL MOOKHEY:** In terms of going on with some of the specific matters that he has brought to our attention, in his submission he says—this was as of May last year:

More recently, Transport for NSW ("Sydney Metro") has had more than 70 property and business claims referred to the Valuer-General as agreement could not be reached. This should be a cause for alarm as it would be the largest number of properties/businesses referred to the Valuer-General for a single project. Furthermore, many of the matters which did reach agreement were resolved only in the last month (or even last days) before Sydney Metro prepared its Gazette Notices.

That is Mr Newhouse's claim. Did you have 70 properties and business claims referred to the Valuer General last year in respect to any part of the Sydney Metro projects?

**PETER REGAN:** I will have to check the exact number. I am happy to take the exact number on notice. What I would say is the last year has been quite different to the previous years, in that Sydney Metro has been acquiring property for two Metro lines simultaneously. The number of properties we have been acquiring has also been significantly higher, and you are referring to the evidence you received from a solicitor who represents some of those clients. I can get you the exact number, but I do not think that number going to the Valuer General suggests, one way or the other, whether or not our processes being properly followed is also reflective of what owners are seeking.

**The Hon. DANIEL MOOKHEY:** Mr Regan, again, I invite you to reply however you see fit, but it is a claim that has been made to us. I am giving you a right of reply here.

**PETER REGAN:** As I said, I will take it on notice, unless Ms McPhee may have the number in front of her.

**REBECCA MCPHEE:** I think it is probably worth noting that in terms of percentages across those two projects, with more than 70 per cent, in both cases, we reached commercial negotiations. The number being referred to the Valuer General does relate to a small proportion of the very large number of acquisitions that we have been making.

**The Hon. DANIEL MOOKHEY:** Sure, and I do wish to unpack the numbers shortly. I am just going to provide you the specific instances we have been told.

**PETER REGAN:** On the question of how many were referred to the Valuer General, we are happy to take that on notice and we can get that exact number for you.

**The Hon. DANIEL MOOKHEY:** Can I say just say, going on further to specific details that have been provided, Mr Newhouse says that he represented, I think 12 was his claim, particularly in Five Dock, and he says, "It is not only the sheer number of matters recently referred to the Valuer General that should be of concern to the Committee, but the proportion of those referrals which are related to claims by land and business owners in 2-3 key locations in Sydney, being Burwood/Concord, Clyde and Five Dock." We have heard about the Clyde disputes, but the Five Dock disputes are emerging, it seems. Can you give us an update? What is going on in Five Dock, because the way it has been described is Metro's conduct there has been especially egregious?

**PETER REGAN:** No, I do not agree with that assertion. Seventy-two per cent of the properties in Five Dock that we have sought to acquire have been acquired by commercial agreement, and that is consistent with the rates that Ms McPhee just referred to generally. There are a number of properties in Five Dock, around 10 I believe, that we have not been able to reach commercial agreement on, which have gone through the compulsory acquisition process. I think in terms of proportion, I am not seeing that there is any significant difference there. There may be differences in view as to some of the factors around valuation. One of those factors, which is often a very material difference in view, is the value that is placed on the uplift in land value that the investment in the Metro itself is creating.

The public purpose, as that is described in the Act, is not something that we can compensate owners for. In acquiring the land in order to build the infrastructure, we cannot compensate them for the value of increase in land caused by that infrastructure investment itself. That can be a very material difference in expectation and what we are required or able to pay and often there is a very significant misunderstanding that that is not something that we are able to pay.

**The Hon. DANIEL MOOKHEY:** I appreciate that, Mr Regan. Just to put another claim to you, which I thought was startling, they make the point that Sydney Metro has engaged lawyers and town planners to identify technicalities under the Land Acquisition (Just Terms Compensation) Act. They make the point that one specific result of this was that Sydney Metro has been particularly technical when it comes to compensating people who are leaseholders who are affected by acquisitions. They say, "For example, in recent matters, tenants who had been in properties for 5, 10, 20 years were treated differently if they had a month-to-month lease, versus those who had long-term leases. There was no acknowledgement by Sydney Metro of the history of occupation, but rather a reliance on technicalities to try to reduce compensation payable." Do you want to respond to that claim?

**PETER REGAN:** Yes, I would actually. Sydney Metro does not engage lawyers or consultants with a view to find technicalities in order to reduce the offers it makes to buy property. We engage consultants and lawyers and valuers as required to ensure we meet our obligations under both the just terms compensation Act but also our obligations more generally as a public organisation to ensure that we appropriately spend government money. So we do not look for technicalities. There are often technicalities, if you want to use that word, around what different valuers or different lawyers may see as being the interpretation of clauses in those Acts and that is why there is a process where, if we are unable to reach agreement, that a third party, an independent party, or the Valuer General makes that determination.

Sometimes the example I used previously around the public purpose is a very big cause of the difference. So we are not seeking a technicality; we are ensuring that the offers we make are based on an appropriate basis so that we are fulfilling our obligations. If we do not fulfil our obligations when it comes to value for money, we are answerable in a different regard then to the Auditor-General and the like. So it is this balance point. We are absolutely trying to find the right path between the expectations of owners and our own obligations and we do that within the law.

**The CHAIR:** Can I just clarify on that point? When we are talking about the public purpose—and, as you say, you can imagine a situation where the value to sort of be discounted, I guess, would be very, very different depending on what the public purpose happened to be and that the public purpose, there could be multiple sort of contenders for that—when, as the acquiring authority, you are trying to establish what that public purpose is, is there a consistent sort of guideline or policy document that governs that or do you go for what you think is going to be the lowest cost to begin with? How does that work through?

**PETER REGAN:** I will make a comment and then I will ask Ms McPhee to answer that as well. The public purpose generally that we are referring to that is excluded is the value of land uplift created by the investment of the Metro infrastructure itself. That is the specific. When we do analyse the value of a property, and our valuers do so, it is often done on a number of bases to look at, for example, the value of the property as is, the value of the property if it was redeveloped, the value of the property in different circumstances or different valuation methods, and it certainly is not the case that we do that and then choose the lowest. In many cases, actually, the recommendation from the valuer is, "You could look at this a number of ways, but the highest and best use or the highest offer would be achieved this way", and that is often where the offer is.

So I think there seems to be a sense here from some of these questions, or the evidence that you have been given, that we are out to low ball. That is not the case. But there is going to be a disconnect at times between what the owner of a property thinks it is worth, or wishes it was worth, and what our valuers say it is worth. That is the challenge. Ms McPhee may be able to provide a little more colour on that.

**REBECCA MCPHEE:** In terms of public purpose, as Mr Regan says, we do limit the public purpose to the Metro infrastructure itself and not broader government investment in an area. So it is very limited to uplift as a result of investment in Metro.

**The CHAIR:** I guess if we were to try and get an idea of how many of the acquisitions that do not reach negotiation have to go to the Valuer General, how many of them are focused around that public purpose point, really?

**PETER REGAN:** It is hard to say. I think in some areas that has been the primary difference in valuation opinion more than others. I think you probably have heard plenty of evidence that certainly in a fast-moving, fast upward-rising market, that becomes even more challenging because it is harder to delineate what the increasing value is for where there is a broad-based infrastructure investment or uplift taking place. Is it the Metro or is it

something else that is driving it? That is, I think, something that we have seen on the Western Sydney Airport metro line. That has been a particularly challenging area because there is a lot of government investment going in and what we are trying to do is isolate which bits relate directly to our infrastructure, not the fact that the market is moving very quickly, which is due to a number of other purposes. So difficult, and I do not think we know the exact—because we do not know why someone does not accept.

**The CHAIR:** No.

**PETER REGAN:** But certainly we do see that sometimes in the valuation exchanges, in the valuation conferences that happen between the advisers representing different parties, that that is sometimes a key area of difference of view.

**The CHAIR:** How many—and obviously take this on notice because I do not imagine you have it in your head—I guess looking over the last five years, say, how many of the acquisitions that did not go ahead through negotiation, but were then given to the Valuer General, resulted in a higher price or a higher value through the Valuer General than had been offered on the basis that the public purpose was viewed differently?

**PETER REGAN:** Chair, we could definitely take that on notice to see whether we can answer that. If we cannot answer that specific question as to the public purpose, I think what we definitely can do is give you some further information on just that broad-based percentage itself—how many have come in at a higher or lower level, if that would be helpful.

**The CHAIR:** As well. That would be useful, actually. A final one and then I will pass back. No, I forgot what it was now. You go ahead, Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** Mr Regan, elsewhere we had other representatives and other people who were representing those in the Hunter Connection describe your conduct as being "brutal". That was the evidence that they gave us. They did not think that Sydney Metro was genuinely negotiating or trying to reach an agreement in good faith. There is another incidence where effectively the same claim is being made against your agency. Do you want to respond to the claims we have heard this morning about the way the Sydney Metro is engaging with the Hunter Connection businesses?

**PETER REGAN:** That is certainly disappointing if people are suggesting that we are not behaving in a professional or appropriate manner, because for everyone who works for Sydney Metro and contracts with Sydney Metro we expect the highest standards of behaviour. I do not know whether that is the suggestion.

**The Hon. DANIEL MOOKHEY:** The suggestion is that you are being hard line actors who are not there to negotiate and who are turning up to meetings explicitly saying, "This is not a negotiation." And the way in which that conduct or some of that conduct has been described was "brutal".

**PETER REGAN:** I think we also need to take into account where we are in that process. The Hunter Connection and the other property acquisition processes in the northern Sydney CBD are progressing, and we are at a stage where we are having discussions with parties but also providing valuations where we can. I think we need to be careful because some meetings that are set up to explain how we have got to a valuation or to where we are in the process are not negotiations. It does not mean that we are not willing to negotiate. But actually where there are meetings between, for example, the valuers for each side of a negotiation, some of them are specifically set up to exchange information between valuers to allow further information to be taken into account. That, of itself, is not a negotiating meeting. So I do make the observation that it is possible that things have been taken slightly out of context. We are going through the process, as we are required to do and as we seek to do, to try to work through those steps to get to the point where we can reach commercial agreement with as many parties as possible, and that applies in the Hunter Connection as well.

**The Hon. DANIEL MOOKHEY:** Mr Regan, I accept that that is the view you are putting, but the problem that we have is that incident after incident amongst people who are not coordinating with each other, who are all disparate and who are all engaging with your agency are all pointing to the same problems. We have had the families from Orchard Hills, we have had the businesses of Clyde, we are now hearing about the businesses of Five Dock, we are hearing about the businesses of the Hunter Connection and they are all making the same claim, which is basically your agency acts like a Goliath and that they cannot deal with you.

**PETER REGAN:** If that actually is the claim that they are all making, if we could be given more information on that, that would be great. Because, as I said before, we are acquiring a very significant number of property interests in the Hunter Street area alone. There are 11 buildings where there are 500 property interests. It is a very difficult process and a very difficult situation where we are acquiring the residence or the commercial premises, particularly of individual owners or small business owners. We recognise that is difficult. We do get into situations where people are very unhappy because they are unhappy we are buying their property. That is a

hard place to start from. We also get commentary which probably may not have been given in evidence to this inquiry. We get a lot of positive feedback as well. So the suggestion that all of those owners are making those allegations about Sydney Metro—I would like to know whether that is actually the case, because that is not the information that we have.

**The Hon. DANIEL MOOKHEY:** Mr Regan, I invite you to read the evidence that they have given to us—the testimony that they provided throughout this inquiry as well as their submissions.

**PETER REGAN:** But that is only a fraction of the parties that we have engaged with. That is the point that I am making. A lot of those properties that we have acquired, we have acquired by agreement and some of those property owners have told us they have been very pleased with the process. So it is clearly more difficult when someone is not happy with where it has landed and they are, in that case, open to seek alternatives, including the way the process is set up where they can go to the Valuer General.

**The Hon. JOHN GRAHAM:** Mr Regan, I would be more open to accepting that view if the weight of evidence was not that there are more issues with Metro and with the culture that exists. There are significant acquisitions going on, including many road acquisitions. We have had less evidence raised with us about those. I accept the work you are doing is of very large scale but it is causing more community concern.

**PETER REGAN:** As I said, the percentage of properties that we have acquired by agreement still remains quite high and the number of properties we are acquiring has been at a peak because of the two projects that we are acquiring for at the same time. I hear what you say but certainly we are genuinely focused on trying to reach agreement with as many as possible, and the fact that we do not reach agreement does not necessarily mean that we have not behaved well.

**The Hon. DANIEL MOOKHEY:** Mr Regan, you were giving us some statistics before about the numbers that you have reached by agreement. I think you said 70 per cent, was it?

**REBECCA McPHEE:** That is correct—70 per cent on the Sydney Metro—Western Sydney Airport project and 73 per cent on the first stage of Sydney Metro West.

**The Hon. DANIEL MOOKHEY:** Mr Regan, let me put this to you. One of the analyses that has been provided to us is from BT Legal, who have looked at the figures. They say in the eight-year period prior to the commencement of section 10A, there were 2,970 reported acquisitions in New South Wales, of which they say 85 per cent were by agreement. In the analysis that they have done on the acquisitions since the commencement of section 10A, they have said 84.7 per cent are reached by agreement. To be fair to them, they are the first people to provide us with this analysis. As far as I am aware, it is the first type of analysis that I have seen on the issue. If we were to accept their view, that 85 per cent is the benchmark for reaching by agreement, it does seem, even with your figures, you are well below it.

**PETER REGAN:** I would disagree with that. Ninety-five per cent of the properties on the Northwest Metro were done by agreement.<sup>3</sup>

**The Hon. DANIEL MOOKHEY:** That is 95 per cent on the Northwest Metro but you are on between 70 and 73 on these ones.

**PETER REGAN:** Yes. There are different circumstances on these projects. I would be very happy, if it would help the inquiry, to provide details of the percentages by project that we have acquired by agreement or that have gone to the Valuer General.

**The Hon. DANIEL MOOKHEY:** Please, if you could.

**The Hon. SCOTT FARLOW:** Can I just pick up on this point. In the Northwest Metro you have a record 95 per cent. What is so different with these two projects that has them sitting at 70 and 73 per cent?

**PETER REGAN:** There are some significant differences. Certainly the acquisitions at scale in areas where you have a high proportion of strata occupation, particularly in the retail or commercial space, are very different—so in the city, around the Hunter Connection and the buildings around the Hunter Connection, that is a very different environment to when you are acquiring a greenfield site, for example. In the city, in that circumstance, there are 11 buildings that we are acquiring for the Hunter Street Metro station. There are over 500 individual property interests in those 11 buildings, so it is a very different challenge and circumstance, both

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<sup>3</sup> In [correspondence](#) to the committee dated 3 May 2022, Mr Peter Regan, Chief Executive, Sydney Metro, provided a clarification to his evidence.

in terms of volume and in terms of the types of owners and the ability for those owners to relocate, as a greenfield site.

There have been other areas where we have achieved a lower rate of agreement, such as the Orchard Hills area, where around 50 per cent of the properties that we acquired were done by agreement and 50 per cent have gone through to the Valuer General. That was particularly difficult as an area. We are not talking about a large number of properties but for the individuals affected, it is still a very, very significant and difficult process that we understand and acknowledge. The challenge there has been the very significant growth that is going on more broadly in the area and a lack of perhaps agreement or understanding as to, in some cases, why those properties were being acquired, which has created a different circumstance. They are quite unique properties, where it must be harder for people to see what alternative they might have to them.

