PERFORMANCE AUDIT

18 MAY 2021

Acquisition of 4–6 Grand Avenue, Camellia

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

audit office OF NEW SOUTH WALES

THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector, local government entities' and universities' financial statements. We also audit the Total State Sector Accounts, a consolidation of all state public sector agencies' accounts.

Financial audits are designed to add credibility to financial statements, enhancing their value to end users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to parliament. In combination these reports give opinions on the truth and fairness of financial statements, and comment on entity internal controls and governance, and compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities.

As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under Section 27B(3) of the *Public Finance and Audit Act 1983*, and section 421E of the *Local Government Act 1993*.

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Under section 27B(3)(c) of the *Public Finance and Audit Act 1983*, the Minister for Transport requested a performance audit to examine whether Transport for New South Wales conducted an effective process to purchase 4–6 Grand Avenue, Camellia and whether Transport for New South Wales has effective processes and procedures to identify and acquire property required to deliver the NSW Government's major infrastructure projects.

I am permitted by section 52(3) of the *Public Finance and Audit Act 1983* to report to Parliament on any matter that arises from the exercise of my functions that in my opinion should be brought to the attention of Parliament.

Therefore, in accordance with section 52B of the *Public Finance and Audit Act 1983*, I present a report titled '**Acquisition of 4–6 Grand Avenue, Camellia**'.

Margaret Crawford
Auditor-General
18 May 2021

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Acquisition of 4–6 Grand Avenue, Camellia

Section one

Acquisition of 4–6 Grand Avenue, Camellia

Executive summary

On 17 November 2020, the Hon. Andrew Constance MP, the Minister for Transport and Roads, requested this audit under section 27B(3)(c) of the *Public Finance and Audit Act 1983*.

On 15 June 2016, Transport for New South Wales (TfNSW) acquired 6.3 hectares of land at 4–6 Grand Avenue, Camellia, by agreement from Grand 4 Investments Pty Ltd. Grand 4 Investments was a business entity established by the owners of Billbergia Pty Ltd, a property development and investment company.

TfNSW paid Grand 4 Investments $53.5 million and assumed liability for addressing environmental issues and contamination associated with the site. This took place seven months after the vendor acquired the land as part of a competitive Expression of Interest process, in which TfNSW also participated, for $38.15 million.

TfNSW is the NSW Government agency responsible for most major transport infrastructure projects in New South Wales. TfNSW acquired the Camellia site for use as a stabling and maintenance depot to support the Parramatta Light Rail (PLR) project.

Consistent with the minister's request, this audit assessed:

- whether TfNSW conducted an effective process to purchase 4–6 Grand Avenue, Camellia
- whether TfNSW has effective processes and procedures to identify and acquire property required to deliver the NSW Government's major infrastructure projects.

In considering the effectiveness of the processes for this purchase, the audit considered:

- the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act)
- the application of sound processes to manage risk to the NSW Government and to achieve value for money
- the application of disciplines associated with complex procurement, such as probity, in a NSW Government context.

Conclusion

TfNSW conducted an ineffective process to purchase 4–6 Grand Avenue, Camellia. TfNSW did not obtain a formal valuation of the site, nor did it assess the financial impact of environmental remediation before the purchase. TfNSW did not have sound probity management controls in place for the transaction, and decision-making was rushed and poorly informed. These omissions from TfNSW's application of due diligence over the use of public money mean that TfNSW is unable to demonstrate that the acquisition represented value for money for the State.

TfNSW's formal valuation of the site, which it obtained after the acquisition was finalised, specifically excluded consideration of environmental contamination risk.

TfNSW did not obtain a formal valuation of the site before completing the transaction. Instead, it commissioned a valuation on the day of settlement. Although TfNSW knew the site was contaminated, it instructed the valuer to disregard the effect of existing site contamination. This raises doubts about the purpose and validity of the valuation and whether it provided any genuine basis upon which TfNSW could assure itself that the acquisition represented value for money for the State.

The lack of analysis and due diligence to support the level of financial offer and the approach to environmental contamination risk constitutes poor governance and ineffective administration.

During the transaction, TfNSW's position on the implications of the contamination changed. Initially, TfNSW was unwilling to accept the costs and risks of contamination, but later changed its position to accepting the risk and costs unconditionally. TfNSW could not explain or justify this decision.

While TfNSW had access to considerable information regarding the environmental risks associated with the site, it did not commission any advice on the implications or likely costs of remediation until after the acquisition was finalised. TfNSW was not able to supply any evidence to justify why it accepted unconditional liability for contamination costs and risks.

At the time of this report, TfNSW has entered into contracts worth $106.9 million for environmental remediation of the site, ground improvement works and other remediation-related consultant costs, such as Environment Protection Authority (EPA) site auditors. Out of the total forecast cost of $106.9 million TfNSW has incurred $105.9 million to date, with the majority spent on remediation.

TfNSW's probity practices were insufficient and exposed TfNSW to a greater risk of corruption, misconduct and maladministration.

The probity management controls and assurances in place for the acquisition were insufficient given the known high probity risk profile of the transaction. Specific risks affecting the acquisition included the short timeframe for negotiating the terms of the agreement and high value of the transaction. Despite these risks, TfNSW did not:

- have a comprehensive probity management policy or plan
- have a documented negotiation strategy
- keep complete or comprehensive records of negotiations or decisions
- engage independent specialist probity advice or assurance.

The records show that only one person completed a conflict of interest declaration. TfNSW's insufficient probity practices and gaps in documentation mean that we are unable to exclude the possibility that the transaction was affected by misconduct or corruption.

TfNSW staff did not have approval to offer $53.5 million to Grand 4 Investments, and the Acting Deputy Secretary who approved the acquisition did not have delegation to do so.

On 21 April 2016, TfNSW offered Grand 4 Investments $53.5 million for the site, with TfNSW assuming liability for remediating the site. When discussing an offer with the landowner, the Technical Director Project Property Services, who was acting as lead negotiator, was not working within any documented or agreed funding limits or conditions of purchase. Neither TfNSW's Finance and Investment Committee (FIC), nor any other appropriately delegated person, had authorised terms or funding limits for the acquisition.

On 29 April 2016, the Acting Deputy Secretary, Infrastructure and Services, approved the acquisition. While the Acting Deputy Secretary would normally have delegation to approve the acquisition, they did not in this case as it was undertaken in advance of the approved business case and associated funding for the Parramatta Light Rail (PLR). As such, any property acquisitions for the PLR required specific funding approval from FIC.

Consideration of the acquisition was rushed and poorly informed.

FIC was the Senior Executive Committee in TfNSW responsible for providing executive oversight and releasing funding for major capital projects. At the time of the acquisition, FIC included in its membership the Secretary and Deputy Secretaries of TfNSW. On 16 May 2016, FIC approved the release of $53.5 million for the purchase of 4–6 Grand Avenue.

FIC's consideration of the acquisition was rushed and poorly informed and based on information that was biased towards efforts to complete the transaction. As FIC managed the matter out-of-session and FIC members were provided less than two hours to consider the proposal, there was negligible opportunity for Committee discussion and questioning of the responsible officers. There is no evidence that FIC members queried obvious gaps in the information they were provided, such as the lack of information on contamination remediation costs and the lack of a formal valuation to support the purchase price. This is not consistent with the effective and ethical stewardship of public resources.

Internal policies and procedures to guide the transaction were, and continue to be, insufficient.

Procedures and guidance in place at TfNSW to support property acquisitions in 2016 lacked specificity on how, or when, to apply guidance that would have been relevant to the acquisition of 4–6 Grand Avenue. Where the procedures did contain relevant requirements or guidance, this was not followed. As at the time of this audit, the policies and processes are largely unchanged for TfNSW, and the performance gaps identified in the 4–6 Grand Avenue transaction remain.

TfNSW has identified that the acquisition was at increased risk of fraudulent activity and financial loss but has not investigated whether these risks were realised.

Following media enquiries in February 2019, TfNSW became aware of the potential for probity or integrity issues with the transaction. In response to these enquiries, TfNSW's Workplace Investigations section identified several potential fraud and corruption risks. Subsequently, TfNSW staff considered whether to conduct an internal audit or misconduct investigation. The Director of Audit and Risk noted that an internal audit would be unlikely to detect wrongdoing unless the audit included a 'deep dive' component. The then Deputy Secretary, Infrastructure and Place, made the decision to conduct an internal audit on the basis that an internal audit was the most appropriate initial course to identify whether the acquisition had been made in accordance with TfNSW policy.

The internal audit identified a high-risk deficiency in the control framework for commercial land acquisitions that exposed TfNSW to an increased risk of fraudulent activity and high probability of financial loss. Notwithstanding the internal audit's findings, TfNSW has not conducted any other investigation or review to assess whether those risks were realised in the acquisition of 4–6 Grand Avenue.

1. Key findings

TfNSW's acquisition of 4–6 Grand Avenue for a suitable price in Camellia was consistent with the PLR project objectives

In 2014, a feasibility study for the PLR identified 4–6 Grand Avenue as one of several options suitable for a stabling and maintenance depot. The study found that a centrally located stabling and maintenance facility would be required for all routes serving the Parramatta CBD, and that the Camellia industrial area was a preferred location for such a facility. As such, the acquisition of the 4–6 Grand Avenue site in Camellia was consistent with the PLR project objectives.

However, the work to acquire the site occurred in advance of the PLR project officially commencing and before many of the processes that usually come with the initiation of a project, such as a property acquisition strategy. TfNSW recognised the risks associated with early acquisition and had considered the option of disposing of the site should it ultimately not be required.

TfNSW acquired the site by agreement with the then landowner, which is consistent with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991*

One of the objects of the *Land Acquisition (Just Terms Compensation) Act 1991* ('the Act') is to encourage the acquisition of land by agreement instead of compulsory process. In this regard, TfNSW's acquisition of 4–6 Grand Avenue site by negotiation and agreement with the landowner is consistent with the terms and the objects of the Act. Further, TfNSW's efforts to seek ministerial approval for compulsory acquisition should negotiations break down is also consistent with the Act.

Grand 4 Investments wanted to finalise the transaction quickly, and TfNSW did not escalate risks arising from this

Grand 4 Investments was a special purpose vehicle (a type of business entity with a specific purpose) created and controlled by the owners of Billbergia specifically for its purchase of 4–6 Grand Avenue.

In March 2016, TfNSW approached Grand 4 Investments regarding its interest in 4–6 Grand Avenue.

Grand 4 Investments advised TfNSW that it was seeking tenants for the site. In line with the requirements of the Act, TfNSW would have had to pay more in compensation if Grand 4 Investments had leased the site. Grand 4 Investments pressed TfNSW to finalise the transaction on the basis that a tenancy agreement was imminent. There is no evidence that TfNSW sought verification from Grand 4 Investments or any other source regarding the existence of prospective tenants.

Pressure applied by the vendor to hasten the transaction is a risk that TfNSW staff should have escalated to TfNSW's executive leadership. It did not.

TfNSW did not obtain comprehensive, independent valuation advice to support its assessment of market value before it acquired 4–6 Grand Avenue

The Act requires compensation to be based on the market value of the land. It was not until the date of settlement for the property acquisition, 15 June 2016, that TfNSW engaged an independent valuer to assess the market value of 4–6 Grand Avenue.

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

TfNSW's failure to obtain an independent professional valuation prior to the acquisition breached its own policies and does not support the requirements of the Act that market value guide compensation. The absence of independent valuation prior to purchase exposed TfNSW to the risk that the price it paid exceeded market value.

TfNSW instructed the independent valuer to exclude consideration of environmental contamination

When TfNSW commissioned an independent valuation of 4–6 Grand Avenue, it instructed the valuer to:

- Conduct a market valuation on an 'as is' basis – with market value based on the methodology described in the Act. This approach valued the site at $25.0 million.
- Conduct a second market valuation, made on a speculative development basis – with market value based on the financial value of the vendor's intended use of the site which, in this case, involved leasing the site for industrial use. This approach valued the site at $52.0 million. TfNSW advised us that this valuation retrospectively supported the purchase price.
- Disregard any known or unknown site contamination for both valuations.

The site is affected by significant environmental contamination and this was known at the time of the acquisition. Accordingly, the instruction to disregard any contamination resulted in a valuation that overstated the value of the site by excluding the cost of environmental remediation.

TfNSW staff did not have formal approval when they made an offer of $53.5 million to Grand 4 Investments

On 21 April 2016, TfNSW offered Grand 4 Investments $53.5 million for the site, with TfNSW assuming responsibility and liability for remediation.

The Technical Director Project Property Services, who was acting as lead negotiator, was not guided by acquisition terms or funding limits. There was no negotiation strategy in place, nor any documented or agreed funding limits, terms or conditions to support the offer made. Neither TfNSW's Finance and Investment Committee (FIC), nor any other appropriately delegated person, had authorised terms or funding limits for the acquisition. The absence of an independent professional valuation during the negotiation exacerbated these gaps in acquisition and negotiation plans.

In the absence of approved funding for the PLR project, the Acting Deputy Secretary who approved the acquisition did not have delegation to do so

On 29 April 2016, the Acting Deputy Secretary, Infrastructure and Services, approved the acquisition. The Acting Deputy Secretary did not have delegation to approve the acquisition because it was conducted in advance of an approved business case and associated funding for the PLR. As such, any property acquisitions for the PLR required specific funding approval from FIC.

TfNSW accepted responsibility for the environmental remediation, but did not assess the environmental contamination risks or seek independent expert advice

TfNSW was aware of contamination issues affecting the land and had access to considerable information about the environmental conditions, such as site environmental audit reports and information on the NSW EPA's contaminated land register. However, TfNSW did not seek to inform itself of the implications of this, including the likely costs for remediation. When TfNSW changed its position from not being willing to accept the risks and costs of contamination, to acquiring the site unconditionally and accepting the costs associated with contamination, it did so without any specific information about what these costs could be. There is no documented or clear basis for this decision.

