



PERFORMANCE AUDIT

9 FEBRUARY 2023

Government's acquisition of private property: Sydney Metro project

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

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In accordance with section 38EC of the *Government Sector Audit Act 1983*, I present a report titled '**Government's acquisition of private property: Sydney Metro project**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford PSM'.

Margaret Crawford PSM
Auditor-General for New South Wales
9 February 2023



RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

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Section one

Government's acquisition of
private property: Sydney
Metro project

Executive summary

The NSW Government has the power to acquire land that is owned or leased by individuals or businesses, if it is needed for a public purpose. The power arises from the *Land Acquisition (Just Terms Compensation) Act 1991* (the Just Terms Act). Government agencies that have the power to compulsorily acquire private property are referred to as 'acquiring authorities'. People who are subject to acquisitions are referred to as 'affected parties' and include property owners (business or residential), businesses with a commercial lease on a property, or individuals with residential tenancy leases. In recent years, the vast majority of acquisitions by the NSW Government have been for public transport or road projects.

Sydney Metro is a NSW Government agency with responsibility for building the Sydney Metro railway project. Sydney Metro is Australia's largest public transport project. The project requires the acquisition of a large number of private properties. Sydney Metro has been one of the largest acquirers of private property in recent years, completing over 500 acquisitions between 2020 and mid-2022, with a total acquisition value of over \$2 billion. Other agencies and statutory officers involved in the acquisition of property for the Sydney Metro project include:

- the Department of Planning and Environment (DPE), which supports the minister responsible for the Just Terms Act. DPE also provides staff to the Valuer General of NSW
- the Valuer General of NSW, an independent statutory officer that determines compensation in cases where the acquiring authority and the affected party cannot agree on compensation for property that has been acquired
- Transport for NSW, which includes the Centre for Property Acquisition (CPA). The CPA does not have a direct role in acquiring properties, but its responsibilities include developing guidance for acquiring agencies and monitoring and reporting on their activities.

About this audit

The objective of this audit was to assess the effectiveness of acquisitions of private properties for Sydney Metro projects. The audit assessed agencies against the legislative and policy requirements in place for government acquisitions of private property in New South Wales. In line with the Audit Office's legislative mandate, the audit does not comment on the merits of the policy objectives reflected in the Just Terms Act.

The audit examined a sample of 20 property acquisitions. This was not a statistically representative sample. While our report provides comments on Sydney Metro's overall acquisition processes, it does not provide assurance regarding the acquisitions that were not examined for this audit.

The audit did not re-perform the valuations done for individual properties that were acquired by Sydney Metro. Affected parties who disagree with the valuation of their property have the right to seek independent assessment of this via the Valuer General and the Land and Environment Court.

Conclusion

Acquisitions of property for the Sydney Metro project were mostly effective in the sample of acquisitions we assessed. Sydney Metro followed requirements for communication with affected parties. Compensation processes were conducted in compliance with legislative requirements, but compensation determinations for compulsory acquisitions were not completed within legislated time frames due to delays in receiving these from the Valuer General. Governance and probity processes were followed consistently, with some relatively minor exceptions.

Sydney Metro has detailed guidelines for acquisitions that are based on relevant legislation and government policy. In the 20 acquisitions we assessed for this audit, these procedures were followed consistently. This included adhering to minimum timelines for negotiation periods, engaging independent valuers and other experts when needed, and complying with governance and probity processes.

Sydney Metro staff followed requirements for communication and support for residential acquisitions by assigning 'personal managers' and providing additional support to affected parties when needed. The Centre for Property Acquisition (CPA) has overseen reforms to the residential property acquisition process in recent years. These reforms include the introduction of the NSW Property Acquisition Standards and the use of personal managers, in addition to the existing acquisition managers, for residential acquisitions. However, the CPA has not assessed the impact of these changes on the experiences on people affected by property acquisitions.

Sydney Metro did not comply with the legislative requirement to provide a formal compensation notice to the affected party within 45 days of a compulsory acquisition starting in any of the eight relevant acquisitions in our sample. This was because Sydney Metro must wait for the Valuer General to complete a compensation determination before Sydney Metro can send the compensation notice, and the Valuer General did not do this within 45 days. We acknowledge that Sydney Metro does not have full control over this process, and that it has taken steps to mitigate the impact of delays on affected parties.

1. Key findings

Sydney Metro's property acquisition procedures align with legislative and policy requirements

Sydney Metro has detailed guidelines for acquisitions which set out processes to ensure compliance with legislation and policy. Our review of 20 acquisitions of private properties, which included industrial, commercial, residential and small business acquisitions, found that Sydney Metro followed its property acquisition procedures consistently. In the sample of acquisitions we reviewed, statutory timelines for minimum negotiation periods were followed, independent valuations were commissioned and used to inform compensation offers, and governance and probity processes such as declarations of interests and financial approvals were observed.