I think it is a bit case by case. In some areas, there has been a much higher success rate. Perhaps where there is more fungibility of property, for example, that people can move to. I cannot really speculate why it is different in different areas, but there have been individual factors that have impacted it. We have not finished, to be clear, the acquisitions for Metro West. We may well still end up at a higher percentage than we were talking about before.

**The CHAIR:** Just on that, then, we are using the idea of percentages of properties acquired during negotiation as a measure of perhaps some sort of success or whatever, which clearly it is not. There are many, many reasons why people might accept or not accept the offer. Do you do anything such as a satisfaction survey or some sort of data collection to see what people are thinking after the process? Is there any kind of surveying done?

**PETER REGAN:** I might ask Ms McPhee.

**REBECCA McPHEE:** We do a lot of broader community engagement surveying, but I am not aware that we do specifically with the acquisition process but I will take that on notice.

**PETER REGAN:** I think we could look into it because the Centre for Property Acquisition does have those personal property managers. I do not know whether they do specifically what you are asking but certainly we could look at that.

**The CHAIR:** That would be useful data to guide and to work out if there are approaches from particular agencies that are problematic. Could I ask, though, how many of your acquisitions are done by external parties rather than a permanent team within the agency?

**PETER REGAN:** We do use a combination of permanent staff and external parties. The challenge with Sydney Metro's acquisitions is that when we do acquisitions for a line, there are, as we have discussed, a very significant number, but certainly we would not have that volume other than when we are at the front end of a new project. At the moment we happen to be at the front end of two. But by the end of this year, for example, most of our property acquisition processes will be done for some time potentially, unless there is a further new Metro line announced. We do not maintain a team of permanent staff to match that surge capacity. We probably, relative perhaps to Transport for NSW, need to supplement that further. That said, the decisions around the offers and the approach taken are still decisions taken by Sydney Metro employees. We do use third-party advisers and valuers and contractors to supplement our capability to manage the processes, but the key decisions are still made by staff.

**The CHAIR:** Are third parties involved in the actual contact with individuals who are having their properties acquired?

**PETER REGAN:** In some cases. That is right, yes.

**The CHAIR:** What assurance do you have then that those parties acting on your behalf are carrying out those acquisitions in the way that you would hope that they are?

**PETER REGAN:** As I said before, we absolutely expect the highest standards of behaviour. If we get feedback that that is not the case, then that is something we look into and address.

**The CHAIR:** Perhaps another thing that a survey would identify for you.

**PETER REGAN:** Potentially. That is right.

**REBECCA McPHEE:** We do also undertake assurance reviews and audits of our processes as we go through. The last one of those was completed in February last year. But that is obviously more focused on how our staff are applying our standards, policies and procedures in accordance with the Act. We do do a retrospective check on how well we have applied the legislation that we are operating under.

**The CHAIR:** Yes, but not what it feels like to be a person on the receiving end.

**PETER REGAN:** No.

**The Hon. DANIEL MOOKHEY:** Can I take you to another matter, Mr Regan, which is similar and connected. Sydney Metro is active in the community of Narellan, are you not?

**PETER REGAN:** Narellan?

**The Hon. DANIEL MOOKHEY:** Yes.

**PETER REGAN:** I do not believe we are undertaking acquisitions in Narellan. When you say "active", do you mean undertaking acquisitions?

**The Hon. DANIEL MOOKHEY:** Is Sydney Metro responsible for land near Narellan being rezoned as special purpose infrastructure allowing for the development of a train station?

**PETER REGAN:** Narellan is, I believe, on a future corridor; it is not part of the current corridor. Sydney Metro is not a party that is responsible for rezoning, so I am not sure I understand your question.

**The Hon. DANIEL MOOKHEY:** Are you the beneficiary of that or is that corridor being reserved for Sydney Metro or not?

**PETER REGAN:** I believe that may form part of potential future extension to the Metro – Western Sydney Airport line, but that is not something that we are actively proceeding with at the moment.

**The Hon. DANIEL MOOKHEY:** Sure, but the problem is that as a result of the special purpose infrastructure rezoning, 19 landowners have been told that there is a possible compulsory acquisition of their properties coming but they have not heard anything since and this took place two years ago. Do you have any response to that or any knowledge of that?

**PETER REGAN:** I would have to take that on notice. We have no investment decision; there has been no decision from Government to build that section of rail line. I am not aware of that.

**The Hon. DANIEL MOOKHEY:** Can you take it on notice?

**PETER REGAN:** I am happy to take it on notice.

**The Hon. DANIEL MOOKHEY:** The problem is that it has effectively rendered their land untransactable because now its zoning has changed for a corridor development ahead of a, clearly as you say—

**PETER REGAN:** As I said, I do not believe that that is a Sydney Metro activity but I will take it on notice.

**The Hon. DANIEL MOOKHEY:** I will confirm that it has already been rezoned, so as a result of its rezoning to preserve the corridor, I presume, it has rendered the land, again, unsellable.

**PETER REGAN:** I cannot comment; I am not aware of it.

**The Hon. DANIEL MOOKHEY:** Fair enough. I was hoping to get a very short update on the number of acquisitions which are still pending for the two lines.

**PETER REGAN:** Yes, if you give us a moment. When you say "acquisitions still pending", do you mean acquisitions still to be determined?

**The Hon. DANIEL MOOKHEY:** Acquisitions you would like to make that are yet to be resolved in either way you described through whichever method of resolution.

**PETER REGAN:** Sorry, I was just checking what you meant.

**REBECCA McPHEE:** I think it is probably best if we take that question on notice because we have a mix. We have a mix of acquisitions which are for the Pyrmont and Hunter Street stations, which are—

**The Hon. DANIEL MOOKHEY:** Any information you have to hand right now will be acceptable with the opportunity to supplement by notice. That might be a better way to proceed if possible.

**REBECCA McPHEE:** I am happy to do that. For Metro West, we are in the offer and negotiation process for Hunter Street and Pyrmont, which I believe—yes, I do have those stats. That is a total of 513 interests, as Mr Regan has mentioned previously, across 13 buildings. That is across the two stations. Then for the other two, Metro – Western Sydney Airport and the first stage for Metro West, there are a number of issues which are with the Valuer General or at the Land and Environment Court, and I am afraid I am going to have to get back to you with those specifics.



**The Hon. DANIEL MOOKHEY:** Are you saying all of the remaining acquisitions are now with the Valuer General and/or the Land and Environment Court?

**REBECCA McPHEE:** Correct, or have been—

**PETER REGAN:** Other than the ones at Pymont and the city, the majority—

**The Hon. DANIEL MOOKHEY:** Yes, I have got it. For Metro West's initial section, how many have you achieved by agreement? By number, not percentage.

**PETER REGAN:** Bear with us; we have that number.

**REBECCA McPHEE:** Sorry, I am doing some maths—298.

**The Hon. DANIEL MOOKHEY:** Do you know how much was the target for that section in total?

**REBECCA McPHEE:** The total number of acquisitions?

**The Hon. DANIEL MOOKHEY:** Yes.

**REBECCA McPHEE:** Four hundred and seventeen, and that is interests.

**The Hon. DANIEL MOOKHEY:** Interests, okay. We can conclude that the difference between 417 and 298 is the number that are either before the Valuer General and the—

**REBECCA McPHEE:** Some have since been agreed, either acceptance of the Valuer General determination—

**The Hon. DANIEL MOOKHEY:** But that is a good enough range for us to understand how many are still outstanding.

**PETER REGAN:** At this stage, 72 per cent have been concluded by commercial agreement and so the outstandings are around—

**REBECCA McPHEE:** Of the remaining 119 for Metro West, 60 of the Valuer General determinations have been accepted.

**The Hon. JOHN GRAHAM:** I want to turn to the Orchard Hills question and one aspect of that. The Committee went out there and talked to the residents. I understand there is a whole set of issues, but one thing that was quite persuasive when you looked at the site was there is a small space required for the station, perhaps a slightly larger space required for construction but a much larger space again which is being acquired for the site.

**PETER REGAN:** That is not correct, the third bit.

**The Hon. JOHN GRAHAM:** I have to say, standing on the site, it really did look like that.

**PETER REGAN:** No. I think I described to the inquiry before that the land that is being acquired at Orchard Hills is entirely for the station and the construction of the line. It does include a very intensive construction facility and site over about 27 or 28 hectares, similar in size to the parallel site at Bella Vista where the same works were undertaken for the Northwest Metro. All of that site will be used for the construction.

**The Hon. JOHN GRAHAM:** So, you stand by those comments.

**PETER REGAN:** I do, yes.

**The Hon. DANIEL MOOKHEY:** Mr Regan, the issue that the Orchard Hills families all raised was, accepting, as you say, that you needed it for intensive construction, why did Sydney Metro not just pursue a lease as opposed to a permanent acquisition? Their point was, "We'll give you the lease; we'd just like to come back to the land when it is done."

**PETER REGAN:** I believe we went through this in detail in the previous hearing.

**The Hon. JOHN GRAHAM:** And we are still struggling with the answer.

**PETER REGAN:** That is fine. I am happy to go through it again but we did go through this in detail. The land will be materially and significantly changed and the individual holdings that are there, once this is a full construction site, will be significantly and permanently altered from its current configuration. Therefore, it is not a matter of just handing back a piece of land that would have any similarity to what was there in the first place.

**The Hon. JOHN GRAHAM:** You are comfortable with the position you previously put, is really what I am hearing.

**PETER REGAN:** Yes. The land that we are acquiring is for the purposes of the railway and the construction of the railway and it will be intensively used and the nature of that land will be changed.

**The Hon. JOHN GRAHAM:** I might move to this issue, back to the Hunter Street acquisitions. The Government and Sydney Metro have made it clear that Hunter Street, when it is redeveloped, will be part of the revitalisation of the CBD. There are big plans for what might be there. Just give us a brief description of what you might see there for the public. Aside from the transport infrastructure, food and beverage, and entertainment, what is envisaged for that station as it is rebuilt?

**PETER REGAN:** The Hunter Street station has two key areas of impact at the surface level and with entrances around the corner of George and Hunter Street and then further along to the east of Hunter Street, between Bligh and O'Connell streets.

**The Hon. JOHN GRAHAM:** Understood.

**PETER REGAN:** So there are two areas where we are acquiring property for that station. That particular part of the city, as you know, is a very busy part of the city and essentially commercial activities predominate in terms of the buildings at the higher levels and there is a lot of retail, food and beverage retail, and other retail around the ground level. What we are doing at Hunter Street is that the station will connect those two sites underground and then it will also connect into Martin Place and Wynyard. We expect that there would be a mix of retail, station-orientated retail around the station itself, and then there is a very significant opportunity for integrated or over-station development, which we expect would be a mix of commercial buildings on top and around but with a very significant focus on the ground-level place-making opportunity that it brings. And some of the buildings that are there at the moment are buildings that have been there for some time. The opportunity to reshape and redevelop that area with a more open public-facing, public-orientated ground plan and above is pretty challenging to deliver, but a very exciting opportunity.

**The Hon. JOHN GRAHAM:** One of the businesses that is operating there at the moment, one of the key music venues in the city, is Frankie's Pizza By The Slice. There has been some public concern about what happens to that. Where are you up to in the process with that specific business?

**PETER REGAN:** I am not sure where we are up to with the specific discussions with the owner of that business. But I could look into that, although I will not be able to come back with the specifics because we are in that early negotiation phase.

**The Hon. JOHN GRAHAM:** My previous questions were too general. I am now being quite specific. I was hoping you could tell me something about this, in part because the former transport Minister promised publicly the venue would be looked after and relocated.

**PETER REGAN:** I will take it on notice to see whether I can give you a specific update. I do not know where we are up to on that actual site.

**The Hon. JOHN GRAHAM:** Can I put my concern to you though, Mr Regan, which is this: This is what the Minister said:

Frankie's is an important part of the Sydney live music scene and we will make sure it is properly supported during this challenging time. Sydney Metro is assigning Frankie's a dedicated acquisition manager to guide them through this process ...

The Minister has promised it will be looked after and relocated, which will not be easy.

**The Hon. SCOTT FARLOW:** This is the former Minister, I take it.

**The Hon. JOHN GRAHAM:** The former Minister. Have they been allocated a dedicated acquisition manager?

**PETER REGAN:** I will check that.

**The Hon. JOHN GRAHAM:** Do you want to check that with Ms McPhee, who is nodding?

**REBECCA MCPHEE:** All of our properties we acquire are—

**The Hon. JOHN GRAHAM:** Alright, so it is a routine part of the process.

**PETER REGAN:** Yes. We can come back and confirm that. I do not believe that any transaction has been agreed on that site. I will see what I can come back with in terms of detail. And I understand your comment.

**The Hon. JOHN GRAHAM:** A less routine part of the process is that they will be looked after and relocated. That will not be easy. We have already lost 176 venues in the CBD after the lockouts and because of the conflict in use in the area, it is difficult to find places for these businesses to operate, sometimes because of

the sound issues that arise. Can you give us any guarantee that the former Minister's promise, now the former Minister has departed the stage, will be adhered to?

**PETER REGAN:** I will have to look into where that specific one is up to. I understand your question. There have certainly been no decisions made around the individual use of the sites in terms of the mix or the individual tenants in the future; we are a long way from that. But I am happy to come back with any further information I can give you.

**The Hon. JOHN GRAHAM:** But is it a possibility that in a rebuilt Hunter Street station, in the ground-level place-making that you have described, there might be a place for this venue?

**PETER REGAN:** I think it is quite likely that in the scale of the opportunity that exists there and the type of activated place-making opportunity that exists, there would be a mix that would be targeting not just people quickly getting a coffee when they get off the train, but people who want to be there in the evening, be it for a music venue, be it food and beverage. I think there is probably going to be a demand for all of that. We have not made any decisions. I am not being defensive about it; no decision has been made.

**The Hon. JOHN GRAHAM:** But that is not off the table?

**PETER REGAN:** No, absolutely not. What we are seeking at the moment from industry is ideas on what they would like to do in that area in the context of that place-making. We have put that out for a response from industry. I think there is an incredible opportunity. So, absolutely it is possible.

**The Hon. JOHN GRAHAM:** You have taken on notice the specifics, and that is acceptable, but there is no guarantee at the moment that the former Minister's promise that it will be looked after and relocated—acknowledging how difficult that might be, that "looked after and relocated" for a venue like this, a very specific use in the city when we have lost so many music venues will not be easy.

**PETER REGAN:** I will have to see where it is up to. But I understand the question.

**The Hon. JOHN GRAHAM:** Acknowledging that, that sounds more expensive than your usual process, I have to say, Mr Regan.

**PETER REGAN:** Well, I understand there are different landowners around that area and the different parts of place-making thinking that is going on would be looking to create a very lively, thriving precinct that would have a mix of use, including exactly the kind of venue that Frankie's was. I am not able to give a specific answer on where we are up to, but I absolutely understand the question and we will come back and see what we can give you on that.

**The Hon. DANIEL MOOKHEY:** Mr Regan, can we turn to the size and scale of the acquisition of land around Orchard Hills? Once you complete construction and the station is built, is there going to be surplus land to the station?

**PETER REGAN:** What do you mean?

**The Hon. DANIEL MOOKHEY:** Once you finish constructing the station at Orchard Hills, is there going to be surplus land in the surrounding area of the station?

**PETER REGAN:** As I said, there is a station and an alignment for the railway that is being built and that will obviously be the railway land in the future. Some of the other construction land that is being used to construct the railway will then form part of the precinct around the station.