The acquisition was also not supported by a comprehensive and up-to-date risk management plan. A risk management plan could have identified risks that impacted on value for money and may have supported clearer and more robust decision-making around issues such as probity management and contamination risks.

The cost of remediation has been significant, which diminishes the value of the land at the time of acquisition

At the time of this report, TfNSW has entered into contracts worth $106.9 million for environmental remediation of the site, ground improvement works and other remediation-related consultant costs, such as EPA site auditors. Out of the total forecast cost of $106.9 million, TfNSW has incurred $105.9 million to date, with the majority spent on remediation.

Briefings omitted key information to inform prudent decision-making, and there is no evidence that decision-makers queried gaps in the advice they received

At the time of the acquisition, TfNSW's FIC was responsible for making decisions on funding allocations at a whole of program level within TfNSW. FIC was also responsible for approving 'High Risk/High Value' variations to program budgets. FIC comprised the Secretary and Deputy Secretaries of TfNSW.

Exhibit 6 on page 33 contains a description of TfNSW's investment decision thresholds.

On 16 May 2016, FIC considered an out-of-session request to approve the release of $53.5 million for the purchase of 4–6 Grand Avenue.

The briefing note considered by FIC, recommending the release of these funds, was signed by the then Deputy Secretary, Finance and Investment. This briefing note:

- included a high-level description of the property, the price being offered and the fact that the Strategic Business Case for the PLR had not been completed
- stated that TfNSW was forecasting a capital underspend of $258 million for the financial year with likely further deterioration
- remarked that 'TfNSW will need to undertake remediation works to obtain a Site Audit Statement' and that the request for funding did not include remediation, fencing or operating expenditure.

This briefing note followed a business paper submitted on 29 April 2016 by the Acting Deputy Secretary, Infrastructure and Services. The business paper sought release of funding of $80.2 million for the 'purchase and remediation of a site at Camellia to be used as a stabling facility for the Project.' The $80.2 million comprised $53.5 million for property acquisition and $26.7 million for remediation and other costs. However, the briefing note ultimately considered by FIC replaced this business paper, and did not include the request for $26.7 million. FIC's consideration of remediation and operation costs for the site was postponed pending approval of the PLR business case in 2016–17.

Both the 29 April 2016 business paper and the briefing considered by FIC on 16 May 2016 were silent on a number of important matters that were relevant for FIC to consider, including:

- explanation of the 40 per cent increase in purchase price between November 2015 and May 2016 - from $38.15 million to $53.5 million
- an evidence-based estimate of costs required to remediate the site as TfNSW had changed its earlier position and were accepting all responsibilities and liabilities for environmental contamination
- advice that an independent valuation had not been obtained
- advice that TfNSW did not follow its own internal procedures (such as having updated due diligence checklists)
- advice that Grand 4 Investments were applying pressure to finalise the transaction rapidly, including context with respect to Grand 4 Investment's comment regarding a 'highly political circumstance'.

On 16 May 2016, FIC members were emailed to request their out-of-session consideration for the release of $53.5 million for the purchase of 4–6 Grand Avenue. FIC members were provided less than two hours to vote on the proposal and they approved the release of funding that day. Four (of six) FIC members voted to approve the proposal. The Secretary and Deputy Secretary, Freight Strategy and Planning did not vote.

There is no evidence that FIC members queried the quality of advice they were provided when they made the decision to fund the acquisition, nor that they considered the balance of opportunities and risks of the acquisition.

TfNSW did not keep complete or comprehensive records of negotiations or decisions, reducing transparency of the process and outcomes

Email records indicate frequent interactions between TfNSW officers and Grand 4 Investments staff between 6 April and 21 April 2016.

In our assessment, TfNSW's records did not contain sufficient information on participants in meetings and discussions, nor on negotiation terms agreed or discussed – including price and conditions. Also, TfNSW's documentation refers to phone calls with Grand 4 Investments, but matters or details discussed in these calls were not documented.

There is also limited documentation of discussions and direction with senior leaders and central areas within TfNSW (including the Project Director and the Finance area) informing and authorising the negotiations.

The probity management controls and assurances in place for the acquisition were inadequate given the probity risk profile of the transaction

The purchase was a high-risk, high-value acquisition undertaken without some of the standard project controls and in an environment of volatile property market conditions. Specific risk factors that are relevant include:

- a high value transaction where market testing is difficult
- a transaction undertaken in a short timeframe, under significant pressure.

TfNSW should have obtained independent specialist probity advice or assurance. It did not.

Officers advised that they complied with TfNSW expectations regarding probity management. However, TfNSW did not have any probity policies to inform these expectations beyond a conflict of interest policy. TfNSW's records include only one conflict of interest declaration, despite more officers being involved with the acquisition including in dealings with the landowner. TfNSW's lead negotiator did not complete a conflict of interest declaration.

TfNSW's probity and record keeping practices for this transaction were insufficient in addressing the risks of potential misconduct or corruption. The insufficient probity practices and gaps in documentation mean that we are unable to exclude the possibility of misconduct or maladministration.

TfNSW did not appropriately respond to risks of corruption, misconduct or maladministration when they were brought to the agency's attention

Following media enquiries in February 2019, TfNSW became aware of the potential for probity or integrity issues with the transaction.

In response to these enquiries, TfNSW's Workplace Investigations section identified several potential fraud and corruption risks. Subsequently, TfNSW staff considered whether to conduct an Internal Audit or misconduct investigation. The Director of Audit and Risk noted that an Internal Audit would be unlikely to detect wrongdoing unless the audit included a 'deep dive' component. TfNSW commissioned an internal audit in connection with the transaction in 2019. That internal audit did not contain a 'deep dive' component that would respond to the identified fraud and corruption risks.

The then Deputy Secretary, Infrastructure and Place, made the decision to conduct the internal audit on the basis 'that an internal audit was the most appropriate initial course to identify whether the decision to purchase the land at 6 Grand Avenue, Camellia had been made in accordance with [the] requirements of policy.' He stated:

> I believed that until an internal audit had been conducted, an investigation could not be appropriately directed to a task or tasks. There was no allegation of misconduct.

The internal audit identified a high-risk deficiency in the control framework for commercial land acquisitions that exposed TfNSW to an increased risk of fraudulent activity and high probability of financial loss.

Notwithstanding the internal audit findings, TfNSW has not conducted any other investigation or review to assess whether those risks were realised in the acquisition of 4–6 Grand Avenue. It would have been reasonable, having regard to queries made to the Department and the internal audit findings, for TfNSW to conduct an independent investigation to identify whether these risks eventuated and whether they were systemic across the land acquisition function within the agency.

At the time of the transaction, TfNSW property acquisition policy framework was not sufficiently risk focussed and did not provide clarity on when staff should apply prescribed guidance

At the time of the acquisition, TfNSW had property acquisition policies and procedures in place. Each of these were broadly sound in their content and intent. However, in many respects they lack specificity on how or when to apply guidance, and when risk levels should elevate the importance of recommended guidance.

In the case of the acquisition of 4–6 Grand Avenue, key aspects of these policies and procedures were not followed, including in connection with due diligence about the site being acquired, and in connection with the requirement to obtain an independent specialist valuation prior to completing any acquisition.

TfNSW's key guidance was principles based and relied on agency staff using their experience and expertise to apply guidance according to the circumstances of an individual transaction. This guidance was not duly applied in this acquisition. In addition, there was no quality or control assurance to identify when TfNSW officers did not apply important policies or processes.

TfNSW's policies and procedures are more focussed on acquiring land to meet project needs and timeframes, and less on assuring value for money and managing risks

TfNSW's primary focus in undertaking a property acquisition is to achieve vacant possession of the land in a timeframe that meets the need of the relevant project and in compliance with the *Land Acquisition (Just Terms Compensation) Act 1991.* There is much less specific focus on the need to meet the requirements of the NSW Government financial management framework as outlined in the *Government Sector Finance Act 2018.*

Principles and requirements from the *Government Sector Finance Act 2018* relevant to this transaction include sound financial risk management, transparency and accountability, as well as the efficient, effective and economical use of government resources. TfNSW's Land Acquisition Practice Note does not refer to these principles and requirements, and TfNSW's briefing notes seeking approval for the acquisition did not document how value for money was obtained.

TfNSW's land acquisition policies require clarification on the interaction between the two pieces of legislation, to reinforce the importance of demonstrating value for money while achieving project outcomes.

Many of the gaps in policy and procedure guidance noted throughout this report remain gaps in TfNSW guidance at the time of this audit

The TfNSW policies, procedures and guidance associated with property acquisitions consist of a wide range of guidance notes, guidelines, standards, practice notes, templates, checklists, fact sheets, brochures, explanatory notes and other documents. In total there are 75 separate documents, some developed by TfNSW and others developed by NSW Government agencies such as NSW Procurement. It is difficult for agency staff to efficiently search these documents for guidance in specific circumstances.

The majority of these documents are substantially unchanged from 2016, with only minor updates.

In December 2019, the NSW Government abolished Roads and Maritime Services (RMS) as a separate statutory entity and integrated legacy RMS functions into TfNSW. Both predecessor agencies had their own property acquisition guidance.

Currently, most land acquisitions within TfNSW are managed in accordance with legacy RMS guidance. Our assessment of the RMS guidance indicates that it provides more comprehensive advice and direction, including guidance on how to manage specific circumstances. It also includes the requirement for 'annual compliance monitoring of acquisition matters', with limited direction on how this monitoring should be directed or undertaken. Our audit did not seek to examine how effectively the RMS legacy guidance is applied because it was not used for the acquisition of 4–6 Grand Avenue.

TfNSW advised that an integrated suite of property acquisition policies is in development and will be finalised this year. TfNSW further advised that, at the time of this audit, two acquisitions are being carried out under the existing TfNSW policies.

2. Recommendations

By December 2021, the Minister for Transport and Roads should:

1. take necessary steps to ensure that the deficiencies identified in this audit are not systemically diminishing Transport for NSW's effective and ethical stewardship of public resources.

By December 2021, Transport for NSW should:

2. ensure that an independent investigation is conducted to identify whether the acquisition of 4–6 Grand Avenue was affected by maladministration, fraudulent activity or misconduct
3. ensure its policies and procedures for land acquisitions include the following:
    - an assessment of risk for each acquisition
    - the requirement for property specific acquisition plans to be established and approved by the Project Director for all medium risk or high value property acquisitions (and the responsible Deputy Secretary for all high-risk property acquisitions), which include:
        - an approved business case
        - the options analysis for possible properties to define why the property is preferred
        - a negotiation strategy
        - a risk management plan for risks associated with the acquisition
    - the requirement for independent, and appropriately scoped, valuation to be obtained and utilised to establish a compensation amount for all acquisitions
    - the requirement for a due diligence report to be prepared that supports executive consideration of all proposals for approval of land acquisition offers, and terms and conditions
    - the requirement for submissions for approval for acquisitions of land to clearly disclose all anticipated costs (including the costs to remediate and manage contamination) required to be incurred to allow a site to support the intended use
    - guidance in the commissioning and instructing of valuers for valuations to support acquisitions
    - guidance on the minimum requirements for due diligence reports
    - specific probity requirements and procedures for land acquisitions, including any increased procedures for high-risk acquisitions. This should include guidance on when to utilise probity advisers and/or auditors
4. establish a controls assurance process to ensure compliance with key policies and procedures for high-risk or high-value land acquisitions
5. design its land acquisition policy framework to be comprehensive and accessible
6. provide clarity on the interaction between the *Land Acquisition (Just Terms Compensation) Act 1991* and the *Government Sector Finance Act 2018* and reinforce the importance of achieving value for money from government expenditure while also supporting project outcomes
7. improve accountability and transparency by establishing a consistent process for members of senior committees to make, and record, queries when considering matters out-of-session.

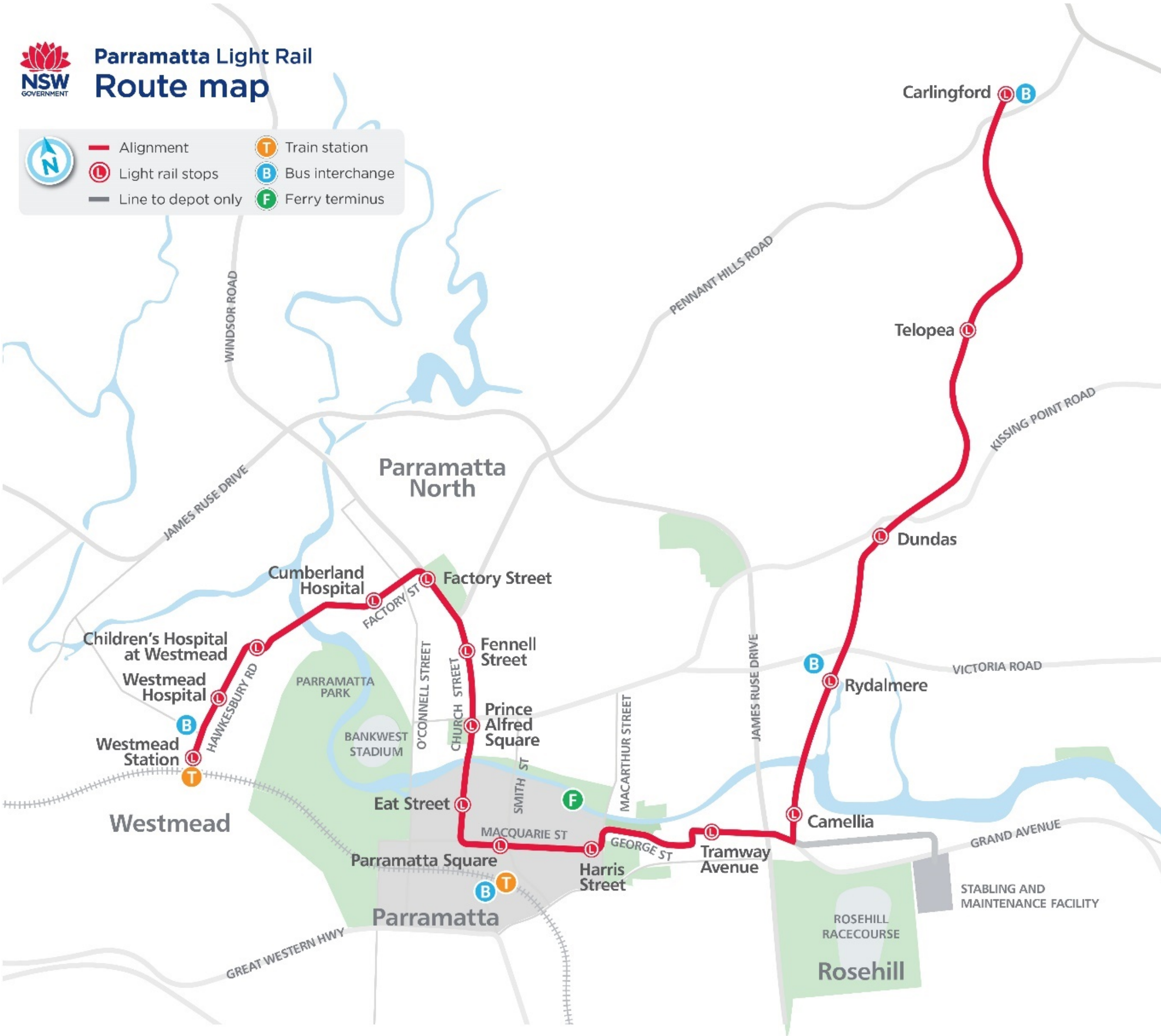
1. Introduction

1.1 Parramatta Light Rail

The Parramatta Light Rail (PLR) is a significant infrastructure project intended to serve Western parts of the Sydney region.