Our review found that Sydney Metro did not meet the legislative time frame for making compensation offers for compulsory acquisitions. Sydney Metro must wait for the Valuer General to complete its determinations of compensation in these cases before it can make an offer. Delays from the Valuer General meant Sydney Metro was unable to issue its final offers within the specified time frame in all of the cases we reviewed (discussed further below).

Sydney Metro staff followed requirements for communication and support for residential acquisitions consistently

Our review of ten residential and small business acquisitions found that a consistent approach was used to communicate with, and provide support to, people affected by acquisitions. This included assigning personal managers for residential and small business acquisitions, providing information about the acquisition process, meetings and calls with affected parties, and providing specific support where needed. Types of support included guidance on relocation to a new property and referrals to counselling services.

Previous reviews of property acquisition in New South Wales, including the Pratt review of property acquisitions in 2016, have found that improvements were required in the way acquiring authorities interact with affected parties, especially for residential acquisitions. These reviews led to changes in processes, some of which were embedded in legislation and policy. Our audit found that Sydney Metro followed these processes consistently in the ten residential and small business acquisitions in our sample.

However, some affected parties, lawyers working in this area, and legal peak bodies have raised concerns that government acquisition of private properties do not lead to fair outcomes. These criticisms have focused on the use of 'market value' to determine compensation, and the exclusion of any 'uplift' in property values that may occur as a result of the government's proposed use of the land being acquired. The *Government Sector Audit Act 1983* prevents the Auditor-General from questioning the merits of policy objectives of the government. This audit assesses compliance with the relevant legislation and NSW Government policies, but it does not comment on the merits of these policy objectives. These matters could be considered by the government in future reviews of the Just Terms Act.

Sydney Metro did not reach agreement on more than half of the industrial acquisitions completed between 2020 and 2022

Of the acquisitions completed for Sydney Metro projects between 2020 and 2022, 58% of the acquisitions of industrial property required a compensation determination from the Valuer General rather than being agreed with the affected party. Around one quarter of the commercial acquisitions during the same period also required compulsory acquisitions. The objects of the Just Terms Act include encouraging acquiring authorities to reach agreement with the affected party on compensation. Specific provisions that set minimum time frames for negotiation of compensation are intended to support this objective. In the cases we reviewed, Sydney Metro followed its procedures and attempted to negotiate agreed compensation with the affected party. Despite this, the proportion of compulsory acquisitions remained significant. Industrial and commercial matters are typically the most complex type of acquisition. They are often contested and sometimes require expert advice from multiple sources.

Acquisition staff at Sydney Metro advised that one of the most significant project risks is that acquisitions will not be completed in time to allow construction work to begin on schedule. Sydney Metro maintained risk registers that listed properties being acquired and identified potential issues that might cause delays. In some cases, the suggested mitigation was to determine a negotiation strategy and contingency before commencing negotiations. However, in the acquisitions we reviewed, Sydney Metro did not complete detailed plans or negotiation strategies for the acquisitions. Our '[Acquisition of 4–6 Grand Avenue, Camellia](#)' report (tabled May 2021) recommended that property acquisition procedures should include risk assessments and acquisition plans for all high-value property acquisitions. We note that the acquisitions we assessed had commenced before this report was published.

Issues with the timeliness of compensation determinations from the Valuer General delay the completion of acquisitions and impact legislative compliance for acquiring authorities

The Valuer General has not met its target time for the completion of compensation determinations in any of the last five years. Its target time of 45 days is based on the legislative time frame by which acquiring authorities must issue a compensation notice. The issues with the timeliness of compensation determinations have been raised in hearings and reports of the NSW Parliament Joint Standing Committee on the Office of the Valuer General (the Joint Standing Committee), which monitors, reviews and reports on how the Valuer General carries out its land valuation functions. In response to recommendations from the Joint Standing Committee, several reforms of the Valuer General's processes have begun in the past year. We did not include assessment of these reforms in this audit because they were being implemented while the audit was being conducted. DPE advised that its data indicates improvements in the average timeliness of the Valuer General's compensation determinations in the last year, which it attributes to the process reforms. It is unlikely that the reforms will, on their own, lead to all compensation determinations being completed in a time that allows an acquiring authority to issue its compensation notice within 45 days, as required by section 42 of the Just Terms Act.