**The Hon. DANIEL MOOKHEY:** Who will own that?

**PETER REGAN:** That land is owned by Sydney Metro.

**The Hon. DANIEL MOOKHEY:** You are also a developer, are you not? You have got the ability to develop land?

**PETER REGAN:** The land I was just describing around the station—access for cars, for buses, for active transport, the general precinct around the station, which is not part of the station itself—that transport precinct then forms part of the transport interchange. Then the broader land beyond that, the Government has announced the intent that that area of Orchard Hills will have a town centre and be a mixed use precinct of activities, which I expect would include community, public use, residential, commercial.

**The Hon. DANIEL MOOKHEY:** But Sydney Metro would be the owner of it.

**PETER REGAN:** At the moment, Sydney Metro, as the acquiring authority, owns that land. But no decisions have been made around the development of that land and which entity or which part of government—noting that the land will also need to be rezoned—will be doing that. So that is a decision for the future.

**The Hon. DANIEL MOOKHEY:** Sure, I accept that it is a decision for the future. When is that line meant to open again? In four years' time?

**PETER REGAN:** Yes. The airport is due to open around the end of 2026 and we are running in parallel with that.

**The Hon. DANIEL MOOKHEY:** So in four years' time your organisation and/or the Government will face a question as to what to do with the land. Correct?

**PETER REGAN:** Yes, and I expect that we will be working, as we have been, with the other parts of government well in advance of that to ensure that the area along the whole alignment and the future use of that area is something that people are working through at the moment—there is a planning process, a rezoning process. It is certainly preferable for our Metro stations to open into activated precincts rather than to open with that development still to come.

**The Hon. DANIEL MOOKHEY:** When you say, Mr Regan, that this is a matter for the future, really, all the work that has to have commenced already has commenced, is that correct?

**PETER REGAN:** As I said, agencies across government are doing that work. DPE will be leading a planning process—

**The Hon. DANIEL MOOKHEY:** But does Sydney Metro have a financial target as to what income it is meant to earn off the land that it will own afterwards?

**PETER REGAN:** At Orchard Hills?

**The Hon. DANIEL MOOKHEY:** Yes, we will start with Orchard Hills.

**PETER REGAN:** No, we do not.

**The Hon. DANIEL MOOKHEY:** What about across your whole portfolio?

**PETER REGAN:** In some parts of our portfolio we do.

**The Hon. DANIEL MOOKHEY:** Presumably, once you do finish the station, of course, you are not going to be expected to simply keep the land idle. Do you agree with that?

**PETER REGAN:** The Government, I think, has already been quite clear that it intends those areas of the Metro Western Sydney Airport line to serve integrated precinct/township-type developments. That is on record.

**The Hon. DANIEL MOOKHEY:** But the Sydney Metro organisation was set up with the powers it has so it has got the ability to effectively mimic a model that is available in other jurisdictions—I am not questioning it—which is the ability to equally do the wider precinct planning and then capture some of the value uplift for the public. Do you agree with that?

**PETER REGAN:** Absolutely, yes. In parts of the Metro portfolio we have been tasked with doing that and in recovering part of the value of the investment that the Government has put into the infrastructure by developing the surrounding land. That comes case by case though.

**The Hon. DANIEL MOOKHEY:** Indeed. But it is part of the metro model, is it not, to help reduce the investment cost of building the lines by being able to also benefit from the uplift that the lines create?

**PETER REGAN:** It is different between the different lines in terms of the financial arrangements but, yes, Sydney Metro is set up with the ability to facilitate the broader activation and development of precincts around its stations.

**The Hon. DANIEL MOOKHEY:** And that is to help pay for the building of rail lines, correct?

**PETER REGAN:** Absolutely, and within our portfolio we do have a significant area of our funding source that does come from development of those sites, including some of the Northwest and the City and Southwest, and that is including things like Martin Place, Victoria Cross and the Waterloo housing development. So that does form part of the funding arrangement for Sydney Metro, yes.

**The Hon. DANIEL MOOKHEY:** One of the views that has been put, which I want to give you the opportunity to respond to, is that that then creates commercial incentives for Sydney Metro to acquire the land at

the lowest possible cost in order to maximise the return on land into the future as well, and that part of it is what is driving Sydney Metro's behaviour on the airport metro line, the western metro. It has been made by, again, numbers of people, who have said that because you are a developer as well, or you have the power to develop and a part of your financial model to pay for the rail line is to exploit the wider value that it would create and capture some of it, that is creating a conflict and that is part of the reason why they describe your culture as being commercial and 2. Do you want to respond to that?

**PETER REGAN:** Yes, I will. I think there are two different issues. Firstly, when it comes to acquiring land and particularly the use of compulsory acquisition powers, our powers are quite limited. They are limited to the acquisition of land that we need for the construction of the railway. That is important because that is what we do and, as I was describing before, we limit our acquisitions to the land that we need and we try to minimise the land that we need. When the railway is built and that purpose has been fulfilled, if there is surplus land then it is, in certain parts of our portfolio, part of the financial package that we are operating under that we are required to seek a return on that land post the development of the railway in order to contribute to the cost of building the Metro. But they are quite different phases in the process. So I do not agree with the assertion that the fact that we do sell surplus land means that we have any conflict at the start. We are under a separate and very clear set of obligations as to what land we are allowed to acquire.

**The Hon. DANIEL MOOKHEY:** Sure. But, Mr Regan, if you were to be benchmarked to a private developer of land, a private developer of land cannot use compulsory acquisition to acquire the land that they then onsell—they have to buy it in a commercial setting. Now, of course, the Act encourages you to do the same, but the difference between Sydney Metro and a developer is that a developer cannot trigger—for want of a better term—eminent domain, but you can. That is why your agency is unique as a developer, because no other developer is capable of using the Crown's powers to forcibly take land.

**PETER REGAN:** I think we need to be a little bit careful in making that connection, because the vast majority of land that we buy is for infrastructure and is not developed. What we are talking about here is—and you asked around—if there is surplus land after we have needed land for construction, what do we do with it? In relation to Orchard Hills, we have not been set a financial target and we do not have financial targets on that line for property development or returns that we are required to generate. Elsewhere in our portfolio, where we do seek to recoup part of the investment, the value of having already purchased the land and demolished the buildings that are on the land before we get to the station also has to be taken into account. So we are contributing to the cost of the infrastructure, but we are not—in doing so, we have to spend a lot of money to get to the point where we can seek to recoup part of that investment. So they are quite different functions and they are performed at quite different times in the program of a delivery of a railway.

**The Hon. DANIEL MOOKHEY:** Fair enough. I was just going to ask for a short update and I think you may have made a loose reference to it when you were giving us statistics around the Pyrmont acquisition, but you are still intending to acquire land that belongs to Star City, are you not—or The Star?

**PETER REGAN:** We have a station site that is publicly available—

**The Hon. DANIEL MOOKHEY:** Yes, it is public.

**PETER REGAN:** —in Pyrmont, which is where we are looking to acquire the station.

**The Hon. DANIEL MOOKHEY:** There is a tension here. Again, it is a land use tension similar to what my colleague was describing with Frankie's, albeit on a larger scale, in which some of that land has been earmarked for the development of six-star casinos to help boost our tourism industry—hotels, I should say, six-star hotels. I am not sure there is a six-star casino. But, either way, can you give us an update as to where you are up to in terms of that particular acquisition? Is that one that has gone to determination or is that one that you are still negotiating?

**PETER REGAN:** Yes, we are still negotiating on that site.

**The Hon. DANIEL MOOKHEY:** When are you meant to have all of these acquisitions around Pyrmont wrapped up?

**PETER REGAN:** We are negotiating on that site. We are looking to conclude those negotiations this year.

**The CHAIR:** That is all we have time for. Thank you very much for making yourselves available for our questions. In relation to questions taken on notice, you will have 21 days to respond. As per usual, the Committee team will be in touch.

**(The witnesses withdrew.)**



**Mr PAUL PLOWMAN**, General Manager Asset Lifecycle, Sydney Water, affirmed and examined

**The CHAIR:** We now welcome our next witness, Mr Plowman. Do you have an opening statement that you would like to make at this point?

**PAUL PLOWMAN:** I do. I thank the Committee for the opportunity to assist in this inquiry. On occasion, Sydney Water does need to acquire land or easement to build or upgrade water and wastewater infrastructure. The location of land acquisition is driven by the nature of the assets and the proximity of the catchment that we need to serve. Where property owners are directly affected by a proposed project, we try to contact them as early as possible and let them know about the potential impacts and the process that is about to begin. Sydney Water's property acquisition process is in line with the legislative obligations that are expressly outlined in the Sydney Water Act and also the Land Acquisition (Just Terms Compensation) Act 1991.

In the first instance, Sydney Water does seek to contact impacted landowners, notify them, offer to purchase the land and commence negotiations. If an agreement is reached, the acquisition is finalised and Sydney Water compensates the affected owners for a reasonable valuation and legal fees. In some cases, Sydney Water may need to compulsorily acquire land under the Land Acquisition (Just Terms Compensation) Act. Sydney Water will always continue to try to negotiate with property owners throughout that process. In relation to Transport for NSW, the subject of this Committee, Sydney Water works with Transport for NSW when projects overlap and land needs to be acquired by either party. Sydney Water and Transport for NSW utilise the Treasury directive for the purposes of determining compensation payable between parties when undertaking that acquisition. On behalf of Sydney Water, I hope to assist the Committee in its inquiry as best I can.

**The Hon. JOHN GRAHAM:** Thank you, Mr Plowman, for that opening statement. In the course of this inquiry, the Committee is looking at the general issues that affect the just terms compensation Act, or acquisitions of the style that you have just described. It is also looking at some specific sites and issues. One of those is the development centred around the Sydney Science Park and related issues. It is really in that capacity that a request was made for a witness. Sydney Water recommended that you should appear in place of that witness, as I understood it, but feel free to correct me on that. I turn to the set of issues around that development and ask you to give us some background. I turn first to the moment on 17 December 2020 when the Government announced, with Sydney Water, a landmark partnership for that site and investment for significant water infrastructure. Can you give us any background about how that came to be the case?

**PAUL PLOWMAN:** Sydney Water has an agreement for an accelerated development with Celestino. That is not an unusual agreement for Sydney Water to be entering into with any developer that wants to develop land. It is what we would describe, in general terms, as "out of sequence". In those instances the developer will forward-fund all of the infrastructure required to service that particular development. By "forward-funding", that is both the infrastructure but also the land acquisitions associated with any infrastructure that needs to be built. Then, over time, Sydney Water, depending on the appropriateness and whether those assets serve other developers along the way, will reimburse under our standard policies at a later date once development and customers come online. Basically we are future-proofing our customers from any growth risk—any infrastructure that is built without customers to use.

**The Hon. JOHN GRAHAM:** This is a significant \$200 million investment in water infrastructure. Are you saying this investment was made by the developer, Celestino, and not by Sydney Water in the first instance?

**PAUL PLOWMAN:** That is right.

**The Hon. JOHN GRAHAM:** Over what time period will Sydney Water start to invest in this?

**PAUL PLOWMAN:** We have actually started constructing work at the moment. There is a transaction between the two organisations to pay for those works as they are being built.

**The Hon. JOHN GRAHAM:** What is Sydney Water's contribution by way of that transaction?

**PAUL PLOWMAN:** Obviously the intellectual know-how to build and operate those sorts of assets.

**The Hon. JOHN GRAHAM:** What is the total value of that work?

**PAUL PLOWMAN:** I do not know.

**The Hon. JOHN GRAHAM:** It is \$200 million in total, is it?

**PAUL PLOWMAN:** Yes. Sorry, I would have to say that I have not gone and got any detailed notes for this because it is not really within the scope of the Committee.

**The Hon. JOHN GRAHAM:** It certainly is within the scope of this Committee. One of the reasons I am struggling with the evidence you are giving is that in budget estimates hearings on 10 March, when asked the same questions about that water deal when it was announced, Minister Ayres said that Sydney Water will pay for that and Celestino will probably make a contribution.

**PAUL PLOWMAN:** I will have to take that on notice to get some specific answers for you.

**The Hon. JOHN GRAHAM:** But to be clear, that is the exact opposite of the evidence that you are giving us.

**PAUL PLOWMAN:** I understand. I will have to take it on notice and make sure that you get the answers that you are asking for. As I said—

**The Hon. JOHN GRAHAM:** Does that mean you are standing by the evidence that you have just given or are you withdrawing that evidence.

**The Hon. SCOTT FARLOW:** I think he has taken it on notice.

**The CHAIR:** No, let us have the clarification.

**The Hon. JOHN GRAHAM:** That stands. I am now asking him about the evidence that he has given up until now.

**PAUL PLOWMAN:** I gave the evidence as I understood it. If I have misunderstood it—the evidence, as I understand—I will have it corrected on the record on notice, okay?

**The Hon. JOHN GRAHAM:** I think that is fair. I just want to be clear.

**PAUL PLOWMAN:** I understand there was a Standing Order 52 that had gone through whatever process that was, and Sydney Water has responded to that. I think the answers would be in that document.

**The Hon. JOHN GRAHAM:** Again, one of the concerns is that documents available show that on 3 December Sydney Water's media lead is telling then Minister Pavey's office, "Sydney Water is investing around \$200 million over the next 30 years to build an integrated water cycle system and associated infrastructure at Sydney Science Park." That does not sound like a developer paying for it, Mr Plowman; that sounds like Sydney Water paying for it.

**PAUL PLOWMAN:** No, I think I can only say what I said before. I understand the question that you have asked, and I will take it on notice and make sure the record is correct.

**The Hon. JOHN GRAHAM:** I invite you to come back with that information. I want to rewind. One of the reasons why this is of some surprise is that Sydney Water, earlier on, had been taking quite a hardline position about this proposal. The Sydney Water view in September 2015 describes this site as a "proponent-led, out-of-sequence, at no cost to government planning proposal" and advises that Sydney Water has "no servicing strategy for the area and would not be funding trunk or lead-in infrastructure for the proposed development". You have used some of those terms as you have described these sorts of arrangements that might be in place. That is pretty clear cut in 2015. Do you agree with that?

**PAUL PLOWMAN:** I will have to take the question on notice.

**The Hon. JOHN GRAHAM:** Can you explain why what was a hardline position in 2015 has led to \$200 million being invested in 2020 by someone? We will clarify who. Do you see that as a shift in position?

**PAUL PLOWMAN:** We have an out-of-sequence policy document for all developers if they want to go out of sequence to have that infrastructure built. I would imagine that that statement was made prior to any negotiations or discussions with the developer on how we would fund such an arrangement to make sure that our customers would not be out of pocket for funding out-of-sequence development.

**The Hon. DANIEL MOOKHEY:** Mr Plowman, can you table or provide us on notice with that out-of-sequence policy that you just referred to?

**PAUL PLOWMAN:** Yes, if it has not already been tabled as part of the Standing Order 52—

**The Hon. DANIEL MOOKHEY:** No, it needs to be tabled in the inquiry. Do you mind doing that on notice?

**PAUL PLOWMAN:** Okay, sure. I will take that on notice.

**The Hon. JOHN GRAHAM:** Would that policy normally involve Sydney Water stumping up the cash up-front?



**PAUL PLOWMAN:** No, the whole idea is to make sure that customers are not out of pocket.

**The Hon. DANIEL MOOKHEY:** That was not the question.

**PAUL PLOWMAN:** I will provide you with—

**The Hon. JOHN GRAHAM:** So under that policy, if there is a significant investment—say, hundreds of millions of dollars—in water infrastructure, who stumps up the cash? Is it the developer or Sydney Water, or is that to be negotiated?