The PLR will connect Westmead to Carlingford via the Parramatta CBD and Camellia with a two-way track spanning 12 kilometres. It is expected to open in 2023. The current route, which was announced in February 2017, will link Parramatta's CBD and train station to the Westmead Health Precinct, Cumberland Hospital Precinct, the Bankwest Stadium, the Camellia Town Centre, the proposed science and technology museum Powerhouse Parramatta, the private and social housing redevelopment at Telopea, Rosehill Gardens Racecourse and three Western Sydney University campuses.

Exhibit 1: Parramatta Light Rail Route Map



Source: Transport for NSW.

History of the Parramatta Light Rail project

In 2013, the Parramatta City Council published a $1.0 million feasibility study into a proposed Western Sydney Light Rail Network, designed to improve transport links throughout Western Sydney and meet the challenges posed by the projected rise in population in the region in the coming decades. The study found that a light rail system was a viable solution to address the growing transport needs of Parramatta and Western Sydney.

As part of its 2014–15 budget, the New South Wales Government announced that Transport for NSW (TfNSW) would investigate ten potential light rail routes in Western Sydney. The government allocated $400 million to ensure funds for detailed planning and construction of an initial project would be 'ready to go', should the investigations prove favourable. Six of the ten routes being investigated were eliminated from contention in October 2014. Exhibit 2 provides information on the routes TfNSW investigated.

Exhibit 2: Parramatta Light Rail routes considered by TfNSW

Route option	Selection
Parramatta to Bankstown	Option not progressed.
Parramatta to Castle Hill via Old Northern Road	Option not progressed.
Parramatta to Castle Hill via Windsor Road	Eliminated in October 2014.
Parramatta to Liverpool via T-way	Eliminated in October 2014.
Parramatta to Macquarie Park via Carlingford	Parramatta to Carlingford section selected as Phase 1.
Parramatta to Macquarie Park via Eastwood	Eliminated in October 2014.
Parramatta to Strathfield/Burwood via Sydney Olympic Park	Strathfield option selected, and route extended from Sydney Olympic Park to Strathfield/Burwood in October 2014 as potential Phase 2.
Parramatta to Sydney CBD via Parramatta Road	Eliminated in October 2014.
Parramatta to Rouse Hill	Eliminated in October 2014.
Parramatta to Ryde via Victoria Road	Eliminated in October 2014.

Source: Transport for NSW.

On 8 December 2015, the government announced that it had selected a truncated version of the Macquarie Park route that ends at Carlingford, plus a Strathfield route. The two routes were proposed to converge at Camellia and proceed through Parramatta to Westmead.

Acquisition of 4–6 Grand Avenue, Camellia

On 15 June 2016, TfNSW acquired 4–6 Grand Avenue, Camellia, by agreement (not as a compulsory acquisition), paying $53.5 million and taking on all responsibilities from Grand 4 Investments Pty Ltd for addressing environmental issues and contamination associated with the site. Grand 4 Investments, the vendor for the sale, was a special purpose vehicle (a type of business entity with a specific purpose) created and controlled by the owners of Billbergia Pty Ltd, a property development and investment business, specifically for its purchase of 4–6 Grand Avenue.

This took place seven months after TfNSW's unsuccessful participation in a competitive Expression of Interest (EOI) process to acquire the property. Grand 4 Investments was the successful bidder in the EOI process where they made Akzo Nobel Pty Ltd an unconditional offer of $38.15 million for the site. TfNSW's unsuccessful offer was for $28.25 million and conditional to Akzo Nobel accepting responsibility for existing contamination of the property.

TfNSW acquired the land for use as a stabling and maintenance facility as part of the Parramatta Light Rail project. A stabling and maintenance facility is an essential part of a rail project, providing a location for rolling stock to be parked when not in use, as well as providing a location for maintenance of rolling stock.

A timeframe of key events leading up to the acquisition of property is outlined below in Exhibit 3.

Exhibit 3: Timeline of key events

Date	Event
2 June 2014	NSW Premier announces Parramatta Light Rail feasibility study.
27 October 2014	Four short-listed route corridors announced by government.
March 2015	Akzo Nobel Pty Ltd (the then owner of 4–6 Grand Avenue, Camellia) launches an Expression of Interest process managed by CBRE for the public sale of the site.
9 April 2015	TfNSW's Finance and Investment Committee (FIC) approves $30.0 million plus GST to purchase the 4–6 Grand Avenue site in the EOI process, as well as authorising $250,000 to be expended on due diligence activities. The request for approval was accompanied by a risk management plan that advised of an intention to not accept responsibility for existing contamination of the property as part of any acquisition.
20 April 2015	TfNSW's feasibility study addendum provides specific assessment of suitability of 4–6 Grand Avenue as a site for a stabling and maintenance facility.
23 April 2015	TfNSW makes first conditional offer in the EOI process, for $19.84 million. The offer is conditional to the vendor accepting responsibility for remediating the site.
4 May 2015	TfNSW makes revised conditional offer in the EOI process, for $22.0 million plus GST. The offer is conditional to the vendor accepting responsibility for remediating the site.
11 August 2015	TfNSW makes revised conditional offer in the EOI process, for $28.25 million plus GST, noting gaps in certain environmental information. The offer is conditional to the vendor accepting responsibility for remediating the contaminated site.
18 September 2015	TfNSW confirms conditional offer in the EOI process, for $28.25 million plus GST. The offer is conditional to the vendor accepting responsibility for remediating the contaminated site.
25 November 2015	Akzo Nobel finalises contract for sale of 4–6 Grand Avenue with Grand 4 Investments Pty Ltd. The sale was made based on an unconditional offer of $38.15 million.
8 December 2015	Government announced the route of the Parramatta Light Rail.
1 April 2016	First meeting between TfNSW and Grand 4 Investments following approach from CBRE (the agent that managed the original EOI process).
12 April 2016	Second meeting between TfNSW and Grand 4 Investments.
15 April 2016	Grand 4 Investments advises TfNSW that it expects $75.0 million for the site.
19 April 2016	Briefing note provided to the secretary and minister to authorise compulsory acquisition. This was approved by the minister on 28 April 2016.
20 April 2016	Third meeting between TfNSW and Grand 4 Investments.
21 April 2016	TfNSW offers Grand 4 Investments $53.5 million for the acquisition of 4–6 Grand Avenue site with TfNSW assuming all responsibility and liability for remediating the site.
22 April 2016	In response to the offer letter provided by TfNSW, Grand 4 Investments seeks a final and binding offer from TfNSW.
27 April 2016	TfNSW writes to Colliers International requesting a quote for valuation services to support the acquisition of 4–6 Grand Avenue. Colliers is ultimately engaged for this work on 15 June 2016.
29 April 2016	Acting Deputy Secretary Infrastructure and Services approves the acquisition of 4–6 Grand Avenue site for $53.5 million, purchasing the site 'as is' with TfNSW to undertake remediation to decontaminate the site.

Date	Event
29 April 2016	Acting Deputy Secretary Infrastructure and Services submits a business paper to FIC to request release of funds including $80.2 million for the purchase and remediation of 4–6 Grand Avenue site. The business paper does not include information regarding how it estimated remediation costs. This business paper was not provided in full to FIC, and instead informed a 13 May 2016 briefing note from the Deputy Secretary Finance and Investment to FIC.
11 May 2016	TfNSW submits payment authorisation for $5.35 million as payment of ten per cent deposit.
13 May 2016	Briefing note from Deputy Secretary Finance and Investment to FIC regarding the 29 April 2016 business paper. The briefing note only addresses the request of $53.5 million for the purchase of the property and does not carry any detail on the $26.7 million included in the 29 April 2016 business paper. The briefing note states that 'TfNSW will need to undertake remediation works to obtain a Site Audit Statement' and that the request for funding does not include remediation, fencing or operating expenditure. The briefing note also states that acquisition of land is required to be finalised by 30 June 2016.
16 May 2016	Email to FIC members requesting out-of-session consideration for the release of $53.5 million for the purchase of 4–6 Grand Avenue.
16 May 2016	FIC considers the 13 May briefing note and approves the release of funds ($53.5 million) for the purchase of 4–6 Grand Avenue site.
17 May 2016	Executive Director, Program Delivery, as signatory of the contract for acquisition of the 4–6 Grand Avenue, approves the Acquisition Agreement.
19 May 2016	Deed of Acquisition, Compensation and Release and Contract of Sale signed by Technical Director, Property, Finance and Investment Division for TfNSW.
23 May 2016	Acting Deputy Secretary Infrastructure and Services submits a business paper to FIC requesting the release of $88.715 million to fund the Parramatta Light Rail project in 2016–17. The business paper asks FIC to note that $26.7 million (of the $88.715 million) would be for the operation, management and remediation of the depot stabling facility.
7 June 2016	FIC approved $64.0 million for Parramatta Light Rail Project, but FIC, noting the Finance and Investment evaluation, did not approve the request for $24.7 million for environmental remediation costs. The Executive Director of the Light Rail Project advised that a further submission would be made if the funds were required. The meeting minutes for this meeting note that FIC approved $53.5 million funding for the acquisition of 4–6 Grand Avenue on 16 May 2016.
15 June 2016	Settlement date for the acquisition - TfNSW paid $48.15 million (as balance of funds) to Grand 4 Investments for the acquisition of 4–6 Grand Avenue site.
15 June 2016	TfNSW engages Colliers to conduct a formal valuation of 4–6 Grand Avenue.
24 October 2016	Colliers provides draft formal valuation report to TfNSW. The report uses 8 July 2016 as the date of valuation. The report values the 'as is' value at $25.0 million and a 'speculative redevelopment potential value' of $52.0 million. The valuation specifically excludes analysis and financial impact of costs and liability to remediate the contaminated site.
23 November 2016	Colliers provides final formal valuation report to TfNSW. The report uses 8 July 2016 as the date of valuation. The report values the 'as is' value at $25.0 million and a 'speculative redevelopment potential value' of $52.0 million. The valuation specifically excludes analysis and financial impact of costs and liability to remediate the contaminated site.

Source: Audit office analysis based on research of Transport for NSW documents.

1.2 About the audit

On 17 November 2020, the Minister for Transport and Roads, the Hon. Andrew Constance, requested the Auditor-General conduct an audit under section 27B(3)(c) of the *Public Finance and Audit Act 1983* (PFAA). The minister requested that the audit focus on whether:

- Transport for NSW conducted an effective process to purchase 4–6 Grand Avenue, Camellia and
- Transport for NSW has effective processes and procedures to identify and acquire the property required to deliver the NSW Government's major infrastructure projects.

The audit assessed the acquisition against the following criteria:

1. Transport for NSW's acquisition of the 4–6 Grand Avenue was consistent with the objectives for the Parramatta Light Rail project.
2. Transport for NSW's acquisition of the 4–6 Grand Avenue was consistent with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991.*
3. Transport for NSW identified and managed risks relevant to the acquisition of the Camellia property, and considered reasonable alternatives to the purchase:
    a) Sub-criteria: effective governance arrangements to support identification and management of risk.
    b) Sub-criteria: effective processes to support identification and management of risk in the acquisition of complex parcels of land.
4. Transport for NSW had effective probity processes throughout the acquisition of the Camellia property.
5. Transport for NSW had policies, processes and systems in place that supported the effective acquisition of the Camellia property and the demonstration of value for money for government expenditure.

Consistent with the request from the Minister for Transport and Roads that forms the basis for this performance audit, the scope of the audit was limited to the single transaction, being the acquisition of 4–6 Grand Avenue, Camellia and the processes and procedures that were in place at this time.

2. Alignment of the acquisition to the objectives of the Parramatta Light Rail Project

> **The acquisition of the 4–6 Grand Avenue site in Camellia was consistent with a 2014 feasibility study for the PLR, but occurred before the completion of detailed project planning or an acquisition strategy.**
>
> TfNSW made two attempts to acquire the 4–6 Grand Avenue site in Camellia, and was successful on the second attempt. TfNSW recognised the risks associated with early acquisition and had high-level strategies in place should the site not be required.
>
> The specific site had been identified in a feasibility study for the PLR commissioned by TfNSW in 2014 as one of several options in Camellia for a stabling and maintenance depot. However, TfNSW had not done any substantive analysis of the various options to identify a preferred location before the two opportunities to acquire 4–6 Grand Avenue were brought to TfNSW's attention by the landowners (or their agents). On both occasions, TfNSW chose to actively pursue acquisition in advance of any such analysis.
>
> The acquisition was also not informed by a Property Acquisition Strategy, which TfNSW policy recommends in order to guide the process and manage acquisition specific risks.