In all seven of the commercial and industrial acquisitions in our sample that were completed compulsorily, Sydney Metro did not comply with section 42 of the Just Terms Act, which requires the acquiring authority to provide a compensation notice to the affected party within 45 days of the acquisition. Sydney Metro can only issue a compensation notice when the Valuer General has completed its determination of the compensation. The Valuer General took longer than 45 days in these cases. Sydney Metro advised that its senior executives have worked with the Valuer General and DPE to attempt to improve the timeliness of determinations. Sydney Metro made advance payments of a proportion of the expected compensation amount to those affected by these delays, which is allowed under the Just Terms Act.

The CPA has overseen the implementation of reforms to residential acquisition processes, but its assessment of their effectiveness has not been comprehensive

The CPA has developed Property Acquisition Standards and other guidance for acquiring authorities to support compliance with legislation and policy commitments. The overall goal of this work is to improve the experiences of people subject to residential property acquisitions. The CPA has commissioned an annual survey in each of the last three years which sought the views of people who were subject to property acquisitions. However, it has several weaknesses that limit its usefulness, including a low response rate and changes in the profile of respondents that make year-on-year comparisons difficult.

One of the main recommendations of the Pratt review of property acquisition in 2016 was the introduction of 'personal managers' for residential acquisitions. These roles are now required in addition to the existing acquisition manager roles. The CPA has not done any work to assess the impact of this reform on the experiences of affected parties. Its annual surveys do not provide insights into this, and it has not commissioned separate work to assess their effectiveness.

2. Recommendations

By 30 June 2023, Sydney Metro should:

1. develop consistent acquisition plans, risk assessments and negotiation strategies for all high value and high-risk property acquisitions.

The Department of Planning and Environment should:

2. as a part of the review of the *Land Acquisition (Just Terms Compensation) Act 1991* scheduled to commence in 2023, consider whether the provisions relating to legislative timelines for issuing compensation determinations for compulsory acquisitions require amendment
3. continue work to support improvements in the timeliness of the Valuer General's compensation determinations, including:
 - consultation with acquiring authorities that require compensation determinations
 - monitoring and reporting on the impact of the reforms.

By 30 June 2023, Transport for NSW should:

4. commence work to improve the quality of its data on the experiences of people subject to property acquisitions by:
 - evaluating the impact of the introduction of personal managers on the experiences of people subject to residential property acquisitions
 - developing and implementing practices to increase the response rate to post-acquisition surveys
 - analysing survey responses from people subject to residential acquisitions separately to those from people subject to business, commercial and industrial acquisitions.

1. Introduction

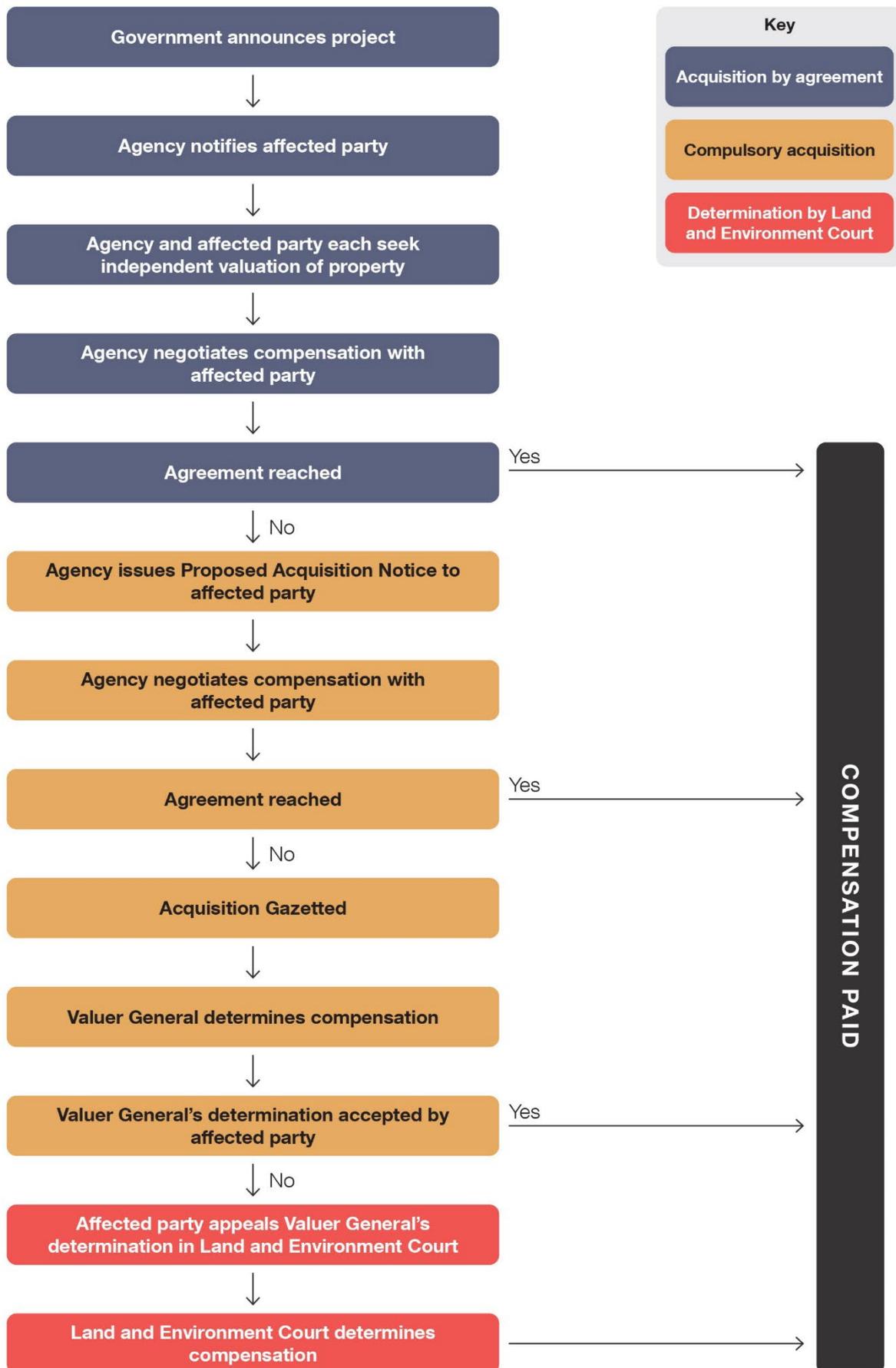
1.1 Property acquisitions by the NSW Government