**PAUL PLOWMAN:** As I said, I will take it on notice. But the philosophy is that customers do not take the development risk for development, so it is generally future funded by developers. I will take it on notice and I will provide you with both the policy—

**The Hon. JOHN GRAHAM:** I am struggling to understand what you mean by that. In general, the developer is paying. I am asking now about the usual course of events.

**The Hon. SCOTT FARLOW:** Just let me clarify something. Your terminology of the "customers" is Sydney Water customers. Is that correct?

**PAUL PLOWMAN:** That is exactly right.

**The Hon. SCOTT FARLOW:** So Sydney Water is not picking up the bill; the developer is, effectively.

**The Hon. DANIEL MOOKHEY:** Under that policy.

**PAUL PLOWMAN:** That is the general philosophy of what we are trying to achieve.

**The Hon. JOHN GRAHAM:** That is a useful clarification. Thank you for that. Is that clear under the policy? The developer would normally pay—not Sydney Water, not the customer—as it is passed on?

**PAUL PLOWMAN:** I will take that on notice. The information that I will be providing, which I have already committed to taking on notice, would have the answers to that.

**The Hon. DANIEL MOOKHEY:** Do you not know, Mr Plowman?

**PAUL PLOWMAN:** It is not my area of expertise. I am here as—I explained what I was doing before.

**The Hon. DANIEL MOOKHEY:** But you are aware that the Committee requested that we wanted a person who is in the position to—

**PAUL PLOWMAN:** We read the terms of reference and it was about acquisition. I am here to answer the questions about specific property acquisitions.

**The Hon. DANIEL MOOKHEY:** But you are aware that the Committee requested that a person be provided who is in a position to answer these questions about the Celestino development? Or your view is that, as with Sydney Water, you disagreed with our ability to do that and you were sent instead. Is that what has happened?

**PAUL PLOWMAN:** It was decided that I was the most suitable person to attend.

**The Hon. JOHN GRAHAM:** Yes, and that is a matter for Sydney Water. However, we are deciding what to ask you—

**PAUL PLOWMAN:** Yes, sure. Understood.

**The Hon. JOHN GRAHAM:** —and we are struggling with your answers.

**PAUL PLOWMAN:** And I have committed to and will continue to commit to providing those answers on notice.

**The Hon. DANIEL MOOKHEY:** Mr Plowman, can I just be clear here? There is what is called "in sequence"—I could only infer if there is an out-of-sequence process—that there is a sequence by which you build water infrastructure for new areas. Is that correct?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** And that is planned, is it? Is that strategically planned? Over what time horizon?

**PAUL PLOWMAN:** It can vary depending on the areas, but we have a growth servicing plan that we put out for people to see where the sequence of development is happening every so often.

**The Hon. DANIEL MOOKHEY:** What is "every so often"?

**PAUL PLOWMAN:** I do not know the answer to that. I have take that on notice.

**The Hon. DANIEL MOOKHEY:** Can we get, on notice, the plan that applied? Did you describe it as the growth areas plan or—

**PAUL PLOWMAN:** The growth servicing plan.

**The Hon. DANIEL MOOKHEY:** The growth servicing plan that existed in 2015, if that is possible. And on notice as well, can we get the one that applies now?

**PAUL PLOWMAN:** That is all available on our website.

**The Hon. DANIEL MOOKHEY:** Yes, but can we still ask you to formally provide it as evidence?

**PAUL PLOWMAN:** If that is appropriate, yes.

**The Hon. DANIEL MOOKHEY:** Thank you. "Out of sequence" is when a developer wishes to deviate by bringing forward an area or, for that matter, having an area connected that otherwise would not be connected. Is that fair?

**PAUL PLOWMAN:** That is correct.

**The Hon. DANIEL MOOKHEY:** Do you have a policy in place to guide how Sydney Water is to act in that circumstance?

**PAUL PLOWMAN:** That is correct, and that is what I will provide on notice.

**The Hon. DANIEL MOOKHEY:** And a developer has a right—actually, any person who wishes to have water infrastructure put anywhere out of sequence is entitled to come and speak to Sydney Water directly about an adjustment under that policy, in broad terms?

**PAUL PLOWMAN:** Indeed.

**The Hon. DANIEL MOOKHEY:** Did Celestino come and ask?

**PAUL PLOWMAN:** To the best of my knowledge, yes.

**The Hon. DANIEL MOOKHEY:** Do you know when?

**PAUL PLOWMAN:** No, I do not know when.

**The Hon. DANIEL MOOKHEY:** Can you take that on notice to find out when?

**PAUL PLOWMAN:** I can indeed.

**The Hon. DANIEL MOOKHEY:** Is \$200 million out of sequence large or small in the scheme of things, in terms of what you described as usual practice?

**PAUL PLOWMAN:** Our capital budget next year is \$1.4 billion, so—

**The Hon. DANIEL MOOKHEY:** I am talking for a developer, a proponent, under the out of sequence policy. Is \$200 million a large or small amount for a developer?

**PAUL PLOWMAN:** I do not think you can make comparisons, because it would be different depending on the nature of the development, the distance away it was from existing—

**The Hon. DANIEL MOOKHEY:** Well, is this a big development or small development, according to that policy?

**PAUL PLOWMAN:** This is a big development.

**The Hon. DANIEL MOOKHEY:** You would agree it is a big development, yes?

**PAUL PLOWMAN:** Sydney Science Park, as a general concept, is a big development.

**The Hon. DANIEL MOOKHEY:** Therefore, for a big development of this size, who in Sydney Water agrees to it? How does it work? Do you agree to it? Is it your job or is it the CEO? Who in Sydney Water is responsible for negotiating with the developer?

**The Hon. JOHN GRAHAM:** Who signs off on this landmark partnership agreement in Sydney Water?

**PAUL PLOWMAN:** It will be a part of the usual investment business case process that we have within the delegations of the organisation.

**The Hon. DANIEL MOOKHEY:** Who has delegation to approve a \$200 million application?

**PAUL PLOWMAN:** It would be, at that level, the managing director. To spend \$200 million worth of capital works would be at the delegation of the board, I would imagine.

**The Hon. DANIEL MOOKHEY:** So the board would have to approve it?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** So it is likely that this matter was considered by your board?

**PAUL PLOWMAN:** It would have been, yes, within the policy that I just described before.

**The Hon. DANIEL MOOKHEY:** How long does it usually take to negotiate an out of sequence agreement of this size? If I was to turn up to your office today and say, "I'd like to talk to you about a \$200 million out of sequence development," how long would it take before I get a final answer?

**PAUL PLOWMAN:** That could take years. That would depend on the extent and the circumstances of a particular development, where it is and what the developer seeks to achieve out of that development.

**The Hon. JOHN GRAHAM:** Where are we now in relation to this infrastructure? It was originally meant to be commenced in December last year. Has this actually commenced? Is this infrastructure being built?

**PAUL PLOWMAN:** Yes, it is currently under construction.

**The Hon. JOHN GRAHAM:** How far through the construction process are we?

**PAUL PLOWMAN:** We would be seeking to commission by the end of this calendar year, December 2022.

**The Hon. JOHN GRAHAM:** Did it start on time, from your point of view, if it commenced in December 2021?

**PAUL PLOWMAN:** Yes, as far as I know.

**The Hon. JOHN GRAHAM:** Minister Ayres and Minister Pavey were at that announcement on 17 December 2020. Minister Pavey would have been there in her capacity as water Minister and Minister Ayres in his capacity, perhaps, as the western Sydney Minister. Do you recall?

**PAUL PLOWMAN:** I cannot recall who attended the event.

**The Hon. JOHN GRAHAM:** Could you take on notice any details about which Ministers' offices were contacted about the announcement and the terms on which they were contacted?

**PAUL PLOWMAN:** Certainly.

**The Hon. JOHN GRAHAM:** I am going to leave it at that point.

**The Hon. DANIEL MOOKHEY:** I am going to continue. Would it usually take a number of years to negotiate on this scale.

**PAUL PLOWMAN:** It could do.

**The Hon. DANIEL MOOKHEY:** Can we infer from that that Celestino would have asked for this a few years ago?

**PAUL PLOWMAN:** I would have to take on notice the exact dates.

**The Hon. DANIEL MOOKHEY:** Do you have any idea? I am not asking necessarily for the exact date, but on notice I will happily accept it. But do you have any idea as to when it started?

**PAUL PLOWMAN:** It would have been a number of years, maybe two or three years, but I will get the exact time frames.

**The Hon. DANIEL MOOKHEY:** It is a relatively open-ended question, but what sort of due diligence does Sydney Water follow before it decides that such a partnership is in Sydney Water's best interests? Do you retain consultants? Do you peer review it? Is it just that your internal team produces an analysis? How do you verify?

**PAUL PLOWMAN:** What sort of due diligence would you be asking me about?

**The Hon. DANIEL MOOKHEY:** Do you interrogate costs and cash flow models?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** Do you look at payback periods [inaudible]?

**PAUL PLOWMAN:** Absolutely, but that would be exactly the same for any developer. It would be part of the investment evaluation decision.

**The Hon. DANIEL MOOKHEY:** And that investment evaluation decision is done in-house?

**PAUL PLOWMAN:** Yes. Generally speaking, that is an expertise we have.

**The Hon. DANIEL MOOKHEY:** Do you use external consultants to verify your work?

**PAUL PLOWMAN:** Occasionally, but I could not answer whether it was done on this particular project or not.

**The Hon. DANIEL MOOKHEY:** Can you take that on notice and inquire as to whether it was?

**PAUL PLOWMAN:** I can.

**The Hon. DANIEL MOOKHEY:** Thank you. Presumably, therefore, all that is done prior to the board being informed, correct?

**PAUL PLOWMAN:** Yes. The board would be involved in various points along the way—but, yes, prior to the final decision.

**The Hon. DANIEL MOOKHEY:** Can you take on notice when the board approved this partnership?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** Minister Ayres called it a landmark partnership. Why is this a landmark partnership?

**PAUL PLOWMAN:** The actual development is a closed system integrated water cycle development. The way that recycled water will be used and the technologies that we will be using to serve the eventual customers in there is quite different to what we have usually done. It is landmark from a technological perspective.

**The Hon. DANIEL MOOKHEY:** Mr Plowman, you said that your best understanding was that this \$200 million is being paid by Celestino. In practical terms, does that mean you build it and send them an invoice?

**PAUL PLOWMAN:** I would have to take on notice exactly the transaction process.

**The Hon. DANIEL MOOKHEY:** Do they pay all the money up-front or do they pay it off in instalments over time?

**PAUL PLOWMAN:** I will take that on notice to provide that information to the Committee.

**The Hon. DANIEL MOOKHEY:** Can I ask in respect to the \$200 million, do you have to acknowledge a provision or a risk on that in terms of the money that has been provided to you or not? How do you effectively reflect this \$200 million contribution in your accounts?

**PAUL PLOWMAN:** I will take that on notice.

**The Hon. DANIEL MOOKHEY:** Has Sydney Water set up a business development unit?

**PAUL PLOWMAN:** Yes, it has.

**The Hon. DANIEL MOOKHEY:** Who leads it?

**PAUL PLOWMAN:** Chris Gould.

**The Hon. DANIEL MOOKHEY:** Is there a head of city growth and development?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** Who is that?

**PAUL PLOWMAN:** Chris Gantt.

**The Hon. DANIEL MOOKHEY:** Has Mr Gantt previously worked for Celestino?

**PAUL PLOWMAN:** I believe he has.

**The Hon. DANIEL MOOKHEY:** Was he, immediately prior to him commencing as the head of city growth and development, a development manager for Celestino?

**PAUL PLOWMAN:** I believe he was.

**The Hon. DANIEL MOOKHEY:** Has that unit played any role in this partnership?

**PAUL PLOWMAN:** Are you talking about the unit or Christopher Gantt?

**The Hon. DANIEL MOOKHEY:** First the unit.

**PAUL PLOWMAN:** Of course.

**The Hon. DANIEL MOOKHEY:** What about Mr Gantt?

**PAUL PLOWMAN:** No.

**The Hon. DANIEL MOOKHEY:** Why not?

**PAUL PLOWMAN:** Prior to the transaction being signed, I understand, he did not. By the way, were these not the subject of the Standing Order 52—

**The Hon. DANIEL MOOKHEY:** Yes.

**PAUL PLOWMAN:** —and this has all been answered? I can provide that same information.

**The Hon. DANIEL MOOKHEY:** Mr Plowman, for what it is worth—I do not want to necessarily remind you that witnesses usually do not ask questions, but I understand it has been made in good spirit—Standing Order 52 is about production of documents often, which is then used to inform the asking of questions in inquiries, which is pretty much exactly what is going on right now. We as members are entitled to use the documents that we obtain to ask questions of government officials about the matters that arise from them. In terms of a digression as to what we are doing, that is it. I just return to my question. I am sorry. I did not hear the answer. I think you skipped a bit over it. You said Mr Gantt did not play a role in the negotiation of this landmark partnership; is that your understanding?

**PAUL PLOWMAN:** That is my understanding.

**The Hon. DANIEL MOOKHEY:** Why did Mr Gantt not play a role?

**PAUL PLOWMAN:** I would take that on notice.

**The Hon. DANIEL MOOKHEY:** Was it because he had declared a conflict of interest?

**PAUL PLOWMAN:** I believe he did. Yes.

**The Hon. DANIEL MOOKHEY:** As a result, he was removed from any involvement with this particular partnership.

**PAUL PLOWMAN:** He was not involved in development of the partnership is my understanding.

**The Hon. DANIEL MOOKHEY:** But the other parts of the unit did. Is that correct?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** That was led by Mr Gould?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** This particular unit within Sydney Water was the lead in interacting with Celestino?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** Was that led by Mr Gould?

**PAUL PLOWMAN:** Yes.

**The Hon. DANIEL MOOKHEY:** What was Mr Gould's background prior to becoming the head of that unit?

**PAUL PLOWMAN:** I do not know. I would have to take that on notice.

**The Hon. DANIEL MOOKHEY:** Thank you. I would appreciate that. Were there any other declarations of interest that were made in respect to this particular project?

**PAUL PLOWMAN:** Not that I know of.

**The Hon. DANIEL MOOKHEY:** Fair enough. Was there a probity adviser at all engaged in respect of inspecting this partnership?

**PAUL PLOWMAN:** I would have to take that on notice.

**The Hon. DANIEL MOOKHEY:** What probity checks were in place by Sydney Water in order to assure itself that all policies, procedures and requirements were adhered to?

**PAUL PLOWMAN:** I would have to take that on notice.

**The CHAIR:** Thank you very much. That brings us to the end of this session. There were actually quite a lot of questions taken on notice. There is 21 days to respond but the Committee secretariat will be in touch to discuss the process for that. Thank you very much for attending and giving your evidence today, Mr Plowman.

**(The witness withdrew.)**

**(Short adjournment)**

**Mr GEOFF CAHILL**, Director Corridor Identification and Protection, Transport for NSW, affirmed and examined

**Ms JULIE GEE**, Acting Chief Transport Planner, Customer Strategy and Technology, Transport for NSW, sworn and examined

**Mr MARK SLATER**, Executive Director Property Group, Infrastructure and Place, Transport for NSW, affirmed and examined

**The CHAIR:** Thank you very much. Would you like to commence with a short statement at all?

**MARK SLATER:** Yes, please. Thank you, Madam Chair. We do have a very brief statement. We thank the Committee for their invitation to appear as witnesses today. First and foremost, we would like to state that Transport does not approach potential property acquisitions lightly. We recognise that land and property acquisitions for public infrastructure can be a challenging and complex experience for home owners, landowners, residents and businesses, as well as the Transport staff members who are involved. We acknowledge that, when it comes to people's homes and their businesses, property acquisitions can be an emotional time. I would also like to reassure the Committee that the property acquisition is only undertaken where there is significant benefit to the broader public. Wherever possible, we look to make use of Government-owned land.