In 2015, TfNSW identified that it would require a stabling and maintenance depot in the Camellia area for the Parramatta Light Rail

In 2014, TfNSW commissioned an external engineering consultancy to undertake a feasibility design study for the Parramatta Light Rail - the Parramatta Transport Corridor Strategy Feasibility Design study (herein referred to as 'the feasibility study'). In early 2015, TfNSW received the feasibility study, which was one of several key sources that informed the development of business cases for the PLR.

The feasibility study recommended that TfNSW should consolidate the maintenance and cleaning operations with overnight stabling facilities on one site. The study noted that the optimal location for any such site would be in close proximity to the proposed network, and noted that the site must have access to road connections to accommodate access for cars and trucks.

The study found that a centrally located stabling and maintenance facility would be required for all routes serving the Parramatta CBD, and that the Camellia industrial area was a preferred location for such a facility. The study noted that the Camellia area was contaminated.

The feasibility study notes that its conclusions were based on assumptions about the light rail system adopted and decisions made by the future operator of the system, who had not yet been selected or appointed.

TfNSW's decision to progress a potential acquisition in 2015 considered the risk that the site may not be required

TfNSW's FIC was responsible for making decisions on funding allocations at a whole of program level within TfNSW. FIC was also responsible for approving 'high-risk/high-value' variations to program budgets. Members of the FIC included:

- Secretary of Transport for NSW
- Deputy Secretary, Infrastructure and Services
- Deputy Secretary, Freight, Strategy and Planning
- Deputy Secretary, Customer Services
- Deputy Secretary Finance and Investment
- Deputy Secretary People and Corporate Services.

An April 2015 submission, from the then Deputy Director-General to the agency's FIC, sought authorisation and funding approval to participate in an Expression of Interest sale process. It noted the risk that the project may not go ahead. The submission advised that:

> By acquiring a strategic site now, it reduces the risk of having to pay an improved value or a value that may be subject to rapidly improving land values due to changes in land use and rezoning.
>
> The property can be acquired for the project, held strategically and income generated by leasing the site as hardstand[1] space until the project requires the land for the Parramatta Light Rail project.
>
> If the project does not proceed in the medium to longer term, the property can be sold at a premium to what has been paid today as property fundamentals improve.

This submission acknowledged the risks associated with environmental contamination and proposed that these risks would be managed by negotiating a contract where the remediation and associated expenses would be at the landowner's cost.

TfNSW assessed the 4–6 Grand Avenue site as one of several sites in Camellia that was a feasible location for a stabling and maintenance facility

The Departmental feasibility study assessed six potential sites for a stabling and maintenance facility, including 4–6 Grand Avenue, noting strengths and weaknesses of each site. A different site on Grand Avenue was assessed as the 'base case' option (1 Grand Avenue). The study's comments on the 4–6 Grand Avenue site included the following:

> With an area of approximately 63,000m^2, this site has sufficient space for a depot with the required stabling yard and maintenance facilities. The location allows for good road access and LRT [light rail transit] access would be from Grand Avenue, which may require a road crossing or signalised intersection. The site has been used for general industrial uses; however the land has been cleared and is currently undergoing remediation[2]. The site is not affected by flooding based on one in 100-year flood data.

[1] A hardstand space is a large, paved area to store cars, heavy vehicles and machinery.
[2] Officers familiar with the acquisition could not confirm the nature of remediation being undertaken, but noted that the previous landowner had cleared buildings from the site, which may have been considered part of remediation.

In early 2015, once the opportunity to acquire 4–6 Grand Avenue emerged, TfNSW commissioned a specific feasibility study of the 4–6 Grand Avenue site. The feasibility studies clearly documented the existence of environmental contamination. In April 2015, the report concluded:

> Given the limitations of this report and within the parameters that have been set it is concluded that from a spatial and geographic perspective the site at 6 Grand Avenue would be suitable as a stabling and maintenance depot for the Parramatta light rail project. There are few engineering and environmental constraints that would affect the feasibility level analysis of this site and all issues identified, within this desk study, are considered to be resolvable. However this being said there is a significant amount of work necessary to reach the final layout and definition of the stabling and maintenance depot. There are numerous items which require further consideration and conformation; planning approvals could impose restrictions on building heights, noise mitigation measures, light and visual impact requirements all of which can have significant impacts on the spatial requirements of any stabling and maintenance depot.

The acquisition of 4–6 Grand Avenue was not informed by a Property Acquisition Strategy

For major projects, TfNSW typically requires the project team to complete a Property Acquisition Strategy, which is intended to guide both process as well as specific acquisition issues expected to be faced during the project. The Property Acquisition Strategy is not a mandated document but is a recommended tool to support property acquisition as part of major projects.

TfNSW did not have a Property Acquisition Strategy in place to guide the 2015 Expression of Interest process. On 6 November 2015, the then Project Director for the PLR project emailed the property team, noting a need to develop a Property Acquisition Strategy to close off the scoping design and preliminary business case.

In January 2016, TfNSW developed a draft Property Acquisition Strategy for the Parramatta Light Rail Project, although it was silent on the potential sites for the stabling and maintenance facility.

TfNSW focussed on 4–6 Grand Avenue because it was available and aligned to TfNSW's strategic interests

In early 2015, officials commenced monitoring the market for industrial real estate in the Camellia area and surrounds for possible sites for a stabling and maintenance facility.

In March 2015, then owner of the site, Akzo Nobel Pty Limited released the 4–6 Grand Avenue site through an Expression of Interest process managed by CBRE.

TfNSW's then Deputy Director-General, Planning, sought approval from FIC to lodge an Expression of Interest up to $30.0 million. Approval was sought on the basis that it would 'provide certainty for the Parramatta Light Rail project by allowing for a depot site in a suitable location and potentially avoid higher costs or longer timeframes associated with compulsory acquisition following completion of the project's business case'. FIC approved the request at its meeting on 9 April 2015.

At this time, TfNSW had not conducted any analysis of financial or operational benefits and costs of the potential sites identified in earlier feasibility studies. TfNSW staff advised us that the decision to participate in the Expression of Interest process for 4–6 Grand Avenue was because it was available. There is no documentation substantiating this statement, which TfNSW staff provided verbally as part of this audit.

In November 2015, TfNSW was advised that it was unsuccessful in the Expression of Interest process and that Grand 4 Investments (a related entity of Billbergia) had purchased 4–6 Grand Avenue. TfNSW did not conduct any further analysis of alternative potential sites in Camellia between this date and commencing discussions with Grand 4 Investments in April 2016. In that time there had been some movement on other properties that were included in the feasibility study, including 37–39a Grand Avenue being under offer in September 2015.

In March 2016, TfNSW approached CBRE to organise a meeting with Grand 4 Investments. On 1 April 2016, TfNSW met with Grand 4 Investments.

TfNSW advises that a perceived benefit of the 4–6 Grand Avenue site was that it was not subject to other uses or leaseholds that would increase the cost of compulsory acquisition. Officers involved in the acquisition advised that other nominated sites in the feasibility study were subject to other uses or leaseholds.

3. Compliance with the *Land Acquisition (Just Terms Compensation) Act 1991*

TfNSW's independent valuation, which it commissioned and received after the acquisition, specifically excluded consideration of environmental contamination risk. As a result, TfNSW is exposed to the risk that the acquisition was not fully compliant with the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) because it did not use an accurate estimate of market value during negotiations. That said, the acquisition of 4–6 Grand Avenue by agreement was consistent with preferred processes described in the Act.

TfNSW acquired the site from the landowner by agreement, and this is consistent with provisions in the Act. Obtaining approval for compulsory acquisition should negotiations for agreement break down is also consistent with the Act. That said, TfNSW did not at any time assess whether a compulsory acquisition could have resulted in acquisition at a lower cost than what was negotiated by agreement.

Despite the high risks associated with the acquisition, TfNSW did not commission a formal valuation in time to inform the negotiation and purchase. Instead, TfNSW relied on internal advice to estimate market value, but did not obtain a formal valuation from those advisors. For high-risk transactions, the greater expertise and arm's-length independence of an external specialist valuer should be preferred over an agency's own staff.

On 15 June 2016, the settlement date for the acquisition, TfNSW commissioned a formal independent valuation of the site. On 23 November 2016, TfNSW received the final formal valuation report. By not obtaining a formal independent valuation of the property in advance of acquisition to inform the acquisition value, TfNSW exposed itself to non-compliance with the Act by not establishing the market value as the basis for the acquisition price. TfNSW also breached its own internal policies.

TfNSW instructed the valuer to conduct its valuation within the following parameters:

- Market valuation on an 'as is' basis – market value based on the methodology described in the Act. This approach valued the site at $25.0 million.
- Market valuation on a speculative development basis – market value based on the financial value of the vendor's intended use of the site which, in this case, involved leasing the site for industrial use. This approach valued the site at $52.0 million, and TfNSW advised us this valuation supported the purchase price.
- Disregard the impact of environmental contamination – TfNSW specifically instructed the independent valuer to disregard any known (or unknown) site contamination. As TfNSW knew of the significant environmental contamination affecting the site, this parameter resulted in a valuation that overstated the value of the site as it did not consider the cost of environmental remediation. The valuer applied this assumption for both market valuation approaches.

Additionally, as the independent valuer completed the valuation after the purchase was finalised, there is a risk that the valuation may have been influenced by the known purchase price.

Key components of the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act) that are relevant to this acquisition for the purpose of this audit include the following:

- The objects of the Act:
  - To guarantee that, when land is affected by a proposal for acquisition by an authority of the State is eventually acquired, the amount of compensation will not be less than the market value of the land (unaffected by the proposal) at the date of acquisition, and
  - To encourage the acquisition of land by agreement instead of compulsory process.
- An authority of the State is to take into account, in connection with any proposed acquisition by agreement of land now available by public sale, the same matters as are required to be taken into account under this Part in determining the compensation payable for an acquisition by compulsory process. (section 38).
- The amount of compensation to which a person is entitled is such amount as, having regard to all relevant matters under this Part, will justly compensate the person for the acquisition of the land. (section 54).
- In determining the amount of compensation to which a person is entitled, regard must be had to the following matters only:
  - the market value of the land on the date of its acquisition[3]
  - any special value of the land to the person on the date of its acquisition
  - any loss attributable to severance
  - any loss attributable to disturbance
  - solatium (which means compensation to a person for non-financial disadvantage resulting from the necessity of the person to relocate his or her principal place of residence as a result of the acquisition)
  - any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired. (section 55).
- If the market value of land is assessed on the basis that the land has potential to be used for a purpose other than that for which it is currently used, compensation is not payable in respect of:
  - any financial advantage that would necessarily have been foregone in realising that potential, and
  - any financial loss that would necessarily have been incurred in realising that potential. (section 61).

TfNSW acquired the site by agreement from Grand 4 Investments

Consistent with the objects of the Act, TfNSW negotiated to acquire the land by agreement and this was achieved in the transaction.

The preference for acquisition by agreement is also noted in the TfNSW Land Acquisition Practice Note (4TP-SD-071/2.0), which notes:

> One objective of the … Act, is to encourage the acquisition of land by negotiated purchase in preference to compulsory process. TP (Transport Projects) fully supports this objective…. If agreement with a property owner is able to be reached, then the purchase is completed by contract, prepared by TP, and transfer takes place similar to a sale in the open market.

[3] The Act defines market value as the amount that would have been paid for the land if it had been sold at the time by a willing but not anxious seller to a willing but not anxious buyer (with certain exclusions).

TfNSW did not at any time assess whether a compulsory acquisition could have resulted in acquisition at a lower cost than what was negotiated by agreement. TfNSW advised us that, in general, compulsory acquisitions took longer and cost more, particularly if there was a risk of legal action.

TfNSW obtained parallel approval to commence a compulsory acquisition process should negotiations for acquisition by agreement not be successful

While there is a preference for acquisition by agreement, TfNSW was aware that it may need to consider compulsory acquisition, should agreement not be able to be reached. On 19 April 2016, TfNSW provided a briefing note to the Minister for Transport seeking approval for compulsory acquisition, which the minister approved on 28 April 2016.

That briefing note explained:

> Compulsory acquisition of the land is required because it appears unlikely that an agreement on compensation will be reached.

It further went on to explain:

> TfNSW will endeavour to acquire the site by a negotiated agreement. Negotiations can be undertaken in parallel with the compulsory process. TfNSW has commenced discussions with Grand 4 Investments Pty Ltd.

On 19 April 2016, TfNSW advised Grand 4 Investments of the possibility of compulsory acquisition.

There is nothing in legislation or in TfNSW policy that prevents negotiations from continuing while obtaining the approval for compulsory acquisition. Landowners do not become aware that government agencies have obtained ministerial approval for compulsory acquisition until they are contacted by the agency in question. TfNSW's efforts to seek ministerial approval for compulsory acquisition should negotiations break down is also consistent with the Act, and a logical approach.

TfNSW did not obtain comprehensive, independent valuation advice or information to support its assessment of market value before it acquired 4–6 Grand Avenue

The *Land Acquisition (Just Terms Compensation) Act 1991* prescribes what compensation should be paid for land by the State in sections 54, 55 and 61 as presented earlier.

To support this, TfNSW guidance on property acquisitions (Land Acquisition Practice Note (4TP-SD-071/2.0)) requires that 'All acquisitions are to be supported by formal valuation'. TfNSW's guidance further notes that the valuation will be undertaken prior to entering into a binding agreement and must be undertaken by a valuer who is registered for the type of property being valued.

The rationale for this is to ensure that TfNSW has strong assurance that compensation agreed to be paid for acquired land is consistent with market value, compliant with the Act, cognisant of the latest market conditions, and can be demonstrably proven to be free of any undue influence.