Land acquisition for essential infrastructure purposes is often an important step in the delivery of critical infrastructure, particularly in light of our State's growing population and the Government's duty to provide essential services to the community. Transport is currently delivering the largest infrastructure program this nation has ever seen, with \$72 billion of investment over four years for major city-shaping and precinct projects like Sydney Metro, light rail, motorways and road upgrades, delivering benefits for communities for generations to come. However, it is equally important that land acquisitions for these purposes are fair and transparent and contain the necessary checks and balances.

The property acquisition process has been improved in recent years to ensure home owners and business owners have appropriate support and time to make informed decision and to ensure that they are supported throughout the process. Transport works closely with home and business owners to ensure they receive fair compensation in accordance with the just terms Act. We aim to complete acquisitions by agreement rather than by compulsory acquisition process, which is in line with the recommendations of the Pratt and Russell reviews. For residential and small business acquisitions, Transport will appoint a personal manager to each home or business owner to help support and guide them through the acquisition and relocation process.

In June 2019 Transport developed and released new property acquisition standards, which included minimum requirements for hardship assessment and a minimum negotiation period. We now provide clear information on the compulsory acquisition process for impacted residents and have undertaken a capability uplift across Transport for all staff involved in the property acquisition process. The new standards commit acquiring authorities like Transport to improving the experience of property owners by ensuring acquisition processes are fair, consistent and transparent.

Transport also implemented six of the seven objectives and recommendations from the May 2021 Auditor-General's report. We completed this by the end of 2021. This ensured our property acquisition processes and policies align with the Auditor-General's recommendations and meet the community's expectations regarding integrity, rigour and value for money. Today I will be offering my assistance with questions regarding the property acquisition process. My colleague Ms Gee will be able to assist with questions regarding the Transport planning process and the centre for property acquisitions. Mr Cahill will be able to assist with questions regarding corridor planning in particular. We thank you for the opportunity to make an opening statement.

**The Hon. DANIEL MOOKHEY:** Thank you. At first instance perhaps we can deal with the issues to do with Transport's engagement with broader acquisitions, then perhaps we can get to corridor preservation issues in that order, if that is okay. Otherwise, it is just two slightly different subject matters. First, Mr Slater, precisely, you are the head of—

**MARK SLATER:** The property group within Transport, which includes the land acquisition team that undertakes the property acquisition process.

**The Hon. DANIEL MOOKHEY:** That is for Transport for NSW. Correct?

**MARK SLATER:** That is for Transport for NSW.

**The Hon. DANIEL MOOKHEY:** Which part of Transport for NSW do you sit within?

**MARK SLATER:** That sits with Infrastructure and Place.

**The Hon. DANIEL MOOKHEY:** The deputy secretary responsible is—

**MARK SLATER:** Camilla Drover.

**The Hon. DANIEL MOOKHEY:** Fair enough. This was a role or a structure that was recently adopted; is that true?

**MARK SLATER:** This was brought about from February 2021 as part of evolving Transport. I joined in May 2021.

**The Hon. DANIEL MOOKHEY:** Ms Gee, are you a part of that team?

**JULIE GEE:** No, I am not. I am in the CST division—customer, strategy and technology. Joost de Kock is the deputy Secretary.

**The Hon. DANIEL MOOKHEY:** Equally, a structure that has been adopted as a part of the evolving transport project.

**JULIE GEE:** Strategic transport planning is a branch that has been around for a number of years, but it has had some changes recently through evolving transport. The Centre for Property Acquisition came into it recently.

**The Hon. DANIEL MOOKHEY:** Mr Slater, I might direct these questions to you. This Committee undertook in one of the earlier hearings into this inquiry examination of the Camellia land acquisition. Are you aware of that matter?

**MARK SLATER:** I am, yes.

**The Hon. DANIEL MOOKHEY:** Have you by any chance familiarised yourself with the transcript?

**MARK SLATER:** I have familiarised myself with that, but I have been focused on the Auditor-General's recommendations and implementing those across transport.

**The Hon. DANIEL MOOKHEY:** Do you want to give us an update as to where you are in terms of those Auditor-General recommendations? You said that you have implemented all of them.

**MARK SLATER:** There were seven Auditor-General recommendations and we have implemented six of them. We completed that by the required time frame of December. The one that we were unable to complete was in relation to an internal investigation, and that internal investigation is pending direction from ICAC. They complete their investigation.

**The Hon. DANIEL MOOKHEY:** I think the secretary told us that there was going to be an internal audit done.

**MARK SLATER:** Yes.

**The Hon. DANIEL MOOKHEY:** Did you do that audit?

**MARK SLATER:** Yes, we did.

**The Hon. DANIEL MOOKHEY:** What exactly was the scope of the audit?

**MARK SLATER:** The scope of the audit was to focus on high-value and high-risk transactions that have been completed by Transport and to undertake an audit of whether they had been completed in alignment with the policies, process and procedures, and that the necessary governance and assurance of those transactions met the required standards.

**The Hon. DANIEL MOOKHEY:** Transactions from what period of time?

**MARK SLATER:** I would need to take that on record as to what the time frame was, but it went back a number of years. I understand it may have gone back prior to Camellia.

**The Hon. DANIEL MOOKHEY:** How many high-risk, high-value acquisitions were identified for that audit?

**MARK SLATER:** I would need to take the question on notice as to the exact number of total acquisitions that were investigated and how many of them were high risk and high value. But one of the elements was to ensure that high risk and high value were a key part of the audit.

**The Hon. DANIEL MOOKHEY:** Perhaps what I should do then before asking those specific questions is ask you to give us a general description of the findings of that audit.



**MARK SLATER:** At high level I understand that there were 50 transactions that were audited and there were no findings from that audit that indicated that appropriate due diligence had not been undertaken and the approvals were not in place. The key areas of risk that were highlighted by the Auditor-General in Camellia, which was the focus of the audit—there were no findings that indicated that any transactions that were reviewed from that audit were amiss.

**The Hon. DANIEL MOOKHEY:** So we can infer therefore that Camellia really was a one-off. Is that fair?

**MARK SLATER:** Look—

**The Hon. DANIEL MOOKHEY:** The specific performance audit of the Camellia transaction was, as we have described it and as the Minister described it—to be fair, the Minister at the time described it as a disgrace and we described it as scathing. We would therefore accept that Camellia was an outlier, if you are telling me that the other 50 that were reviewed did not reach a similar conclusion. Is that a fair inference for us to draw?

**MARK SLATER:** What I can say is that we did not find any during that audit. It was very pleasing to see that the audit, that was very detailed and went through a number of transactions in a period that was from Camellia and prior, I believe, right through until 2021, found no instances that were similar in any way.

**The Hon. DANIEL MOOKHEY:** There were two issues in Camellia. There was what we paid for it and then the cost of cleaning it up and why we did not know about the full cost of cleaning it up after we bought it. Did the audit touch on land remediation of required sites or was that beyond its scope?

**MARK SLATER:** I would need to take that question on notice, specifically covering what the scope was in relation to remediation of sites.

**The Hon. DANIEL MOOKHEY:** To the best of your knowledge, has Transport interrogated whether or not there is similar liability on other sites that have been acquired?

**MARK SLATER:** What I can say is that when we went through the reform and addressed the Auditor-General's recommendations, we hard-coded into our process and into our approach around property acquisitions to ensure that all appropriate due diligence is undertaken across all sites and that fundamentally that has to be signed off and overseen by an appropriate delegate prior to it being able to move forward through the acquisition process. That ensures that we cannot have a situation that occurred in Camellia, where the appropriate due diligence is not undertaken and completed.

**The Hon. DANIEL MOOKHEY:** Do you now accept that the Camellia deal did not go through the proper due diligence?

**MARK SLATER:** I can only comment on what the Auditor-General highlighted, which was that it was something that you would have expected would have been completed.

**The Hon. DANIEL MOOKHEY:** Fair enough. Can I just ask you to respond to one of the other things that we have heard in the wake of the Camellia transaction, which has come through from multiple instances, including from earlier today? One of the criticisms has been that firstly Transport now never deviates from the valuation reports and panel, and that the inference is in order to avoid a situation like Camellia. It has been described to us as an overcorrection on behalf of Transport. To be fair, I am not necessarily sure that is right. I want to put it to you that there is now a practice in which once you obtain a valuation report, there is not—rather than that informing and negotiating the position, that is effectively defining the limit as to what you would pay. Has that been a practice that you or Transport have adopted?

**MARK SLATER:** Absolutely not, no.

**The Hon. DANIEL MOOKHEY:** Can you take us through what you consider to be normative practice now and when it comes to acquisitions of a site?

**MARK SLATER:** In relation to a valuation?

**The Hon. DANIEL MOOKHEY:** In brief, but in general can you take us through the process and procedure you generally follow now?

**MARK SLATER:** I can very briefly summarise the very significant body of work that we have just done to actually uplift and reaffirm the process that was already underway. When we went through the review that we did, we looked at the current process that was being followed and we looked at other processes and we built what we believe is best in class in terms of an approach to property acquisitions going forward. If there is a specific bit of the process that you would like me to articulate in relation to—

**The Hon. DANIEL MOOKHEY:** Is there a policy document now of some form that describes the steps and stages that Transport has to follow when it is doing acquisitions?

**MARK SLATER:** There is now a Transport property acquisition policy, yes. But there is also a suite of artefacts and some process documents which ensure that the operatives that have to deliver this are really clear on what the minimum expectations are. The governance and assurance that has to be stepped through is very clear and also the checks and balances that you would expect us to have for that type of expenditure are now very clear.

**The Hon. DANIEL MOOKHEY:** Can you on notice perhaps table that policy and any of the other supporting documents that you just made reference to, to the extent of which is possible?

**MARK SLATER:** We will provide any documentation that we are able to, yes.

**The Hon. SCOTT FARLOW:** And on that point, as well, perhaps what changes have been made since Camellia to those documents, if any?

**MARK SLATER:** We went through a significant change process through that six-month period. We have a number of areas of what was previously occurring and what the future is. But I think I will go back to the key things that were missing in Camellia, which was not having a valuation completed prior to, you know, making an offer, not having completed the right level of due diligence and not having the appropriate sign-off. These are all things which are now hard-coded into our process. They were things which, when we did the audit, we did not find any instances of that happening. It is very difficult for me to understand how something like that could have happened. But it is now hard-coded and it is now something that means that, you know, we cannot have a transaction completing or even getting anywhere near completion without having some key steps being undertaken and key stage gates through the process.

**The Hon. DANIEL MOOKHEY:** Fair. For what it is worth, if you want to understand how it happened, I guess we can probably tell you, but you would need to wait for our report.

**MARK SLATER:** I have read it.

**The Hon. SCOTT FARLOW:** There are a couple of transcripts.

**The Hon. DANIEL MOOKHEY:** Mr Slater or Ms Gee, depending on how you wish to answer this, can I just turn now to where we are up to in existing acquisitions? Is your team responsible for undertaking Transport for NSW's acquisitions?

**MARK SLATER:** Correct.

**The Hon. DANIEL MOOKHEY:** How many acquisitions are afoot currently?

**MARK SLATER:** I can give you a general number now, but if I could take that on notice.

**The Hon. DANIEL MOOKHEY:** A general number would be good.

**MARK SLATER:** We would be doing over 500 live acquisitions, is what I understand at this point in time.

**The Hon. DANIEL MOOKHEY:** Live acquisitions of interest, we should probably describe it as, correct?

**MARK SLATER:** Yes. They would be multiple and they would not be maybe—I mean, we have such a broad range when it comes to substratum, when it comes to interests in land, whether it comes into leasehold interests, but when I mentioned 500, that would be what I would term more traditional property acquisitions.

**The Hon. DANIEL MOOKHEY:** Right, number of properties.

**MARK SLATER:** Correct.

**The Hon. DANIEL MOOKHEY:** Then you would have a lot more interests?

**MARK SLATER:** And there would be interests on top of that, correct.

**The Hon. DANIEL MOOKHEY:** Can you on notice give us the number of live interests, to the best you can?

**MARK SLATER:** Yes.

**The Hon. DANIEL MOOKHEY:** Of that 500, are most of them in the Greater Sydney Basin?

**MARK SLATER:** No. The team is spread across the State and we are working on transactions on all of the infrastructure projects, so Coffs Harbour bypass and any others.

**The Hon. DANIEL MOOKHEY:** Predominantly road acquisitions though? Do you accept that?

**MARK SLATER:** We can give you the breakdown, but it would be a higher proportion of roads, yes, but there are others beyond that as well.

**The Hon. DANIEL MOOKHEY:** Can we get the breakdown between road and rail, and then also the geographical location information to the best that you possibly could that are live?

**MARK SLATER:** Yes.

**The Hon. DANIEL MOOKHEY:** Do you maintain statistics as to how many of them you reach by agreement, how many you reach by compulsory acquisition?

**MARK SLATER:** Yes, we do.

**The Hon. DANIEL MOOKHEY:** What are they?

**MARK SLATER:** And we report back through the CPA. Over the last three years it has been 90 per cent or more of acquisitions by negotiation.

**The Hon. DANIEL MOOKHEY:** Ninety per cent have been acquired by agreement?

**MARK SLATER:** By agreement, yes.

**The Hon. DANIEL MOOKHEY:** Do you know how many of them then escalated to compulsory acquisition?

**MARK SLATER:** No, no, 90 per cent have been negotiated by agreement and 10 per cent—

**The Hon. DANIEL MOOKHEY:** So 10 per cent have been done by compulsory acquisition, yes?

**MARK SLATER:** Yes.

**The Hon. DANIEL MOOKHEY:** Then of that 10 per cent, do you know how many of them appealed or objections were lodged with the Land and Environment Court?

**MARK SLATER:** I do not believe I have that information with me but it is something that I can take away and come back to you on.

**The Hon. DANIEL MOOKHEY:** So 90 per cent though?

**MARK SLATER:** Yes, 90 per cent.

**The Hon. DANIEL MOOKHEY:** Over what period of time? In the last few years?

**MARK SLATER:** The information that I have—if you just give me a minute I will check.

**The Hon. DANIEL MOOKHEY:** Yes, of course.

**MARK SLATER:** I believe it is from 2018, 2019, 2020 and 2021.

**The Hon. DANIEL MOOKHEY:** Since the commencement of section 10A?

**MARK SLATER:** Since as far as the records go back. I would need to check.

**The Hon. DANIEL MOOKHEY:** Sure. I think that time period happens to coincide with the introduction of section 10A. Ms Gee might have been following.

**JULIE GEE:** I think it is from 2017, 2018 to 2020, 2021.

**The Hon. DANIEL MOOKHEY:** So, yes, from the commencement of section 10A.

**JULIE GEE:** Yes.

**The Hon. DANIEL MOOKHEY:** We are at 90 per cent. The Chair was asking Sydney Metro earlier about whether or not you maintain any form of data about the feelings of your counterparties after they reach agreement.

**JULIE GEE:** Yes, we do.

**MARK SLATER:** Yes, we do. I have got a specific—the most recent survey results that we were provided with through the CPA, which is done annually, indicated that I think six out of 10 acquisition residents were satisfied. But I might defer to Ms Gee.

**JULIE GEE:** Yes, that is correct, six out of 10. So the Centre for Property Acquisitions has a website where all the data is available and one of the standards of the CPA requires or one of the standards that the acquisition process works to, there is a compulsory requirement to seek feedback from every person or party that goes through the acquisition process.

**The Hon. DANIEL MOOKHEY:** Is that a legal requirement?

**JULIE GEE:** It is part of the standards, the Centre for Property Acquisition standards.

**The CHAIR:** Could I ask for some clarification on the Centre for Property Acquisition. Is that purely Transport for NSW acquisitions?

**JULIE GEE:** No, it is a whole-of-government entity. It is based within Transport for NSW because Transport and Sydney Metro do most of the acquisitions, but there are about 60 different entities across the State that apply to use these standards, that operate under these standards.

**The CHAIR:** In which case, would those standards not also apply to Metro?

**JULIE GEE:** Yes.

**The CHAIR:** They would?

**JULIE GEE:** Yes, absolutely, yes.

**The Hon. DANIEL MOOKHEY:** Do your policies bind Metro, by a chance? Or do they make their policies independent of Transport?

**JULIE GEE:** I could not really comment on that. I think they are an independent body but they are part of the Transport cluster.

**MARK SLATER:** What I can say is that the reform program that we went through last year from the Auditor-General included Metro as part of the reform. So the policy that was developed applies to both Transport and to Metro and the process documentation, which articulates how you are to go through the process, was developed with Metro and Transport in mind, so it applies to Metro as well. There are some small intricacies or certain elements which will be slightly different, but the fundamental premise around the approach to property acquisitions and the process document developed is Metro and Transport's to use.

**The Hon. DANIEL MOOKHEY:** You were taking us through some numbers. I think you said six out of 10 were satisfied?

**JULIE GEE:** Sorry, yes, that is right. I thought you were going back to the property numbers. Yes, six out of 10. That is of all the various property acquisitions that happen across the board. The Property Acquisition Standards support the Just Terms Act. There are a number of standards and one of them is—I can go through them if you like.

**The Hon. DANIEL MOOKHEY:** No, on notice if you do not mind.

**JULIE GEE:** Sure.

**The Hon. DANIEL MOOKHEY:** Can I now turn to some specific matters that have been raised. By any chance did you see the Inner West Council's evidence earlier today?

**MARK SLATER:** No.

**JULIE GEE:** No.

**The Hon. DANIEL MOOKHEY:** Inner West were quite scathing of you. They described you as brutal, they said that you do not talk, you do not negotiate, each project has a different team, that there is no consistent behaviour by Transport and that this is creating them tremendous frustration on their behalf. In general, that is my summary of it. Before we take you to the specific incidents, are you aware that they had these concerns?

**MARK SLATER:** No, and that surprises me.

**The Hon. DANIEL MOOKHEY:** To be fair to them, it is written in their submission to this inquiry in quite detail with quite a lot of incidents as to why they have that view. I will take you to some of the specifics that they raised. The first is to do with the acquisition of parklands that belong to them for which they gave us multiple incidents. They named nine parks with which they have interacted with Transport over recent times that Transport has taken off them through a compulsory acquisition. Their evidence is that you never negotiated on any of them and that what then happens is the six-month period passes, they then go to the Valuer General, who then tends to

agree with them. Then if in the event they do not, they then take you to court, after they commence litigation you surrender because you do not want precedents which could be used against you. Is this true?

**MARK SLATER:** I have absolutely no knowledge of that in the slightest. So, no, I cannot comment. I could take a question on notice, but—

**The Hon. DANIEL MOOKHEY:** They mentioned specifically around projects like the Rozelle Interchange, they mentioned projects specifically around WestConnex, they made some reference to looming fears about the western harbour tunnel processes. It was quite detailed evidence that they provided. I do not think I am being unfair in describing it to you in these ways. That is at least what they said, and they may not be right, but that is the way in which they put it. You are not aware of any of this?

**MARK SLATER:** In the time that I have been in the role I have not had any escalations from anybody, either within the team or outside the team in relation to engagement with councils. I suppose there are a couple of things. First things first, the acquisitions team will try and keep expertise and contacts the same. I specifically know, not in relation to that council, but another council where we have got multiple matters going on, we specifically require the same acquisition operators to be involved because they have connections and they have knowledge and they have benefit. It does not benefit us to have multiple different people engaging with the same organisation. And I would find it very difficult to believe that anybody in the acquisition team would have specifically put different people in to work with a council.

There are different project teams, but they are not the people dealing with land acquisitions. We are the only people that deal with land acquisitions. So that is something that I will definitely look into but I find that difficult to understand that they are saying that they dealt with multiple different acquisition people. We do have a big team but we would not be looking to confuse things or not have people that have expertise and knowledge in a particular area, knowledge around a transaction or value or other things and not have them involved because it makes no sense from an operational perspective for us to do that.

**The Hon. DANIEL MOOKHEY:** Another major criticism that they made was even when they do find themselves negotiating with the team that, firstly, it is very hard to get the team from Transport to turn up for a negotiation, was one criticism that they made. Secondly, when they do turn up transport does not negotiate. Rather, it interrogates them for their information and valuation reports but is not prepared to share yours. In the same vein of criticism, the language that they used—the general manager said that he instructs his staff to put on their armour when they have to deal with transport, which is quite startling.

**MARK SLATER:** Again, I find that very difficult to understand. If there are some specifics that we can look to, then I am happy to look at it because that is not the experience that I have got through the team. That is not the individuals that I know. It does us no benefit to not try to negotiate. Outside of what is hard-coded in the process, and what was in the prior process, around engaging fairly, openly and transparently, exchanging valuations and seeking to reach an outcome, which the statistics show that we do, it just does not align with what I see as our practice, our approach and the way that we do things. It is completely at odds. I would be happy to look into it because we have got to have the right relationships with councils, but it is not something that has come up. Within Greater Sydney, obviously transport has lots of engagement with councils on many different things. We have tried to streamline it and have single points of contacts, not for multiple matters but in terms of escalations. I would have thought that, if something was happening over the last six months that was out of step, it would have come to me and I would have been made aware of the fact that something was not appropriate. So if there are some things that we can look to improve, then we certainly will.

**The Hon. DANIEL MOOKHEY:** I imagine we will be inviting you to look at the transcript because, to be fair, it was them telling us, and it is their submission that they have put to this inquiry, in which they have provided quite a lot of the detail. To be fair to them, they put the submission in last year as well.

**The CHAIR:** We heard from the council that they had had at least two instances of taking the issue to court, or launching court proceedings, and in both of those instances their evidence was that that led to Transport for NSW effectively backing down or becoming more reasonable from their perspective. How does that work internally? If there is a team that is involved in the negotiation, at what point does it get notified to the more senior levels of management and the team? At what point would you be made aware that there might be a risk of a legal action?

**MARK SLATER:** The process around negotiation and if negotiations cannot be reached, and then it goes to compulsory and then if somebody is unhappy with the VG's determination to go to the Land and Environment Court and litigation—it depends on the value and the type of escalation as to when it will be notified. I suppose I am maybe not being particularly helpful, but the process is straightforward in terms of that, and when we go through it, we have a very prescriptive and very clear approach around what we achieve. We have

independent valuations and we have advice around things. Obviously parties can have different views. I do not know about the specific instance that you are referring to where something has gone to court.

**The Hon. DANIEL MOOKHEY:** They could not tell us because they said that they were bound by commercial-in-confidence restrictions that were put in place. But they told us about two instances.

**MARK SLATER:** I can just refer back to our current approach. If there is a specific matter I can take away and respond to, then I will.

**The CHAIR:** Is there a mechanism where you could be notified by the acquisition team that the council, for instance, is not happy with what is going on or with the process? Is there an internal complaints mechanism where that would then come up to higher management?

**MARK SLATER:** I would be expected to be made aware, and I have not been in nine months, where we have not been able to reach an agreement and something of a significant nature is therefore then going to litigation. We have to go through the appropriate checks and balances in order to be able to go down that pathway, so it would be escalated up and it would have a number of different stakeholders, whether it be from legal or from the acquisition team, that would be aware that this matter is not being resolved. They are also often linked to timing for access for projects. These are matters which are very clear and well-known about. They are not things that are happening without the appropriate visibility.

**The CHAIR:** If something has proceeded to litigation and a decision is going to be made to settle or to basically give a more satisfactory offer for the acquisition, who makes that decision?

**MARK SLATER:** We have a specific property claims and litigation team who deal with all of those matters, to make sure that the appropriate approach, due diligence and review is undertaken.

**The CHAIR:** Would they do effectively a cost-benefit analysis where they decide that it is easier to add the value onto the property than to pay for the cost of the litigation?

**MARK SLATER:** I am not aware of their specific operating approach on things, but they are a dedicated and specialist team that are set up to deal with those matters.

**The Hon. DANIEL MOOKHEY:** The other criticism that the council mounted was that, upon the return of land, it is not going to be like for like, but equally the return specifically of construction land that would then be turned into parks results in them not taking freehold possession of the land but being responsible for its upkeep and maintenance. Is that within your remit or is that broader transport?

**MARK SLATER:** That is broader transport. That would be, I believe, the care and control CCM arrangements that are put in place.

**The Hon. DANIEL MOOKHEY:** That is not you, though?

**MARK SLATER:** That is not me.

**The Hon. DANIEL MOOKHEY:** Fair enough. We will not pursue that point further. Can I take you to a few other instances that we are hearing about? Can you take us through what is going on with Mulgoa Road? How many properties are you buying out there?

**MARK SLATER:** I do not know whether I have got that data here. I can come back to you with the specifics.

**The Hon. DANIEL MOOKHEY:** Again, we are hearing similar criticisms from at least two businesses there around the trouble they are having negotiating with transport on the acquisitions of their properties. Are you aware of this? Has this been escalated to you?

**MARK SLATER:** Not specifically, no. I am not aware of an escalation in relation to Mulgoa Road.

**The Hon. DANIEL MOOKHEY:** You have not heard from a dental practice and a motorcycle business?

**MARK SLATER:** I can come back to you on the specifics, but I am not aware, no. There are a number of different matters that are going on.

**The Hon. DANIEL MOOKHEY:** Can you take it on notice and find out whether or not you are hearing objections or complaints in that respect?

**MARK SLATER:** Yes.

**The Hon. DANIEL MOOKHEY:** That would be good. I was going to ask about an update if possible about where we are up to with the WHT site. Do you know which one I am talking about?

**MARK SLATER:** Yes, I do.

**The Hon. DANIEL MOOKHEY:** Can we get an update? Where are we up to on that?

**MARK SLATER:** My understanding is that we are still waiting for the Valuer-General's determination.

**The Hon. DANIEL MOOKHEY:** You have been waiting for a while, haven't you?

**MARK SLATER:** We have been waiting for a while, yes.

**The Hon. DANIEL MOOKHEY:** Can you take us through the impact the delays in the Valuer-General's office are having on transport?

**MARK SLATER:** We have a number of matters that are pending. As I am aware right now, there are no specific matters that are—

**The Hon. DANIEL MOOKHEY:** We are told that the Valuer-General, according to the Department of Planning and Environment, is averaging 120 days on determination, despite a requirement to resolve it in 45. That is close to three times more than what they should be. That is not having any impact on transport?

**MARK SLATER:** It is not what we would have expected. We are monitoring it very closely even though it is not something that we can control. We are working as closely as we can with them to provide any information up-front as part of the VG submissions that we have to make. We are very keen for them to settle as many of the determinations as they can.

**The Hon. DANIEL MOOKHEY:** We might turn to corridor preservation, if that is alright. Mr Cahill, what is corridor preservation? Can you take us through it? Give us an explanation.

**GEOFF CAHILL:** My pleasure. I am rather passionate about corridor preservation.

**The Hon. DANIEL MOOKHEY:** You have come to the right place.

**GEOFF CAHILL:** Yes. Corridor preservation is about long-term strategic thinking to secure long-term strategic corridors. Those corridors may not need to be built on for 10, 20, 30, 40 or 50 years. But the objective is to plan for those now before urbanisation and other developments preclude that future transport from being built or forcing future transport to plough through homes, which would have major social disruption, or being forced to go underground, which can be some 10 times the cost and may preclude particularly public transport from being built.

Corridor preservation has not been done at the scale we are doing now since about the 1950s. Back in the 1950s a number of corridors were identified and those corridors have largely been built on—the M2, the M7, Metro Northwest et cetera. Most of those have been built on already, and there has not been large-scale corridor preservation over some 70 years. Thanks to some very important strategic documents such as the long-term strategic transport plan in 2012, *Future Transport 2056* in 2017, plus great work done by the Greater Sydney Commission and also ratified by a number of councils, we have strategic documents that identify the desire and the need for connection between various centres. It has been our job to work out how to connect those centres with appropriate corridors.

Obviously with the Western Parkland City and the new aerotropolis and airport going in, our focus has largely been on western Sydney. The work we have been doing is focusing on providing the absolute critical spines and the connectivity for that new city, and we want to protect those corridors prior to the area being developed. That way we can minimise that social impact and get in before housing and utilities et cetera are in there. Some of those key corridors are the Outer Sydney Orbital, which would provide a connection from the north-west residential areas through to the western Sydney area, largely for employment, and also connecting with the south-west residential areas and ultimately down to the Hume Highway, ideally eventually to the Illawarra. So it is about connecting people. The Outer Sydney Orbital was planned at this stage to be in part a motorway but also in part a dedicated freight rail line.

**The Hon. DANIEL MOOKHEY:** That is the M9 we are talking about, the motorway component?

**GEOFF CAHILL:** The M9 is the motorway component. The Outer Sydney Orbital proposed to have the M9 in it but also, very importantly, a dedicated freight rail line. One of the other corridors we have been working on is the western Sydney freight line. That is a very important corridor for potentially a dedicated freight rail to service western Sydney but also, very importantly, to connect Port Botany with western Sydney, and ideally an intermodal terminal, through to the main west line near St Marys and then further west. Some of the primary

benefits are relieving the passenger rail network on the main west line from freight trains. You may be aware freight trains currently pass through Parramatta, but you also may not be aware that the window for freight trains is diminishing.

**The Hon. DANIEL MOOKHEY:** I actually am.

**GEOFF CAHILL:** More passenger services means that freight trains are having less time able to be accessing through there. We suspect within 10 years that window is going to be very, very small and, if we do not do a bypass, that will have a major impact on productivity from Port Botany across Sydney and across New South Wales.

**The Hon. DANIEL MOOKHEY:** Firstly, legally how is a corridor preserved?

**GEOFF CAHILL:** Great question. It depends. We go through a process of looking at those source documents—as I said, the *Future Transport 2056* and some of our regional plans. We do a strategic justification. We go through constraints analysis. We engage with the community, which is very important. We develop long-list options. We work through the short-list options. We take those back to the community. We then develop a preferred corridor on a strategic environmental assessment. Then, hopefully, that document and that proposal is lodged with the Department of Planning and Environment. We ask them to gazette the corridor and rezone it. Not all our corridors have gone right through that process, but when they are gazetted and rezoned they have a special purpose 2 zoning, which allows us to have a concurrence role and to restrict inappropriate development in that corridor.

**The Hon. DANIEL MOOKHEY:** Fair enough. That is actually very helpful. I will return to my main line of questioning, but, now that you have mentioned it, it might be appropriate to ask this now. Have you designated any land around Narellan as special purpose infrastructure?