In this instance, no such valuation was obtained to support the TfNSW's participation in the 2015 EOI or its acquisition of the site in June 2016. In fact, TfNSW did not commission a valuation until 15 June 2016, the date of settlement. TfNSW did not receive the draft valuation report until October 2016. The reasons for the delay in seeking and finalising this valuation are not clear from the documentation.

TfNSW undertook no structured valuation or market analysis to inform the request to FIC for approval for a limit to use for engaging in expressions of interest, or in any of the three expressions of interest TfNSW submitted. Further, the absence of a valuation was not communicated to FIC when it considered the 13 May 2016 request to fund the acquisition of 4–6 Grand Avenue.

Exhibit 4 provides a timeline of events relating to the TfNSW's valuation of the site.

Exhibit 4: Timeline of key events – valuation

Date	Event
1 April 2016	First meeting between TfNSW and Grand 4 Investments following approach from CBRE (the agent that managed the original EOI process).
15 April 2016	Grand 4 Investments advises TfNSW that it expects $75.0 million for the site.
19 April 2016	Briefing note provided to secretary and minister to authorise compulsory acquisition. This was approved by the minister on 28 April 2016.
21 April 2016	TfNSW offers Grand 4 Investments $53.5 million for the acquisition of 4–6 Grand Avenue site, with TfNSW assuming all responsibility and liability for remediating the site.
27 April 2016	TfNSW writes to Colliers International requesting a quote for valuation services to support the acquisition of 4–6 Grand Avenue. Colliers is ultimately engaged for this work on 15 June 2016.
29 April 2016	Acting Deputy Secretary Infrastructure and Services approves the acquisition of 4–6 Grand Avenue site for $53.5 million, purchasing the site 'as is' with TfNSW to undertaken remediation to decontaminate the site.
11 May 2016	TfNSW submits payment authorisation for $5.35 million as payment of ten per cent deposit.
16 May 2016	FIC considers the 13 May briefing note and approves the release of funds ($53.5 million) for the purchase of 4–6 Grand Avenue site.
19 May 2016	Deed of Acquisition, Compensation and Release and Contract of Sale signed by Technical Director, Property, Finance and Investment Division for TfNSW.
15 June 2016	Settlement date for the acquisition - TfNSW paid $48.15 million (as balance of funds) to Grand 4 Investments for the acquisition of 4–6 Grand Avenue site.
15 June 2016	TfNSW engages Colliers to conduct a formal valuation of 4–6 Grand Avenue.
8 July 2016	Date of valuation from Colliers International which values the 'as is' value at $25.0 million and a 'speculative redevelopment potential value' of $52.0 million. The valuation specifically excludes analysis and financial impact of costs and liability to remediate the contaminated site.
24 October 2016	Colliers provides draft formal valuation report to TfNSW. The report uses 8 July 2016 as the date of valuation.
23 November 2016	Colliers provides final formal valuation report to TfNSW. The report uses 8 July 2016 as the date of valuation.

Source: Audit office analysis based on research of Transport for NSW documents.

TfNSW relied on informal and internal advice on the land's value that was neither robust nor appropriate

Prior to the acquisition, TfNSW relied on the following for valuation information to support decision-making:

- informal commentary on market conditions and value was requested from a valuer who had previously advised TfNSW that it could not act on this matter as it was separately acting for the landowner
- documented analysis undertaken by TfNSW's own staff. These officers did not provide a formal valuation report as such, but rather information which was intended to provide an indication of market value.

Consequently, TfNSW did not have robust and independent assurance of the market value of the land at the time of purchase.

The valuation information that agency staff provided to decision-makers included:

- an assessment of the speculative development potential value of the site. TfNSW based this on the landowner's purchase price, alongside the potential profit generated by future development and stamp duty costs (arriving at $53.5 million). This assessment assumed a cost of only $2.0 million for contamination remediation, which is significantly less than what is now being paid by the State
- an assessment of comparative property values in the area. TfNSW based this assessment on unconfirmed information for a sale at another site on Grand Avenue. TfNSW understood that the price paid per square meter was approximately $800. TfNSW used this figure to support a purchase price for the 4–6 Grand Avenue site of approximately $825 per square meter.

This information does not constitute, and is not equivalent to, a formal valuation. The analyses relied on significant assumptions and were not sufficiently evidenced.

TfNSW was not able to explain why it did not commission the valuation earlier to inform either the TfNSW participation in the 2015 Expression of Interest process, or the negotiations with Grand 4 Investments. Given there had been acquisition activity involving the site for over one year, there is no obvious reason to have omitted commissioning a valuation earlier.

The formal valuation, received after the acquisition, provides a speculative valuation which assumes no environmental contamination, and which may have been influenced by the outcome of the acquisition

On 27 April 2016, TfNSW contacted an independent valuer to request a valuation of the site. TfNSW's procurement was not finalised until 15 June 2016, where it formally engaged the services of the independent valuer. The same date,15 June 2016, was also the settlement date for the acquisition.

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

TfNSW had instructed the valuer to:

- Conduct a market valuation on an 'as is' basis – with market value based on the methodology described in the Act. This approach valued the site at $25.0 million.
- Conduct a second market valuation, made on a speculative development basis – with market value based on the financial value of the vendor's intended use of the site which, in this case, involved leasing the site for industrial use. This approach valued the site at $52.0 million. TfNSW advised us this valuation retrospectively supported the purchase price.
- Disregard any known or unknown site contamination for both valuations.

As the site is, in reality, affected by significant environmental contamination, the instruction to disregard the contamination is difficult to understand and increased the risk that the valuation overstated the value of the site by excluding the cost of environmental remediation.

Despite the high risks associated with the acquisition, TfNSW did not commission the valuation in time to inform the negotiation and purchase and TfNSW excluded consideration of liability associated with site contamination from the valuation's scope. Additionally, as the independent valuer completed the valuation after the purchase was finalised, there is a risk that the valuation may have been influenced by the known purchase price. The limitations arising from the timing and scope of the valuation cast doubt over whether it can be considered a credible assessment of the market value of the property.

4. Management of risk associated with the acquisition

TfNSW's failure to acquire a formal valuation and an assessment of the financial impact of environmental remediation before it purchased 4–6 Grand Avenue represents ineffective administration and governance.

TfNSW acquired the site at a time when there was demand and increasing prices for industrial property in the area. However, TfNSW did not effectively assess and manage the risks associated with the acquisition, and gaps in process led to increased risk. Briefings to decision-makers did not contain important information, and we found no evidence that gaps in advice were queried or explored by decision-makers.

TfNSW did not have plans or advice in place to assist in managing risk, such as:

- a property acquisition plan
- a comprehensive and up-to-date risk management plan
- a negotiation strategy, or any authorisation limit or minimal acceptable position
- an independent professional evaluation
- external expert advice (with the exception of legal advice relating to the contract of sale).

TfNSW was aware of contamination issues affecting the land and had access to considerable information about the environmental conditions, such as site environmental audit reports and information on the NSW Environment Protection Authority's contaminated land register. However, TfNSW had not analysed specific technical information about the contamination and therefore was not aware of the risk implications and cost for remediation. Despite this, TfNSW changed its position from not accepting the risks and costs of contamination, to acquiring the site unconditionally. The basis for this decision is unclear and undocumented.

Briefing to senior leaders on the acquisition was silent on a number of important matters that would have been important for approvers to consider, including:

- an explanation of the 40 per cent increase in purchase price between November 2015 and May 2016, and a 165 per cent increase from TfNSW’s offer in April 2015
- the contamination risks associated with the site and an evidence-based estimate of potential costs to remediate the site
- advice that an independent valuation had not been obtained, inconsistent with TfNSW policy.

Consideration of the acquisition by FIC was based on a summary business paper and was managed out-of-session, thereby removing the ability for comprehensive consideration of the acquisition proposal and its risks.

TfNSW acquired the site in an environment of increasing prices and demand for industrial property in the Camellia region

Property prices in Western Sydney were increasing during the period 2015 to 2019. It was possible that the government’s announcement of the potential route for the PLR in December 2015 also affected property prices.

TfNSW was concerned that deferred acquisition of necessary property for the PLR would result in the State having to pay higher prices for any property acquisitions. The 26 March 2015 briefing, where the then Deputy Director-General sought FIC funding approval to participate in the Expression of Interest process, noted:

> Land values are increasing in the area due to planned change of use of land and rezoning in Camellia, therefore the land acquisition cost for maintenance depot and stabling facilities in this location may increase rapidly in the short to medium term…
>
> By acquiring a strategic site now, it reduces the risk of having to pay an improved value or a value that may be subject to rapidly improving land values due to changes in land use and rezoning.

Grand 4 Investments wanted to finalise the transaction quickly, and TfNSW did not escalate risks arising from this

During negotiations, Grand 4 Investments advised TfNSW that it was also seeking tenants for the site. In line with the requirements of the Act, TfNSW would have had to pay greater compensation if Grand 4 Investments had leased out the site.

On 18 April 2016, following preliminary discussions on potential acquisition value, Grand 4 Investments advised TfNSW that:

> Meeting and agreement tomorrow morning is critical. We have already postponed one lease finalisation discussion and our tenant is pressing closure.

There is no evidence that TfNSW sought verification from Grand 4 Investments (or any other source) regarding the existence of prospective tenants.

Pressure applied by the vendor during the transaction is a risk that TfNSW staff should have escalated to TfNSW's executive leadership. It did not.

4.1 Governance

TfNSW did not use an acquisition plan when purchasing the site

TfNSW did not prepare a dedicated Acquisition Plan for 4–6 Grand Avenue at any point between first considering engagement in the Expression of Interest process in early 2015 and completion of the acquisition in June 2016.

Amongst the templates and tools available to support TfNSW property acquisitions is an 'Acquisition Plan' to guide the acquisition of a specific property. The Acquisition Plan's purpose is 'to outline a practical plan for … acquiring the property' and defines risks, due diligence requirements and an acquisition schedule and cost model. The Acquisition Plan is not a mandatory tool to be used for all acquisitions.

A land acquisition is essentially a procurement. The NSW Government Procurement Policy Framework guides agencies to complete rigorous planning, including in connection with:

- a proposed method for approach to market
- a risk management plan
- a description of how 'value for money' will be assured, especially when conducting direct negotiations
- a plan for how probity will be maintained
- an estimated cost for the acquisition.

In an environment of market volatility, TfNSW should rely on good planning when acquiring property.

The acquisition was not supported by a sound or comprehensive risk management plan

TfNSW's risk management policy requires that major initiatives are supported by the identification and management of risks, and that risk management documentation is maintained and up-to-date through the conduct of the initiative.

TfNSW repeatedly used two summary 'risk and mitigation' documents in briefings to decision-makers that were disproportionately focussed on project risks relating to stakeholder management, timely decision-making and benefits management. These documents had a limited focus on risks relating to environmental contamination, value for money or probity. In both cases, environmental contamination was noted as a risk, with the mitigation being to ensure that the landowner addressed the cost of remediation. Ultimately, this was not the approach taken in the 4–6 Grand Avenue acquisition as TfNSW accepted all responsibilities and liabilities associated with remediating the contaminated site.

Neither risk document identified the risk of not achieving value for money or managing probity appropriately. There was no operational risk management plan to guide the management of risks associated with the acquisition.

It appears that TfNSW focussed on project delivery at the expense of good governance and value for money considerations. Risks that impacted on project delivery schedules were the matters that received close attention.

The acquisition was not supported by external professional expertise beyond a legal adviser

The only external professional advice or support obtained as part of this acquisition was a legal adviser who TfNSW commissioned to draft the Deed of Acquisition, Compensation and Release.

In other major property acquisitions undertaken by government that we have considered, it is common for project teams to seek support in the form of:

- commercial advice
- property strategy and transaction advice
- valuation support (which TfNSW did not obtain until after the acquisition was complete, as discussed earlier in this report)
- professional negotiation support where negotiations are lengthy, complex or challenging
- legal advice
- advisers in particular domains (such as environmental risk).

The use of contractors and consultants should always be well-justified and cost-effective, and will not be necessary nor valuable in all cases. That said, in instances where acquisitions are high-risk or high-value, and where there are small (albeit experienced) teams driving a complex acquisition such as this, proper risk mitigation should be guided by external expertise to provide an additional or alternative opinion on key decisions in a transaction.

At the time of making an offer of $53.5 million to Grand 4 Investments, neither FIC nor any other appropriately delegated person had authorised terms or funding limits for the acquisition

As the acquisition was being undertaken in advance of the approved business case and associated funding for the PLR, any property acquisitions required specific funding approval from FIC.

In March 2015, FIC provided authorisation for TfNSW to submit offers in the Expression of Interest process up to a limit of $30.0 million, with a risk management plan that advised of an intention to not accept responsibility for the existing contamination of the property. As noted earlier, TfNSW was ultimately unsuccessful in its attempts to acquire 4–6 Grand Avenue through the Expression of Interest process and on 25 September 2015 Akzo Nobel sold the site to Grand 4 Investments.

In March 2016, TfNSW approached CBRE, the agent that managed the 2015 EOI process, to organise a meeting with Grand 4 Investments.

On 1 April 2016, TfNSW met with Grand 4 Investments to discuss the possibility of acquiring the site through agreement.

On 15 April 2016, Grand 4 Investments advised TfNSW that it expected $75.0 million for the site.

On 21 April 2016, TfNSW offered Grand 4 Investments $53.5 million for the site, with TfNSW assuming responsibility and liability for remediation.

The Technical Director Project Property Services, who was acting as lead negotiator for TfNSW, was not aware of the acquisition terms or funding limits. On 18 April 2016, three days prior to issuing the letter to the landowner offering $53.5 million (exclusive of GST) for the property, the Technical Director Project Property Services wrote to the PLR Project Director:

> Do we have approval to make an offer in excess of the current FIC approval? If not do you need another BN (briefing note)? and who would be approving?

The PLR Project Director's response to this email did not provide a clear approval path, instead noting:

> I take it that we have to proceed with the CA (compulsory acquisition) now?