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** Is that to allow the construction of a rail station some time in the future?

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** How many properties have been affected by that rezoning?

**GEOFF CAHILL:** I believe it is 19 properties. That is for what we call the north-south rail line from St Marys through the airport, through Bradfield—the new city—and then down through Oran Park. From Oran Park south to link up with Macarthur, it needs to go in tunnel because, as you may be aware, there are a lot of homes between Oran Park. That includes Harrington Park, Narellan—

**The Hon. DANIEL MOOKHEY:** Yes, there are a lot of homes. We accept that.

**GEOFF CAHILL:** A lot of homes all the way down there.

**The Hon. DANIEL MOOKHEY:** Is it the intent that that station would be built by and controlled by Sydney Metro or built and controlled by, I guess, the Transport Asset Holding Entity?

**GEOFF CAHILL:** Our job is to identify corridors and to ensure that those corridors can be built. In terms of the Narellan site, we have asked the planning department and they have rezoned the area around there for what we call a station box—so a station underground—and also sufficient area for us to be able to construct that station box. That is zoned special purpose 2. In terms of how it is picked up in the design phase and the operational phase, delivery phase, construction et cetera, that is beyond corridor preservation. That is subject for a future government to make a decision on.

**The Hon. DANIEL MOOKHEY:** You—"you" as in Transport—designated this area as special purpose infrastructure in 2018. Is that correct?

**GEOFF CAHILL:** We asked the Department of Planning and Environment to do that.

**The Hon. DANIEL MOOKHEY:** In that time? Around that time?

**GEOFF CAHILL:** We exhibited a preferred corridor in 2018. In 2020 the planning department sought and achieved the gazettal and rezoning of that corridor, including that site at Narellan.

**The Hon. DANIEL MOOKHEY:** The residents and the businesses of the 19 properties have not heard anything since about the rezoning or, for that matter, the compulsory acquisition, which was also made reference to. Do you know why, by any chance, there has been no further contact with them?



**GEOFF CAHILL:** There are two aspects in that. Firstly, the identification of a special purpose 2 zoning for corridor protection is for long-term infrastructure. We are not in the process of compulsorily acquiring that land at this point in time. Compulsory acquisition would occur if the Government has not already purchased it closer to the time of construction. So it is not compulsory acquisition.

**The Hon. DANIEL MOOKHEY:** Right now these people are effectively in a form of limbo until some point in the future the Government decides to build or not build a station at Narellan?

**GEOFF CAHILL:** What we have is a situation where when a corridor is gazetted there is provision under the Land Acquisition (Just Terms Compensation) Act 1991 for hardship to be declared and for the Government to acquire a person's property if they can demonstrate hardship under that legislation. So far we have purchased about 19 properties across the suite of corridors we have identified already. So there is that provision. But can I just go back to your earlier point, Mr Mookhey? We do have consultation and ongoing consultation with land owners. I personally have spoken with a person there who has been stated to be representing a number of those landholders around Narellan station. I have spoken to her a number of times and kept her informed of where we are up to.

**The Hon. DANIEL MOOKHEY:** Before I return to the main line of questions I wanted to ask you about, Mr Cahill, I am going to read you this from a media article that appeared about this matter on 6 March 2021, which is now a little bit over a year ago. A Transport for NSW spokesperson is quoted as saying that the final corridors for the Sydney Metro-Western Sydney Airport project, South West Rail Link Extension and the Western Sydney Freight Line were confirmed on 30 June 2020 and that all impacted property owners had been notified. They go on to say—and this is the key part—that Transport for NSW is still working through the cost to complete the future extension of the Sydney Metro network. Is that work completed?

**GEOFF CAHILL:** I cannot comment on Metro's processes—

**The Hon. DANIEL MOOKHEY:** But it says here that Transport for NSW is still working through the cost, not Metro.

**GEOFF CAHILL:** I cannot answer that. As I said, our task is to protect the corridor: to identify it, get it gazetted and then make sure it is protected. Once the corridor is there, it is up to a subsequent government to work out the details of design and the timing of the infrastructure going in.

**The Hon. DANIEL MOOKHEY:** I appreciate, Mr Cahill, that it might not be within the remit of your team. Therefore, can I invite you, Mr Slater, Ms Gee or someone else to take it on notice to get a response? These 19 property owners in Narellan have not heard a word and they are a bit worried. Would we mind if we can get them an update as to what is going on, if anything? Particularly around—

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** Some reference was made to compulsory acquisition, and they are feeling like their assets are stranded.

**GEOFF CAHILL:** As I have said, Mr Mookhey, we do not need compulsory acquisition.

**The Hon. DANIEL MOOKHEY:** Are you now saying to the residents in Narellan that their properties are not going to be acquired?

**GEOFF CAHILL:** I am very happy to communicate with those residents. I will have someone in my team communicate with those residents to reassure them. We will do that.

**The Hon. DANIEL MOOKHEY:** I return to my main line of questioning. Mr Cahill, you have been in your role for how long?

**GEOFF CAHILL:** I started in 2015, so coming up to almost seven years.

**The Hon. DANIEL MOOKHEY:** And you have been leading the development around the preservation of land corridors for the Outer Sydney Orbital, as you described. Is that correct?

**GEOFF CAHILL:** Yes. Before I joined Transport, the Outer Sydney Orbital had already been identified in the Long Term Transport Master Plan in 2012. There was a team already starting to look at that project when I came along. Shortly after I came along, we exhibited a study area for the Outer Sydney Orbital.

**The Hon. DANIEL MOOKHEY:** I appreciate that. Mr Cahill, does the Outer Sydney Orbital pass through the Sydney Science Park?

**GEOFF CAHILL:** It touches Sydney Science Park, yes. It goes between a very narrow gap between Twin Creeks, which is a large residential area, the Orchard Hills defence land and the land that is known as Sydney

Science Park. There is a narrow gap, which is directly north of the entrance to the western Sydney airport and in direct line with there, the M4 and St Marys, which we are targeting.

**The Hon. DANIEL MOOKHEY:** That is the corridor as it currently stands, correct?

**GEOFF CAHILL:** Correct.

**The Hon. DANIEL MOOKHEY:** Previous to that, there were three potential corridors that ran through it, correct?

**GEOFF CAHILL:** Early on there were far more than three. There was a large array of corridors—some going out through Penrith. They were all over the place.

**The Hon. DANIEL MOOKHEY:** In 2014—and this might be before your time—you might be aware that Penrith council asked Transport for NSW to comment on a Sydney Science Park development proposal, did they not?

**GEOFF CAHILL:** I cannot verify that. I have not got that in front of me.

**The Hon. DANIEL MOOKHEY:** According to an email that has been produced to the upper House, a senior planner wrote to Penrith council and said that "there are three potential OSO corridors which will run through the development site. Determination of the preferred route for the corridor is likely to be two years away. The conceptual OSO, or Outer Sydney Orbital, corridor traversing through the site would sever the development, and this may have major implications for how the site is planned". Are you aware that communication was made?

**GEOFF CAHILL:** No, I am not.

**The Hon. DANIEL MOOKHEY:** I appreciate that you would not be if you were not there, but this is what has been produced to us. At the time, the corridor was going to cut the site in two, and that would absolutely impact on its development. That is how I interpreted that email. Are you aware that that was the likely effect of that particular corridor prior to it being shifted to the one that you just described?

**GEOFF CAHILL:** As I said, there were a number of corridors for the Outer Sydney Orbital investigated between the time of the study area being exhibited in 2015 and when we went out with a preferred corridor in 2018. There were various versions of the corridor. I am aware of one in particular which was proposed to come diagonally from the northern road and cut across the back part of Sydney Science Park and then across the pipeline and avoid the defence land ahead to the north. That option was rejected when it became clear that the western Sydney airport wanted access to the main entrance on the northern side. We did not want to have a triangle of major motorways and infrastructure, so we consolidated the arrangement so that the Outer Sydney Orbital would overlap with the M12 corridor to reduce the footprint.

**The Hon. DANIEL MOOKHEY:** We will get to that point. This senior planner then reflects on the implications of the Sydney Science Park being split in two by the orbital. They said that access to the site in between the eastern and western sections of the site are an issue for the proponent to resolve and fund. They also made the point that there would be a need for noise mitigation to deal with the problem of a severed site. That became Transport for NSW's formal position in response to the Penrith council request. Her views were reflected in the position that Transport then put forward to the Penrith City Council. Do you agree that, if the 2015 position by Transport—at least as indicated to Penrith council—had prevailed, that would have split the SSP in two, and that would have resulted in some pretty serious impacts for the owner of that site?

**GEOFF CAHILL:** I can only go on what you have said. I cannot verify. I have not seen the papers. I just say that you need to look at the timing around all of this. I am aware that in mid-2015, the then planning Minister, Minister Stokes, was out on site endorsing a rezoning of the Sydney Science Park. I understand the rezoning of the Sydney Science Park was done by council in about October 2016. Around that time, in 2015, we went out with a very broad study area. We sought input from all stakeholders. I recall that Celestino, the owners of Sydney Science Park, made representation. That would have been one of the factors we would have considered because the objective of corridor preservation is to provide connectivity without destroying development and homes et cetera. We would regard Twin Creeks, the residential area, and existing and well-advanced commercial development or other sensitive land uses as constraints. We would endeavour to minimise our impact on those constraints.

**The Hon. DANIEL MOOKHEY:** Mr Cahill, trust me when I say we will get to all of that. As you rightly point out, at the time the then planning Minister, Minister Stokes, was out publicly supporting the rezoning of the land to facilitate the construction of the SSP. That is fair, and that is on the public record.

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** Did that create any concern for you?

**GEOFF CAHILL:** As I said, that would be one of the factors we would consider. Corridor preservation is an exercise in balancing a whole lot of issues, constraints and values.

**The Hon. DANIEL MOOKHEY:** The question is that specifically, at the time, did the fact that the Minister was endorsing this proposal prior to you having completed the corridor preservation cause you concern?

**GEOFF CAHILL:** Concern is probably the wrong word. It was, as I said, a factor considered. Our objective with the Outer Sydney Orbital was to reduce the impact on residential areas and commercial areas. If I can just say, around that time, Infrastructure NSW was undertaking a business case looking at South Creek. They encouraged us to utilise a South Creek corridor, primarily because the Outer Sydney Orbital would be on a viaduct along South Creek, and land acquisitions would enable the South Creek area to come into government ownership. The alignment that we have squeezing between Sydney Science Park and Twin Creeks also took advantage of that request from INSW to utilise more of South Creek.

**The Hon. DANIEL MOOKHEY:** Mr Cahill, do you recall writing an email at the time, in fact, on 30 October 2015 to a person by the name of Mr Raimond that expressed some concerns around the Minister's position?

**GEOFF CAHILL:** I do not recall that, but Mr Tim Raimond was my boss at that time.

**The Hon. DANIEL MOOKHEY:** Do you recall specifically writing him an email in which you said:

The Sydney Science Park has been endorsed publicly by the Minister for Planning (Stokes). The SSP plans will not be showing the OSO—

which I think is a reference to the Outer Sydney Orbital. It states further:

Our options impact on SSP to varying degrees, and if the SSP plan goes out before the OSO plan, then it would look like one part of the Government, Transport for NSW, is trashing the plans of another part of the Government.

Do you recall saying that?

**GEOFF CAHILL:** I do not recall that, but I would not step away from that comment.

**The Hon. DANIEL MOOKHEY:** To be fair to you, it is a legitimate concern because at the same time that the planning Minister is seemingly in favour of this particular proposal, it is not aligning with transport's view at the time. Is that a fair inference?

**GEOFF CAHILL:** As I said, it was a constraint; it was a matter for consideration.

**The Hon. DANIEL MOOKHEY:** But then you went on to say:

If we were able to talk to SSP about our plans, then the SSP plan, or at least the media around SSP, could state that they are in negotiations with Transport for NSW about the OSO alignment.

Was the way in which you were intending to resolve this apparent conflict was to seek a direct dialogue with the Sydney Science Park?

**GEOFF CAHILL:** I do not quite follow what you read out there.

**The Hon. DANIEL MOOKHEY:** Let me repeat it to you.

**GEOFF CAHILL:** However, as I indicated, the way we do corridor preservation is to identify constraints and opportunities.

**The Hon. DANIEL MOOKHEY:** Let me read it to you again and give you what I infer from it. Given you are the author of it, you tell me whether that is right or wrong.

**GEOFF CAHILL:** Sure.

**The Hon. DANIEL MOOKHEY:** You suggested:

If we were able to talk to SSP about our plans, then the SSP plan, or at least the media around SSP, could state that they are in negotiations with Transport for NSW about the OSO alignment.

It sounded like you were giving them an option and a solution to the particular issue, namely that there was a conflict between the view that was being favoured by the Minister and the view of Transport for NSW at the time, and then at least allow you, or at least the Government, to be able to deny that there was a conflict by simply saying, "We were talking to the proponent of the plan to see if we can reach an alignment." Is that the appropriate way to interpret this or not?

**GEOFF CAHILL:** The way I would interpret that is that I think I was seeking permission to have those discussions with Sydney Science Park.

**The Hon. DANIEL MOOKHEY:** To be clear, you then formally asked the then deputy secretary of freight, strategy and planning, Ms Gardiner-Barnes, and then the road Ministers to:

Talk to SSP on a confidential basis to arrange the delay and exhibition and the inclusion of statement that we are in negotiations. The matter is subject to CIC confidence—

which I think is commercial-in-confidence. You did actually seek approval to have a private dialogue with Sydney Science Park. Is that correct?

**GEOFF CAHILL:** That certainly sounds like it, but I do not recall.

**The Hon. DANIEL MOOKHEY:** Did you get the approval?

**GEOFF CAHILL:** I do not know, but I would probably assume I did because the way corridor preservation is undertaken, we try to identify all the constraints and opportunities. Once we went out publicly with the study area, there were a number of private developers, landowners, community members who wanted to talk with us and we did. We tried to have as transparent an approach as possible within the bounds of probity to understand what those constraints are and understand what the possibilities are for us to be able to reserve a corridor. Sydney Science Park, in that instance, was one of those constraints and from that email it sounds like—and I take it on face value—is myself seeking permission to have those discussions with Sydney Science Park.

**The Hon. DANIEL MOOKHEY:** To be very clear, Mr Cahill, I am not suggesting that there is anything inappropriate with that as an option. I am just trying to get your account of what happened, that is all.

**GEOFF CAHILL:** Sure.

**The Hon. DANIEL MOOKHEY:** I also then presume that you got the approval. Did you have those meetings with Sydney Science Park?

**GEOFF CAHILL:** I recall a number of meetings I had with Celestino, who was the—

**The Hon. DANIEL MOOKHEY:** Proponent.

**GEOFF CAHILL:** —proponent.

**The Hon. DANIEL MOOKHEY:** What was discussed?

**GEOFF CAHILL:** All our discussions with developers and any stakeholders are recorded in Consultation Manager, which is a secure database. I would have to refer to what was—

**The Hon. DANIEL MOOKHEY:** Would you like to take that on notice?

**GEOFF CAHILL:** I am happy to take that on notice and if it helps you, Mr Mookhey, I would be happy to get a copy of what you have in front of you.

**The Hon. DANIEL MOOKHEY:** Again, to be fair, this is a summary that has been prepared by another member, so I would have to seek their permission. These are documents that I think have been produced to the upper House.

**GEOFF CAHILL:** I am taking you on trust there, but it does sound familiar. But I do not recall every email I have ever done.

**The Hon. DANIEL MOOKHEY:** Who does really? That is why we preserve them and produce them to the upper House.

**The Hon. SCOTT FARLOW:** That is why we have Standing Order 52.

**The Hon. DANIEL MOOKHEY:** That is right. We are here to check.

**The Hon. SCOTT FARLOW:** Just to remind us all.

**The Hon. DANIEL MOOKHEY:** I am fairly positive that my colleague Mr Latham might be in a position to supply you with the primary materials if you so wish. I do not think there are any objections that Mr Latham would have on that. I am not sure I can take a question on notice, but nevertheless—

**The Hon. SCOTT FARLOW:** Let us give it a go.

**The Hon. DANIEL MOOKHEY:** I will try it; no-one has ever tried that before. To continue on with the narrative, Mr Cahill, the suggestion to move the corridor to what ends up being its alignment, was that raised in those direct meetings you were having with SSP as one potential solution to this?

**GEOFF CAHILL:** I would be very surprised if we spoke about what our plans were. Most discussions with developers, community, residential et cetera is to understand their views.

**The Hon. DANIEL MOOKHEY:** To be fair, I was not asking you whether or not you put that as a solution. I guess now I am asking you, did they put that as solution to you?

**GEOFF CAHILL:** I do not recall if they did or not.

**The Hon. DANIEL MOOKHEY:** Can you take that on notice and check the records that you referred to earlier to see if that is the case?

**GEOFF CAHILL:** Yes, certainly.

**The Hon. DANIEL MOOKHEY:** You send this email on 30 October 2015—

**GEOFF CAHILL:** Which I do not have, unfortunately.

**The Hon. DANIEL MOOKHEY:** Fair enough. But by 3 November 2015, at least according to a document that was produced to the upper House, deputy secretary Gardiner-Barnes approves a memo from a Simon Hunter, which I believe authorises him to advise Penrith council that:

The SSP site is impacted by corridor investigations and it would be the preference of Transport for NSW for council not to proceed to the public exhibition on the SSP until the broad options for the OSO and something called the SWRLE have been placed on public exhibition.

I think SWRLE is the south-west rail line extension.

**GEOFF CAHILL:** Correct. Yes.

**The Hon. DANIEL MOOKHEY:** It continues:

However if council did wish to proceed with a media submission then it should be acknowledged there may be potentially significant impacts on the site layout from the Outer Sydney Orbital and the South West Rail Link Extension that may trigger a need for re-exhibition.

Did you suggest to Ms Gardiner-Barnes that she issue that?

**GEOFF CAHILL:** I do not recall that.

**The Hon. DANIEL MOOKHEY:** To be fair to Ms Gardiner-Barnes, that would be appropriate to provide notice that there might be a conflict between the two and effectively we should preserve the option. There is, again, no implications.

**GEOFF CAHILL:** I assume that would be my advice, yes.

**The Hon. DANIEL MOOKHEY:** But that takes place within four days of you sending the original email, according to this time line. That is pretty fast, or not? Basically, you are a fast mover, are you?

**GEOFF CAHILL:** We have to be. Even though we are dealing with long-term strategic corridors, it is a very moveable environment.

**The Hon. DANIEL MOOKHEY:** It sounds quite exciting. Penrith council goes on to proceed with the public explanation, and that is what happens. Do you recall receiving communication from a representative of Celestino on 11 December 2015 in which they outline a position that was adopted by Celestino? The position that apparently they suggested that you might wish to consider was to move the Outer Sydney Orbital routes away from the Sydney Science Park primarily through the defence land at Orchard Hills to the north of SSP. Specifically the communication I think you received said:

There would be great merit in discussing the matter with the Federal Minister for Defence who is aware and supportive of the SSP project.

...

We are happy to keep working together to resolve the best option for the OSO rail line and SSP.

Do you recall receiving that representation from a lobbyist of Celestino?

**GEOFF CAHILL:** I do not recall that piece of correspondence.

**The Hon. DANIEL MOOKHEY:** I will give you the name of the person so you can check, if you do not mind. I think it is a Jeremy Spinak—the late Jeremy Spinak.

**GEOFF CAHILL:** Yes, I believe he has passed away. He is a person that I did speak to a number of times during that period, just as I spoke with a number of other landowners and developers, and we received various correspondence from a whole raft of people. Those pieces of correspondence all assisted us in identifying constraints and opportunities.

**The Hon. DANIEL MOOKHEY:** And, to be fair, there is nothing untoward about a suggestion that everyone has a right to put a view. I want to be very clear on that.

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** But can you check whether you specifically recall receiving that? Do you also recall receiving a representation from the member for Castle Hill at the time, Mr Ray Williams, also encouraging you to move the site I think to the north of the SSP for the OSO route using the defence land? Actually, to be fair, that representation was made to the then Minister. Did you, by any chance, see that or was that given to you?

**GEOFF CAHILL:** I cannot verify that. However, what I can say is a lot of stakeholders, including members of Parliament, made submissions or provided us with information on their views and that was put into the mix to help us make decisions. But can I go back to your earlier point about the Orchard Hills defence land? At various times we did make contact with defence. I cannot say it was in relation to the correspondence you are referring to, but at times we did look at options going through the defence land. You may be aware of two factors with that: one is it has a lot of very sensitive vegetation on it; and secondly, and more important, it is used for live firing, and there is not an ability to go through that Orchard Hills land other than just very, very minor on the site. So those options which aimed to go through the Orchard Hills defence land were fatally flawed.

**The Hon. DANIEL MOOKHEY:** Thank you, that is helpful. Just to return again to aspects of the chronology here, in March 2016 did Transport for NSW retain as consultants AECOM?

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** And did they undertake a detailed route analysis?

**GEOFF CAHILL:** Yes.

**The Hon. DANIEL MOOKHEY:** Did that also account for the public consultations?

**GEOFF CAHILL:** AECOM was engaged prior to myself coming into the team. They were engaged to look at the engineering components primarily of the Outer Sydney Orbital. They provided a strategic environmental assessment and they looked at all the options and shortlisted those. In terms of the community consultation, that was run by Transport and AECOM, along with other consultants who were involved in the consultation process.

**The Hon. DANIEL MOOKHEY:** The options that AECOM shortlisted, what was their preferred option?

**GEOFF CAHILL:** The option exhibited in 2018 is the preferred Outer Sydney Orbital alignment.

**The Hon. DANIEL MOOKHEY:** Is that the option that would bifurcate the SSP site?

**GEOFF CAHILL:** The current preferred corridor, as I recall, takes off a piece of the—

**The Hon. DANIEL MOOKHEY:** The northern part.

**GEOFF CAHILL:** The eastern part really of the Sydney Science Park, because what we are trying to do there is fit it between the Twin Creeks area and Sydney Science Park. So that corridor takes out some of the Twin Creeks property, a few holes of a golf course, and it takes out a bit of the Sydney Science Park.

**The Hon. DANIEL MOOKHEY:** That is a good point, but you are saying that right now the preferred option is the eastern corridor, or what was described as the eastern corridor?

**GEOFF CAHILL:** It takes a slice off the eastern component of Sydney Science Park.

**The Hon. DANIEL MOOKHEY:** Fair enough. Was RMS at the time doing this?

**GEOFF CAHILL:** They kicked off the Outer Sydney Orbital work. They engaged AECOM, and then when I came across into Transport we took over the running of the Outer Sydney Orbital project.

**The Hon. DANIEL MOOKHEY:** As they prepared some papers for a western Sydney infrastructure interface workshop, did RMS say that "at present Transport for NSW is undertaking a corridor preservation

exercise for the Outer Sydney Orbital and the expectation is that a western OSO alignment would be recommended to Government by the OSO project team in March 2016"?

**GEOFF CAHILL:** I would have to see the correspondence. I am not aware of what you are talking about.

**The Hon. DANIEL MOOKHEY:** Is the western OSO alignment the option that was chosen?

**GEOFF CAHILL:** I have not heard of that being referred to as a western—

**The Hon. DANIEL MOOKHEY:** Okay, fair enough. On 4 May, Mr Cahill, did you email a Mr Ian Mathews and a Mr Trevor Townsend when you cc'd a Mr Spinak and Rania Zahab, who I believe was a communications official, to say, "Jeremy Spinak has just phoned and stated that their preferred option is for the OSO to go along the eastern alignment rather than across the west to northern alignment. He also said he is flexible with the rail line location and we agreed to talk again in a couple of weeks and meet up again before any announcements." Do you recall communicating with—

**GEOFF CAHILL:** I do not recall that but that makes sense. Mr Mathews was the project manager for the Outer Sydney Orbital. He was engaged by the RTA, or Roads and Maritime Services at the time. So he was running the Outer Sydney Orbital when I joined. And Trevor Townsend was looking after the rail component.

**The Hon. DANIEL MOOKHEY:** Basically, by this point it seems like Transport had effectively agreed that when it comes to the Outer Sydney Orbital, their preferred option was option two.

**GEOFF CAHILL:** No, I beg to differ on that. As I said, corridor preservation involves trying to get a balance between a whole lot of competing values and interests. Residential areas are of utmost importance, as is commercial industrial precincts as well as environment engineering components et cetera. I regard input from Sydney Science Park and others as an input into the decision-making process.

**The Hon. DANIEL MOOKHEY:** Sure, and I am not suggesting for a second that the predominant motivation of Transport was to suit the requirements of that. But there seems to be a remarkable alignment between the outcome that resulted from this consultation and the position adopted by the Sydney Science Park proponents. They eventually did align, you would agree with that?

**GEOFF CAHILL:** Yes, the option which is the preferred option, which was exhibited in 2018, aimed to minimise the impacts on constraints and maximise opportunities. The alignment through that area impacts in part on the Twin Creeks residential development and in part on the Sydney Science Park. It is aiming to have the most palatable alignment through that area.

**The Hon. DANIEL MOOKHEY:** I accept at face value what you are saying, that Celestino's input was just one of many, but the outcome that was reached by Transport certainly prevented the Sydney Science Park from being bifurcated in two, as was originally the concern of the proponent, correct?

**GEOFF CAHILL:** Look, I believe that the final preferred alignment through there gets a pretty good balance between the impact on the residential area and on—

**The Hon. DANIEL MOOKHEY:** But, Mr Cahill, the specific question I am asking you is: The position that Transport eventually adopted here prevented the Sydney Science Park from being split into two, is that correct?

**GEOFF CAHILL:** Well, that is a statement of fact, yes.

**The Hon. DANIEL MOOKHEY:** Yes, thank you. And that did preserve the value of the site for the proponent, you would agree with that?

**GEOFF CAHILL:** It minimised the severance of Sydney Science Park. But can I also draw to your attention that, as we spoke earlier, the Orchard Hills defence land is immediately north of Sydney Science Park, and when we did our inquiries there, it was found that it was fatally flawed to put the Outer Sydney Orbital through that defence land, and that consequently pushes the alignment back towards the east.

**The Hon. DANIEL MOOKHEY:** We do not have much more time, because the Chair is scolding me here.

**GEOFF CAHILL:** Thank goodness for Madam Chair. Thank you.

**The Hon. SCOTT FARLOW:** You came here early and Mr Mookhey is going to keep you.

**The Hon. DANIEL MOOKHEY:** I actually do not have that many more questions. Mr Cahill, certainly I accept your evidence on face value that that was not the purpose of the consultation Transport were doing. But

you have to accept that the inevitable outcome did confer a benefit on Celestino in that the value of its land was not otherwise reduced as it would have been if the original plan had gone ahead?

**GEOFF CAHILL:** Yes. But, just as likely, if we had chosen to go further east, straight through the Twin Creeks residential area, the value of the residential area of Twin Creeks would have been greatly diminished.

**The Hon. DANIEL MOOKHEY:** Yes. Are you suggesting that the position of a Twin Creeks resident is identical and equal to the position of the Sydney Science Park proponent?

**GEOFF CAHILL:** That is a value judgement.

**The Hon. DANIEL MOOKHEY:** Exactly.

**GEOFF CAHILL:** But as I said before, residential areas—existing residential areas and residential areas which are well advanced in their planning phase—are of utmost concern to us. We endeavour at all possibility to miss those residential areas because of the social disruption that would be resultant.

**The Hon. DANIEL MOOKHEY:** But the final route does actually pass next to the Twin Creeks residential estate, does it not?

**GEOFF CAHILL:** It passes through part of the estate, yes.

**The Hon. DANIEL MOOKHEY:** And so those people, in the event that this corridor is inevitably developed, are likely to suffer some diminishment in the value of their land?

**GEOFF CAHILL:** We are aware that there would be some potential impacts if mitigation measures were not put in place, yes.

**The Hon. DANIEL MOOKHEY:** So it is the case that the Twin Creeks residential estates, or at least those to the east of it, are likely to suffer an impact as a result of the decision to move the orbital closer to their properties?

**GEOFF CAHILL:** There would be some direct impacts on the Twin Creeks estate, as there would be some direct impacts on the Sydney Science Park estate.

**The Hon. SCOTT FARLOW:** But not as much under that route?

**GEOFF CAHILL:** Look, as I said before, corridor preservation is all about getting a balance between values and trying to minimise impacts on people's homes and their livelihood. The preferred corridor that was exhibited, I think, does a reasonably good job at balancing those impacts through that area.

**The Hon. DANIEL MOOKHEY:** But throughout this process it was rebalanced in terms of the impact on property owners. It seems like it was rebalanced away from Celestino towards Twin Creeks. You might suggest that that is reasonable. From what we are observing, the position as it applied in 2014 versus the position that was adopted a few years later certainly did rebalance, that is correct, but the beneficiary of that rebalancement seems to be Celestino, and the people who did not benefit as much were perhaps the Twin Creeks residents?

**GEOFF CAHILL:** I would not accept that premise. I think a closer look at the alignment through there—I would have to check, but I would have thought that Twin Creeks would have been affected further to the south as well. So, yes, I would have to—

**The Hon. DANIEL MOOKHEY:** But you do not dispute that—

**GEOFF CAHILL:** I would have to check that.

**The Hon. DANIEL MOOKHEY:** —Celestino is less affected than it otherwise would have been in 2014?

**GEOFF CAHILL:** There are options that the Outer Sydney Orbital corridor could have taken which would have been very detrimental to the Sydney Science Park. There are other options which could have been very detrimental to Twin Creeks. There are options which could have been very detrimental to a number of other areas. As I said, some of the early corridors had it going up through Penrith. That could have been very detrimental. The idea of corridor preservation is trying to get the right balance between constraints and opportunities.

**The Hon. DANIEL MOOKHEY:** No Minister ever spoke to you about this, is that correct?

**GEOFF CAHILL:** I beg your pardon?

**The Hon. DANIEL MOOKHEY:** No Minister or their office ever spoke to you about this?

**GEOFF CAHILL:** I do not recall, no.



**The Hon. DANIEL MOOKHEY:** Can you, on notice, check whether you had any communications with any Minister or ministerial office about this matter?

**GEOFF CAHILL:** Yes, we can check our consultation manager database.

**The Hon. DANIEL MOOKHEY:** Thank you.

**The CHAIR:** That was very generous of you to give us a little bit of extra time. Thank you very much. That does conclude this part of the hearing and also the hearing for the day. In terms of questions taken on notice, you will have 21 days to answer them. The Committee secretariat will be in touch to arrange that. Thank you very much to the Committee team and to Hansard. That concludes the hearing.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:37.**