On 28 April 2016, after issuing the offer, the Technical Director Project Property Services sought the following approvals. These approvals were the first formal engagements with delegates or oversight committees since the 2015 approval to participate in the EOI process:

- On 28 April 2016, the Technical Director Property Project Services submitted a briefing note to the delegated Acting Deputy Secretary, Infrastructure and Services seeking approval to acquire 4–6 Grand Avenue for $53.5 million (exclusive of GST) and requesting approval for the Project Director to sign the Deed and Contract of Acquisition. On 29 April 2016, the Acting Deputy Secretary approved the briefing note.
- On 29 April 2016, the Acting Deputy Secretary Infrastructure and Services submitted a business paper to FIC seeking release of funding of $80.2 million for the 'purchase and remediation of a site at Camellia to be used as a stabling facility for the Project'. The $80.2 million comprised $53.5 million for property acquisition and $26.7 million for remediation and other costs.

On 13 May 2016, the Deputy Secretary Finance and Investment submitted a briefing note to FIC regarding the 29 April 2016 business paper. FIC's consideration of the acquisition was based on this briefing note, which recommended that FIC approve the request of $53.5 million for the purchase of the property. The briefing note did not include the request for $26.7 million as there was no immediate need to operate and remediate the land.

Briefings to delegates for approval of the acquisition did not contain important information

In addition to the briefing notes described above, the following were provided to delegated officials during the attempts to acquire the 4–6 Grand Avenue site during 2016:

- Briefing to the Minister for Transport and Infrastructure dated 19 April 2016 seeking approval to acquire the 4–6 Grand Avenue site by compulsory acquisition.
- Briefing to the Executive Director of Finance dated 4 May 2016 seeking approval for payment of the initial ten per cent payment under the Deed and Contract for Sales, and allocation of funds to pay the residual 90 per cent of the agreed amount for the acquisition of the 4–6 Grand Avenue site.

All briefing notes to decision-makers for the 4–6 Grand Avenue acquisition were silent on a number of important matters, including:

- an explanation of the rationale and/or evidence for the 40 per cent increase in purchase consideration between November 2015 and May 2016
- an explanation of the rationale for the change in approach to remediation from it being the vendor's responsibility in 2015 as part of the Expression of Interest process, to it being accepted as TfNSW's responsibility as part of the acquisition in 2016
- an estimate of potential cost required to remediate the site. This is important as it provides greater clarity on the true cost of the acquisition of the property, being the acquisition cost and the costs to remediate it to a state where it can be used as a stabling and maintenance depot
- advice that an independent valuation of the property had not been obtained, inconsistent with TfNSW policy or procedures
- an estimate of the alternative costs that may be associated with a compulsory acquisition, which may have been less than the price TfNSW paid for the site
- advice that Grand 4 Investments were applying pressure to finalise the transaction rapidly, including context with respect to Grand 4 Investment's comment regarding a 'highly political circumstance'.

The inclusion of the above information would have helped to ensure diligent and professional decision-making and may have assisted in managing some of the risks that have emerged since the acquisition.

By considering the proposal out-of-session, and with insufficient information, FIC failed to conduct prudent and reasonable due diligence for the acquisition

At the time of the acquisition, TfNSW's FIC was the most senior governance committee within TfNSW responsible for making decisions on funding allocations at a whole of program level within TfNSW. FIC was also responsible for approving 'high-risk/high-value' variations to program budgets. FIC comprised the Secretary and Deputy Secretaries of TfNSW.

Exhibit 5 provides a summary of key events relating the approval of the acquisition.

Exhibit 5: Timeline of key events – Formal approvals

Date	Event
1 April 2016	First meeting between TfNSW and Grand 4 Investments.
12 April 2016	Second meeting between TfNSW and Grand 4 Investments.
15 April 2016	Grand 4 Investments advises TfNSW that it expects $75.0 million for the site.
19 April 2016	Briefing note provided to secretary and minister to authorise compulsory acquisition. This was approved by the minister on 28 April 2016.
20 April 2016	Third meeting between TfNSW and Grand 4 Investments.

Date	Event
21 April 2016	TfNSW offers Grand 4 Investments $53.5 million for the acquisition of 4–6 Grand Avenue site, with TfNSW assuming all responsibility and liability for remediating the site.
22 April 2016	In response to the offer letter provided by TfNSW, Grand 4 Investments seeks a final and binding offer from TfNSW.
29 April 2016	Acting Deputy Secretary Infrastructure and Services approves the acquisition of 4–6 Grand Avenue site for $53.5 million, purchasing the site 'as is' with TfNSW to undertaken remediation to decontaminate the site.
29 April 2016	Acting Deputy Secretary Infrastructure and Services submits a business paper to FIC to request release of funds including $80.2 million for the purchase and remediation of 4–6 Grand Avenue site. The business paper does not include information regarding how it estimated remediation costs. This business paper was not provided in full to FIC, and instead informed a 13 May 2016 briefing note from the Deputy Secretary Finance and Investment to FIC.
13 May 2016	Briefing note from Deputy Secretary Finance and Investment to FIC regarding the 29 April 2016 business paper. The briefing note only addresses the request of $53.5 million for the purchase of the property, and does not contain any detail on the $26.7 million requested for remediation on 29 April. The briefing note states that 'TfNSW will need to undertake remediation works to obtain a Site Audit Statement' and that request for funding does not include remediation, fencing or operating expenditure.' The assessment also notes that the acquisition of land is required to be finalised by 30 June 2016.
16 May 2016	Email to FIC members requesting out-of-session consideration for the release of $53.5 million for the purchase of 4–6 Grand Avenue.
16 May 2016	FIC considers the 13 May briefing note and approves the release of funds ($53.5 million) for the purchase of 4–6 Grand Avenue site.
17 May 2016	Executive Director, Program Delivery, as signatory of the contract for acquisition of the 4–6 Grand Avenue, approves the Acquisition Agreement.
19 May 2016	Deed of Acquisition, Compensation and Release and Contract of Sale signed by Technical Director, Property, Finance and Investment Division for TfNSW.
23 May 2016	Acting Deputy Secretary Infrastructure and Services submits a business paper to FIC requesting the release of $88.715 million to fund the Parramatta Light Rail project in 2016–17. The business paper asks FIC to note that $26.7 million (of the $88.7 million) would be for the operation, management and remediation of the depot stabling facility.
7 June 2016	FIC approved $64.0 million for Parramatta Light Rail Project, but FIC, noting the Finance and Investment evaluation, did not approve the request for $24.7 million for environmental remediation costs. The Executive Director of the Light Rail Project advised that a further submission would be made if the funds were required. The meeting minutes for this meeting note that FIC approved $53.5 million funding for the acquisition of 4–6 Grand Avenue on 16 May 2016.
15 June 2016	Settlement date for the acquisition - TfNSW paid $48.15 million (as balance of funds) to Grand 4 Investments for the acquisition of 4–6 Grand Avenue site.

Source: Audit office analysis based on research of Transport for NSW documents.

As noted above, on 29 April 2016, the Acting Deputy Secretary Infrastructure and Services submitted a business paper to FIC seeking release of funding of $80.2 million for the 'purchase and remediation of a site at Camellia to be used as a stabling facility for the Project'. The $80.2 million comprised $53.5 million for property acquisition and $26.7 million for remediation and other costs.

On 13 May 2016, the Deputy Secretary Finance and Investment submitted a briefing note regarding the 29 April 2016 business paper. FIC's 16 May 2016 consideration of the acquisition was based on this briefing note, which recommended that FIC approve the request of $53.5 million for the purchase of the property. The briefing note was far less detailed than a standard business paper considered by FIC. FIC's consideration of $26.7 million for remediation and operation costs for the site was postponed pending approval of the PLR business case in 2016–17.

The 13 May 2016 briefing note:

- included a high-level description of the property, the price being offered and the fact that the Strategic Business Case for the PLR had not been completed
- noted that TfNSW was forecasting a capital underspend of $258 million for the year with likely further deterioration
- stated that 'TfNSW will need to undertake remediation works to obtain a Site Audit Statement' and that the request for funding did not include remediation, fencing or operating expenditure.

Both the 29 April 2016 business paper and the briefing considered by FIC on 16 May 2016 were silent on a number of important matters that were required for FIC to consider, including:

- explanation of the 40 per cent increase in purchase price between November 2015 and May 2016 – from $38.15 million to $53.5 million
- an evidence-based estimate of costs required to remediate and maintain the site as TfNSW had changed its earlier position and were accepting all responsibilities and liabilities for environmental contamination
- advice that an independent valuation had not been obtained
- advice that TfNSW did not follow its own internal procedures, and why
- advice that Grand 4 Investments were applying pressure to finalise the transaction rapidly.

On 16 May 2016, FIC members were emailed to consider, out-of-session, the release of $53.5 million for the purchase of 4–6 Grand Avenue. FIC members were provided less than two hours to vote on the proposal. Members approved the release of funding that day. The Secretary and Deputy Secretary, Freight Strategy and Planning did not vote.

TfNSW advised that out-of-session business papers for FIC were unusual and suffered from a lack of opportunity for robust consideration and discussion of proposals and risks that was common in FIC meetings.

The then Deputy Secretary, Finance and Investment, advised us that, as the Acting Deputy Secretary, Infrastructure and Services had already approved the acquisition, FIC's 16 May 2016 consideration of the acquisition was limited to FIC's approval of the release of funds required for the purchase. However, as discussed above, any property acquisitions for the PLR required specific funding approval from FIC.

Exhibit 6 contains a description of TfNSW's investment decision thresholds.

Exhibit 6: TfNSW's investment decision thresholds

Table 1 - Investment Decision Thresholds (CAPEX or OPEX)

Approval Scenario	Finance & Investment Committee	Deputy Secretary Finance & Investment	Agency CEO / TfNSW Division Head
New Funding Allocation to Investment	High Risk or High Value ($10 million to $100 million)	Low Risk or Low Value (Less than $10 million)	None
Variations to Program Budget	High Risk or High Value ($10 million to $100 million)	Low Risk or Low Value (Less than $10 million)	None
Unplanned/ Unforeseen Expenditures	As directed by Secretary	As directed by Secretary	If within an allocated Budget,Agencies: $1 million or 1% of total budget Divisions: $500,000 or 1% of total budget (capped at $10 million for Capital Projects)

Source: Transport for NSW.

There is no evidence that FIC members queried the quality of advice they were provided when they made the decision to fund the acquisition, nor that they undertook a balanced consideration of the opportunities and risks of the acquisition proposal.

With more information and opportunity for in-session discussion and analysis, FIC decision-making may have been better informed and more transparent. Better planning for the acquisition and the negotiation would have avoided the need for out-of-session consideration of the matter.

4.2 Processes

TfNSW's processes require completion of due diligence in any property acquisition

TfNSW's Land Acquisition Practice Note (4TP-SD-071/2.0) states that due diligence is essential to understand the property being acquired, including to confirm its suitability for the project, as well as to inform the acquisition. It further suggests (although does not mandate) that a Land Purchase/Site Report and Due Diligence Checklist 'should be completed prior to entering any formal acquisition agreement'.

The accompanying Property Acquisition Due Diligence Guide Note advises that:

> Legal, physical and investigative due diligence should start once the parties have settled terms in principle and normally after a term-sheet has been signed. Subsequently more detailed asset and structural enquiries and reports should be undertaken, but it should be remembered that many (sic) individual reports will take time to prepare and sufficient period therefore allowed for further investigation or to deal with issues arising.

The Acquisition Due Diligence Checklist is an extensive tool which allows the recording of the conduct of:

- engineering due diligence (including legislation and licenses, maintenance contracts, building surveys, tenancy compliance and relevant regulatory issues)
- environment due diligence (including consideration of heritage issues, contamination of the site, hazardous substances, materials and waste, amenity and relevant legislative requirements)
- financial due diligence (including lease arrangements, charges against the land and tenancies)
- legal due diligence (including consideration of title, encumbrances, licenses, services, surveys and encroachments, access, zoning, notices from authorities, legislation and licenses, insurances, tenancies, planning issues, health and safety matters, taxation, nuisance and relevant court proceedings)
- management due diligence (including advice from authorities such as in connection with flooding risk, maintenance contracts and tenancies).

While not all of these matters are relevant to every acquisition, the majority did have some relevance to 4–6 Grand Avenue.

TfNSW did not complete due diligence checklists and reports for this acquisition

Officers obtained access to a range of materials in connection with the site in their due diligence activities. As part of the Expression of Interest process, TfNSW had access to a ‘data room’ facilitated by the then landowner which contained materials such as title information and various technical reports and site audit statements relating to environmental contamination.

TfNSW provided numerous documents related to the property which may have been obtained and considered as part of a due diligence process. However, there is no evidence that TfNSW exercised complete and comprehensive due diligence to inform the transaction.

In particular, TfNSW did not prepare a Land Purchase/Site Report nor a Due Diligence Checklist for the site acquisition as part of either the Expression of Interest process in 2015 or the acquisition in 2016. TfNSW relied on officers' familiarity with this detail when considering and summarising their understanding in final submissions for approval to acquire.

A key component of the due diligence for 4–6 Grand Avenue should have been a deep understanding of the environmental contamination issues associated with the site. There was an awareness of potential contamination risks in the Camellia region, which was noted in the feasibility study. Since 1989, the site has been registered on the NSW Environment Protection Authority’s contaminated land register. In addition, the then Department of Planning had undertaken its own study into the contamination in the Camellia area in 2015 to inform its precinct planning. This study found:

> As a result of its long industrial history, contamination is a key issue for redevelopment of the Precinct. Significant areas of the Precinct are impacted by contaminants such as asbestos, hexavalent chromium and other hazardous substances. A number of properties in the Precinct are under some form of statutory remediation management.

The study noted that 4–6 Grand Avenue was one of the properties under statutory remediation management.

Officers leading the acquisition in 2016 advised that they did not analyse or summarise the various technical contamination and environmental reports to which they had access. We were advised that there was an intention to obtain specialist support to review and summarise the reports and information that was available related to environmental risks and contamination. However, TfNSW did not commission this work until after the acquisition was complete.

The negotiation was not informed by any form of negotiation plan or strategy

The negotiation of the final terms of the acquisition was undertaken via a series of meetings and phone calls between the TfNSW Technical Director Project Property Services and a representative of Grand 4 Investments, commencing with an initial meeting on 1 April 2016 and culminating in an offer letter on 21 April 2016. There were further negotiations on detailed terms after the offer letter was submitted, including in relation to the settlement period, prior to approval of final terms being sought from FIC on 13 May 2016 (and FIC consideration on the 16 May).

On 18 April 2016, three days prior to the TfNSW making an offer to Grand 4 Investments, the Project Director advised the Technical Director Project Property Services that:

> I discussed this with the secretary last week who made it clear that a fair and reasonable price would need to be demonstrated.

Beyond this, there was no negotiation plan or specific direction to influence this negotiation.

The NSW Government is aware of the risks associated with direct negotiation with private sector organisations. Both NSW Procurement (a trusted strategic adviser in government) and the Independent Commission Against Corruption (ICAC) note that 'negotiations carry higher risks, particularly around corruption and demonstrating value for money'. Negotiations can be particularly challenging when the counterparty is highly experienced in commercial negotiation and well resourced, as was the case in this instance.

Negotiation planning and key negotiation controls are recommended in these instances to protect both the agency as well as officers involved. Negotiation plans typically include:

- acceptable prices to pay
- negotiation features that can be offered to achieve more significant outcomes
- when information relevant to the State's interests may be shared to greatest tactical benefit
- processes to be followed
- approvals to be obtained prior to directly or indirectly agreeing to certain terms
- definition of 'best alternative' and 'minimum acceptable' positions in the negotiation.

The absence of some of these pre-established positions exposed TfNSW to potential poor decision-making in agreeing the terms and price of the acquisition. Further, a negotiation plan could have included a threshold price and conditions which, if the vendor was unwilling to meet, would trigger a decision to purchase the property through compulsory acquisition.

The negotiation with Grand 4 Investments was undertaken reactively based on positions being put by Grand 4 Investments. As detailed earlier in this chapter, Grand 4 Investments was putting pressure on TfNSW with regard to the negotiation, advising that it would be signing leases for the site imminently, which would likely increase the cost of the acquisition to the State.

TfNSW staff involved in the property acquisition advised us that, due to a projected underspend of capital funding in TfNSW in the 2015–16 financial year, there was internal pressure to finalise the property acquisition before the end of that financial year. The 13 May 2016 briefing note to FIC, which recommended the release of funds for the acquisition of 4–6 Grand Avenue, stated that:

> At March 2016, the capital portfolio is forecasting to underspend $258 million against approved revised budget for 2015–16 with further deterioration expected in the year end forecast.

TfNSW made an assessment of a reasonable and defensible amount to pay to guide the final accepted financial position in the negotiation

Parallel with the negotiations, TfNSW officers conducted basic analysis to determine what would represent acceptable value for money in an acquisition. This analysis included drawing on:

- advice received from Knight Frank Valuations, which had been consulted to provide a valuation, but who had declined on the basis of conflict of interest as it was already engaged by Billbergia, (the owner of Grand 4 Investments)
- unsubstantiated commentary in the marketplace regarding other transactions in the Camellia area that were in process
- an estimate of hypothetical development options for the site based on an understanding of Grand 4 Investment's intentions, in order to reflect compensation on just terms
- estimations of disturbance costs that Grand 4 Investments would incur in the event of an acquisition, including stamp duty, allowance for environmental investigations incurred since acquisition and costs associated with purchase and sale.

TfNSW's analysis indicated possible values of between $54.3 million and $60.8 million.

This analysis, while not based on robust and independent advice, appears to have informed the negotiation as a basis for determining what would be a reasonable and defensible amount to pay to acquire the property. However, the analysis does not constitute, and is not equivalent to, a formal valuation.

TfNSW changed its approach to the site to accept responsibility for contamination remediation without an accompanying explanation of why this was justified

Risk management planning undertaken in 2015 as part of the EOI process clearly stated that the management approach to the contamination was to make the acquisition conditional to the vendor remediating all contamination.

This changed during the April 2016 negotiation, when TfNSW took on full responsibility for remediation as part of its purchase of the site.

TfNSW has no documentation to explain when or how this change in management approach was determined, nor an assessment of the implications of that change on the management strategy for that risk.

At the time of this report, TfNSW has entered into contracts worth $106.9 million for environmental remediation of the site, ground improvement works and other remediation-related consultant costs, such as EPA site auditors. Out of the total forecast cost of $106.9 million, TfNSW has incurred $105.9 million to date.

These environmental remediation costs significantly diminish the value of the land, relative to what TfNSW paid for it. As such, TfNSW should have considered these costs at the time of acquisition.

5. Probity management

The probity management controls and assurances in place for the acquisition of the 4–6 Grand Avenue site were insufficient. These insufficiencies were exacerbated by the probity risk profile of the transaction.

The 4–6 Grand Avenue acquisition was a high-risk/high-value transaction, undertaken in a volatile property market in a short timeframe under pressure from Grand 4 Investments. TfNSW was engaging in a direct negotiation in advance of detailed planning for the acquisition, or the PLR as a whole. These circumstances contribute to heightened probity risk.

TfNSW did not establish a probity plan and sought no probity support throughout the acquisition. Also, with one exception, the staff involved in the acquisition did not complete conflict of interest declarations.

TfNSW was aware of the potential for probity or integrity issues with the transaction when it commissioned an internal audit in connection with the transaction in 2019. Internal discussions considered whether a misconduct investigation may be more appropriate, however no such investigation was undertaken.

TfNSW's insufficient probity practices, in addition to its failure to keep complete or comprehensive records of negotiations or decisions, reduce transparency of the process and its outcome and expose TfNSW to a greater risk of misconduct, corruption and maladministration.

TfNSW’s conflict of interest policy is sound, although it is not a substitute for a comprehensive probity management policy for transactions that are subject to high probity risk

TfNSW advised that the only probity policy guidance relevant to TfNSW staff involved in property acquisitions at the time of the 4–6 Grand Avenue acquisition was a ‘Conflict of Interest Policy’. This policy provides sound guidance for staff and represents a suitable framework for the management of conflict of interest risk, although it includes no follow-up or assurance process.

However, it does not represent a comprehensive policy and procedure framework for probity management. The NSW Government Centre for Property Acquisition’s Minimum Negotiation Period for Acquisition of Land guidance outlines that acquiring authorities must comply with the ICAC Guidelines for Direct Negotiations to ensure fairness and high standards of probity during negotiations. This includes considering the key ‘probity principles’ of fairness, impartiality, accountability, transparency and value for money.

The ICAC Guidelines for Direct Negotiations explains how to manage risks in direct negotiations, providing advice on seeking authority, documenting the process, performing due diligence, managing conflicts of interest and segregating duties, techniques for conducting negotiations, and agreeing on the price and executing the agreement.

The acquisition of the 4–6 Grand Avenue site was not supported by any specific probity plan or probity adviser

The acquisition of the 4–6 Grand Avenue site was high-risk from a probity perspective. Particular risk factors that are relevant include:

- a large value transaction where market testing is difficult and bilateral negotiation is unavoidable
- a transaction where value for money is difficult to evidence
- a transaction being undertaken in a short timeframe, under significant pressure, including pressure from Grand 4 Investments to quickly close the transaction.

In such circumstances, TfNSW should have considered, developed and implemented a specific probity management plan to effectively and demonstrably manage these risks.

In the absence of such a plan, TfNSW is unable to provide assurance that it managed probity risks effectively.

While the use of external probity advice or assurance can be considered the exception rather than the rule, NSW Procurement notes that it may be appropriate to engage a probity adviser or auditor:

- if the integrity of the process (or part of it) may be questioned
- if the project is politically sensitive and/or potentially controversial
- when establishing or renewing contracts for goods or services that are vulnerable to, or have a history of being influenced by, corrupt practices
- to avoid a perception of bias or favouritism
- where the process is extremely complex
- where there are substantial costs involved in preparing submissions or there is substantial government funding involved.

Many of the above circumstances apply to the 4–6 Grand Avenue acquisition. TfNSW should have considered the use of independent and dedicated probity support for the acquisition. It did not.

TfNSW obtained only one conflict of interest declaration, which did not cover all officers active in the acquisition

TfNSW's Land Acquisition Practice note requires:

> All internal … and external parties acting for TP [Transport Projects] (valuer and other technical specialists) in relation to the acquisition should be provided with a copy of TfNSW's Conflicts of interest policy and are required to complete the Conflict of interest form prior to involvement in the project.

TfNSW provided one conflict of interest declaration from an officer involved in the acquisition of the 4–6 Grand Avenue site. TfNSW did not obtain a conflict of interest declaration for the lead negotiator for the acquisition or their line management, staff authorising recommendations to FIC, or from FIC members themselves.

There were other highly-involved officers, for whom no conflict of interest declarations were found. Declarations should have existed for the Project Director, Technical Director Project Property Services, and other staff involved with the acquisition.

Without these declarations, it is difficult for TfNSW to positively demonstrate that it effectively managed conflicts of interest.

TfNSW did not keep complete or comprehensive records of negotiations or decisions, reducing transparency of the process and increasing the risk of corruption, misconduct or maladministration

Email records for relevant officers in the negotiation indicate frequent interaction between TfNSW and Grand 4 Investments. The emails refer to meetings and phone calls for the period between 6 April and 21 April 2016. It is apparent that relevant officers (principally the Technical Director Project Property Services) were endeavouring to maintain file notes of all meetings and phone calls with Grand 4 Investments, as well as with other relevant officers within TfNSW, where key decisions were made. However, TfNSW's documentation refers to phone calls with Grand 4 Investments, but matters or details discussed in these calls were not documented.

In our assessment, TfNSW's records did not contain sufficient information on:

- participants in meetings and discussions
- negotiation terms agreed or discussed, including price and conditions.

In addition, there is limited documentation of discussions and direction with senior leaders and central areas within TfNSW (including the Project Director and the Finance area) informing and authorising the negotiations.

TfNSW is unable to provide historical information on organisational structure or reporting lines for staff involved in the property acquisition, limiting our ability to conduct the audit effectively and efficiently. These limitations, combined with other probity and governance gaps, mean that we cannot rule out misconduct or maladministration.

Exhibit 7: Sufficiency of TfNSW records of discussions with Grand 4 Investments

Date	Form and time of engagement	Participants	Comments/Detail	Sufficiency of retained record
15 March 2016	Meeting	PLR Stakeholder Briefing	Range of topics including noting that Camellia was being considered as a SaM depot.	Y
1 April 2016	Meeting	TfNSW, Grand 4 Investments (G4I), CBRE	First meeting between TfNSW and G4I.	Y
7 April 2016	Email 5.36 pm	TfNSW to G4I	Update and scheduling next meeting.	N
8 April 2016	Email 4.46 pm	TfNSW to G4I	Scheduling meeting for 12 April.	Y
9 April 2016	Email 8.57 pm	G4I to TfNSW	Re-scheduling meeting for 12 April.	Y
11 April 2016	Email 9.40 am	G4I to TfNSW	Re-scheduling meeting for 12 April.	Y
12 April 2016	Meeting	TfNSW, G4I	Second meeting between TfNSW and G4I.	N (nil record)
15 April 2016	Email 5.58 pm	G4I to TfNSW	Provide an indication of expected value and requesting a contract.	Y
17 April 2016	Email 7.39 pm	TfNSW to G4I	Acknowledging email from 15 April.	Y
18 April 2016	Email 4.15 pm	TfNSW to G4I	Provide an indication of possible view on site value and notification of preparing a draft contract.	Y
18 April 2016	Email 5.52 pm	G4I to TfNSW	Request meeting and noting urgency.	Y
18 April 2016	Email 6.09 pm	TfNSW to G4I	Scheduling meeting time.	Y
18 April 2016	Email 6.14 pm	G4I to TfNSW	Scheduling meeting time and reinforcing urgency.	Y
19 April 2016	Phone approximately 2 pm		Negotiation on pricing.	N (notation in email but missing key details).

Date	Form and time of engagement	Participants	Comments/Detail	Sufficiency of retained record
19 April 2016	Phone approximately 2.20 pm		G4I requesting to retain a strip of the site along Grand Avenue, and requesting an alternative offer on that basis.	N (notation in email but missing key details)
19 April 2016	Email 5.01 pm	G4I to TfNSW	Requesting meeting with TfNSW finance manager and Project Director.	Y
20 April 2016	Meeting	TfNSW, G4I		N (nil record)
21 April 2016	Email 11.18am and Letter	TfNSW to G4I	Offer letter for $53.5 million exclusive of GST.	Y
22 April 2016	Email 8.51 am	G4I to TfNSW	Response to offer letter raising numerous concerns.	Y
22 April 2016	Email 3.38 pm	TfNSW to G4I	Response to email raising concerns.	Y
26 April 2016	Email 9.46 am	G4I to TfNSW	Provision of environmental studies commissioned by from Akzo Nobel.	Y
28 April 2016	Phone approximately 9 am		G4I requesting shorter settlement period.	N (notation in email but missing key details)
6 May 2016	Email 10.20 am	G4I to TfNSW	Follow-up on approvals.	Y
19 May 2016	Agreement signed			Y
24 May 2016	Email 12.56 pm	TfNSW to G4I	Contact to arrange access to the site.	Y
26 May 2016	Email 8:26 am	G4I to TfNSW	Request for side deed for first right of refusal should TfNSW decide to sell.	N
26 May 2016	Email 11:15 am	TfNSW to G4I	Clarification re: request for first right of refusal.	N

Source: Audit office analysis based on research of Transport for NSW documents.

In 2019, TfNSW considered undertaking an investigation into potential misconduct affecting the transaction

In late March 2019, following media enquiries regarding TfNSW's acquisition of 4–6 Grand Avenue, TfNSW staff reviewed available documentation to assess the potential exposure to probity or integrity risks and provide options for next steps. Staff involved in the discussion included:

- Associate Director, Workplace Conduct and Investigation
- Director, Fraud and Corruption Prevention
- Director, Audit and Risk
- General Counsel
- Chief of Staff, Office of the Secretary.

None of the participants were involved in TfNSW's acquisition of 4–6 Grand Avenue. During the discussions, staff identified several potential issues or 'red flags' related to 4–6 Grand Avenue. These included:

- Fraud – Did the private sector have access to information regarding the unannounced light rail route?
- Fraud/Legal – Contamination - Who considered the impact of accepting the liability for remediation and when was decision made?
- Fraud/Legal – Lead negotiator's actions in respect to the acquisition. Who made the final decision and why/authority of approval?
- Fraud/Legal – Formal valuation policy. Was there need for a formal valuation?

The Director of Audit and Risk noted that an investigation would be required to find any wrongdoing, and that an internal audit would be unlikely to detect wrongdoing unless the audit included a 'deep dive' component. Resourcing issues were also discussed as a possible barrier to an investigation.

The then Deputy Secretary, Infrastructure and Place, made the decision to conduct an internal audit. The internal audit did not respond to the identified fraud and corruption risks.

When interviewed as part of this audit, the then Deputy Secretary advised that he**:**

> **…**believed that an internal audit was the most appropriate - initial - course to identify whether the decision to purchase the land at 6 Grand Avenue, Camellia had been made in accordance with [the] requirements of policy.
>
> I believed that until an internal audit had been conducted, an investigation could not be appropriately directed to a task or tasks. There was no allegation of misconduct.

The then Deputy Secretary, when asked if there was an intention to conduct an investigation should the internal audit find that key controls were not applied, replied:

> I do not believe that there had been an intention to conduct an investigation (unless it appeared to be a step warranted by the findings of the internal audit).

The internal audit identified a high-risk deficiency in the control framework for commercial land acquisitions that exposed TfNSW to an increased risk of fraudulent activity and high probability of financial loss. Notwithstanding the Internal Audit findings, TfNSW has not conducted any other investigation or review to assessed whether those risks were realised in the acquisition of 4–6 Grand Avenue in Camellia. It would have been reasonable, having regard to queries made to the Department and the Internal Audit findings, for TfNSW to engage an independent investigation to identify whether these risks eventuated and whether they were systemic across the land acquisition function within the agency.

TfNSW's probity and record keeping practices for this transaction were insufficient in addressing the risks of potential misconduct or corruption.

6. Suitability of TfNSW Policy and Procedure Guidance to support the acquisition

At the time of the transaction, the TfNSW policy framework was not sufficiently risk-focussed and did not provide clarity on when officers ought to apply specific guidance or procedures. TfNSW's policies and procedures are more focussed on acquiring land to meet project needs and timeframes, and less on assuring value for money and managing risks.

At the time of its acquisition of 4–6 Grand Avenue, TfNSW had property acquisitions policies and procedures in place. Each of these were broadly sound in their content and intent. However, they lacked specificity on how or when to apply guidance, and when risk levels should elevate the importance of recommended guidance.

TfNSW's key guidance was principles based and relied on agency staff using their experience and expertise to apply guidance according to the circumstances of an individual transaction. This guidance was not duly applied in the acquisition of 4–6 Grand Avenue, Camellia. In addition, TfNSW does not have quality or control assurance to identify when TfNSW officers did not apply important policies or processes.

The primary focus of the TfNSW's property acquisition guidance is to achieve vacant possession of land in a timeframe that meets the need of the relevant transport project. There is less specific focus on the need to meet the requirements of the NSW Government financial management framework.

TfNSW had high-level polices and practice notes in place during the acquisition

The key process and guidance documents that TfNSW had in place to guide the acquisition of property at the time of the 4–6 Grand Avenue acquisition were:

- Land Acquisition Practice Note (4TP-SD-071/2.0), which was a 15-page document that provided high level guidance for land acquisitions generally, programmed acquisitions, total acquisitions, partial acquisitions, entry for construction works, compulsory acquisitions, advance payments, terms for continued occupation, compensation, occupation and internal processes related to conflict of interest management, due diligence and valuations.
- Property Acquisition Due Diligence Guidance Note, which was a 29-page document describing the principles of due diligence and the suite of due diligence activities that may be relevant to any acquisition.
- Project Property Management Standard (4TP-ST-036/4.1), which was a 12-page document defining the broad principles for property management in TfNSW, covering such topics as stakeholder management, risk management and core property management processes and documents that the then Transport Projects division would undertake or maintain.

These are all principles-based documents. The use of a principles-based approach arguably necessary given the wide range of property acquisitions that TfNSW undertakes.

That said, the use of principles-based guidance relies on:

- agency staff using their experience and expertise to apply the principles to the specific circumstances of a transaction
- a documented plan describing how the principles apply to the specific transaction.

TfNSW's key focus in the conduct of land acquisitions is project impact and obtaining the property to support the broader project, and is less concerned with whether the acquisition represents value for money

TfNSW's primary focus in undertaking a property acquisition is to achieve vacant possession of the land on a timeframe that meets the need of the relevant project and in compliance with the *Land Acquisition (Just Terms Compensation) Act 1991* (the Act). This was most notable in our consultations with relevant officers involved in the transaction and in the management of the Property function.

However, as all transactions undertaken by TfNSW need to meet the requirements of the NSW Government financial management framework as outlined in the *Government Sector Finance Act 2018* (previously outlined in the *Public Finance and Audit Act 1983),* we expected to find a balance in emphasis of guidance material and in representations from officers between project outcomes and accountability for spending of government funds.

Achieving this balance can be challenging during high pressure negotiations and acquisitions, such as was the case for the 4–6 Grand Avenue acquisition.

The interaction between the Act and the *Government Sector Finance Act 2018* can be challenging as these legal frameworks approach compensation payable from different angles. Principles and requirements from the *Government Sector Finance Act 2018* relevant to this transaction include sound financial risk management, transparency and accountability as well as the efficient, effective and economical use of government resources. However, TfNSW's Land Acquisition Practice Note does not refer to these principles and requirements and TfNSW's briefing notes seeking approval for the acquisition did not document how value for money was obtained.

TfNSW's land acquisition policies require clarification on the interaction between the two pieces of legislation, to reinforce the importance of demonstrating value for money while achieving project outcomes.

TfNSW's current acquisition policies and procedures are unstructured, and largely unchanged from 2016

The TfNSW policies, procedures and guidance associated with property acquisitions consist of a wide range of guidance notes, guidelines, updates, standards, practice notes, templates, checklists, fact sheets, brochures, explanatory notes and other documents. In total, there are 75 separate documents, some developed by TfNSW and others developed by NSW Government agencies, such as NSW Procurement.

There is no structure or hierarchy for these documents to assist departmental staff who need to use them. As a result, it is extremely difficult for agency staff to efficiently search these documents for guidance in specific circumstances.

The majority of these documents are substantially unchanged from 2016, with only minor updates.

Many of the gaps in policy and procedure guidance noted throughout this report remain gaps at the time of this audit.

Since Roads and Maritime Services (RMS) was abolished with its functions brought into TfNSW, there is no current consolidated guidance for property acquisition for the whole agency

In December 2019, the NSW Government abolished RMS as a separate statutory entity and integrated legacy RMS functions into TfNSW.

Both predecessor agencies had their own property acquisition guidance.

At the time of writing this report, TfNSW has not established a consolidated set of guidance for the whole agency. Instead TfNSW has instructed staff to follow their predecessor guidance until such time as a single TfNSW-wide set of guidance is established.

TfNSW advised that the establishment of this single set of policies, procedures and guidance is under development and will be finalised this year. TfNSW further advised that, at the time of this audit, two acquisitions are being carried out under the legacy TfNSW policies.

Currently, most land acquisitions within TfNSW are managed in accordance with legacy RMS guidance. Our assessment of the RMS guidance indicates that it provides more comprehensive advice and direction, including guidance on how to manage specific circumstances. It also includes the requirement for ‘annual compliance monitoring of acquisition matters’, with limited direction on how this monitoring should be directed or undertaken. Our audit did not seek to examine how effectively the RMS legacy guidance is applied because it was not used for the acquisition of 4–6 Grand Avenue.

TfNSW does not have a quality or conformance assurance process for large or high-risk property acquisitions

A consistent theme of this audit of the acquisition of 4–6 Grand Avenue, Camellia, is the non-application of policies, procedures and guidance (irrespective of whether mandatory, recommended or available) and the non-application of tools and templates.

Quality and conformance assurance processes provide agencies confidence that staff are complying with policy frameworks and staff employ sound judgement when making decisions. Currently, TfNSW does not have these assurance processes in place for high-risk or high-value property acquisitions.

Section two

Appendices

Appendix one – Response from agency

14/05/2021

Your ref: D2107663
Our Ref: LS21/03423

Ms Margaret Crawford
Auditor-General
Audit Office of NSW
GPO Box 12
SYDNEY NSW 2000

Dear Ms Crawford

Thank you for the opportunity to respond to the Performance Audit Report (the Report) on the acquisition of 4-6 Grand Avenue, Camellia.

Transport for NSW (TfNSW) has considered the Report and its findings and acknowledges the deficiencies in the management of this acquisition. Importantly, TfNSW also acknowledges a number of continuing risks that could undermine public confidence in the work of the agency.

TfNSW is committed to making the necessary changes to ensure its property acquisition program meets the community's expectations regarding integrity, rigour and value for money. I accept the Report's recommendations that are directed to the agency, and TfNSW will develop a program of work to address their implementation. This will be developed for TfNSW's June Audit & Risk Committee and provided to you by 30 June 2021.

Property acquisition is an essential but often complex and challenging component of the delivery of city-shaping infrastructure projects. These challenges are why we must strive to continuously assess and improve our policies and procedures.

While there remains work to be done, I am confident that TfNSW is already undertaking structural and governance changes to support this approach.

As part of the Evolving Transport organisational redesign, the former RMS and TfNSW property functions have been integrated into a single team structured to reflect the property lifecycle. A key change is to ensure that while the property team continues to work with project terms to define their land requirements, all other functions – including acquisitions, asset management and divestment – are undertaken centrally. This approach is less siloed, provides more transparency, and supports consistent compliance.

From a policy and procedure perspective, most of TfNSW's property acquisitions are currently undertaken in accordance with the legacy RMS suite of policies (as you have noted in the Report). This suite is underpinned by a more robust governance and due diligence framework and will form the basis of the improved policies that the agency is developing. Additionally, new training materials are being developed to ensure that staff have a clear understanding of relevant delegations, systems, policies and practices.

I look forward to updating you and Minister Constance on our implementation of the recommendations.

Yours sincerely

Rob Sharp
Secretary

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Appendix two – About the audit

Audit objective

This audit assessed whether Transport for NSW:

- conducted an effective process to purchase 4–6 Grand Avenue, Camellia, and
- has effective processed and procedures to identify the property required to deliver the NSW Government's major infrastructure projects.

Audit scope and focus

We addressed the audit objective by assessing against the following criteria and sub-criteria. The audit examined whether:

1. Transport for NSW’s acquisition of the 4–6 Grand Avenue was consistent with the objectives for the Parramatta Light Rail project.
2. Transport for NSW’s acquisition of the 4–6 Grand Avenue was consistent with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991*.
3. Transport for NSW identified and managed risks relevant to the acquisition of the Camellia property, and considered reasonable alternatives to the purchase. This includes:
    a) effective governance arrangements to support identification and management of risk
    b) effective processes to support identification and management of risk in the acquisition of complex parcels of land.
4. Transport for NSW had effective probity processes throughout the acquisition of the Camellia property.
5. Transport for NSW had policies, processes and systems in place that supported the effective acquisition of the Camellia property and the demonstration of value for money for government expenditure.

Consistent with the Minister for Transport’s request that forms the basis for this performance audit, the scope of the audit will be limited to the acquisition of 4–6 Grand Avenue, Camellia and the processes and procedures that were in place at this time. This includes TfNSW’s participation in the competitive Expression of Interest process.

Audit exclusions

The audit did not:

- conduct any assessment of the property vendor, its processes or its activities
- assess processes undertaken since the acquisition of the property for the remediation and development of the site
- question the merits of government policy objectives as they relate to the Parramatta Light Rail or the acquisition of property for public purposes.

Audit approach

Our procedures included:

1. Reviewing documentation accumulated by TfNSW for the purpose of meeting NSW Parliament call for documents in connection with the acquisition of the property.
2. Identifying additional material and making specific requests for documentation from TfNSW and other NSW Government agencies or relevant TfNSW advisers to the acquisition (including, at a minimum, the TfNSW legal adviser and probity adviser to the acquisition).
3. Reviewing documented (and understanding any undocumented) policies, processes and procedures for the acquisition of property for public purposes, including managing compliance with the *Land Acquisition (Just Terms Compensation) Act 1991*, with a view to identifying any risks, gaps or weaknesses in those policies, processes and procedures which may have contributed to identified issues with the 4–6 Grand Avenue, Camellia acquisition.
4. Comparing processes undertaken for the 4–6 Grand Avenue, Camellia acquisition against approved policies, processes and procedures to identify if any instances of non-conformance which may have contributed to identified issues with the 4–6 Grand Avenue, Camellia acquisition.
5. Interviewing TfNSW leadership and staff involved in the acquisition of the site (including the attempted acquisition in 2015) and TfNSW policy and process owners for the acquisition of land for public purposes.
6. Considering lessons learned from the 4–6 Grand Avenue, Camellia transaction, and proposing advice for improvement to TfNSW policies and procedures.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Public Finance and Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by current and former TfNSW staff.

Audit cost

The approximate cost of this audit is $351,288.

Appendix three – Performance auditing

What are performance audits?

Performance audits determine whether state or local government entities carry out their activities effectively, and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Public Finance and Audit Act 1983* for state government entities, and in section 421D of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, state and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's audit committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

Professional people with purpose

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose

Curious and open-minded

Valuing people

Contagious integrity

Courage (even when it's uncomfortable)

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