The framework for property acquisitions by the NSW Government

The NSW Government has the power to acquire private property, including residential and commercial buildings and vacant land, if it is needed for a public purpose such as building public transport, roads, or hospitals. Over the past decade, this has happened for major projects including Sydney Metro, WestConnex, light rail, and a range of other transport projects. There is a large forward program of major infrastructure projects planned for the next decade in New South Wales. Many of these projects will require the acquisition of private properties.

Government agencies that have the power to compulsorily acquire private property are referred to as 'acquiring authorities'. People who are subject to acquisitions are referred to as 'affected parties' and include property owners (business or residential), businesses with a commercial lease on a property, or individuals with residential tenancy leases. The process for acquisitions of private property by government agencies is summarised in Exhibit 1.

Exhibit 1: Process for government acquisition of private property in New South Wales (simplified)



Source: Adapted from information produced by the Centre for Property Acquisition, Transport for NSW.

The framework for property acquisition in New South Wales is comprised of:

- the *Land Acquisition (Just Terms Compensation) Act 1991* (the Just Terms Act)
- the Property Acquisition Standards (the Standards) which are issued by the Centre for Property Acquisition, a unit within Transport for NSW
- the 'minimum requirements for acquiring authorities', which are issued by the Centre for Property Acquisition and are intended to provide additional guidance to support the implementation of the legislation and Standards
- operational guides and factsheets.

The Just Terms Act is overseen by the Minister for Lands and Water. The Minister is also responsible for administering certain functions relevant to property acquisitions, including approving changes to specified time periods for compensation negotiations. The Department of Planning and Environment provides support to the Minister in carrying out these roles.

The Just Terms Act, Standards and minimum requirements prescribe requirements for acquiring authorities including that:

- acquiring authorities must try to seek agreement with the affected party about compensation for the acquisition
- compensation must be based on market value, which is defined in the Just Terms Act as the amount that would have been paid to the seller in an open market
- acquiring authorities must comply with specified time frames for negotiations and finalisation of compensation
- acquiring authorities must provide specified information and support to affected parties, such as letters detailing the process and contact details of support staff.

These requirements were reformed in response to reviews of the NSW Government's approach to property acquisition conducted by David Russell SC (2014) and Michael Pratt (2016). The Russell review examined the State's compulsory property acquisition legislation. It made 20 recommendations to the NSW Government which aimed to improve communication, reduce disputes and increase the accountability of government agencies that are acquiring properties. The Pratt review focused on the experience of people who are subject to compulsory acquisitions. It made 20 recommendations that aimed to improve the way acquiring authorities approached and supported property owners and residents.

Two parliamentary inquiries have considered the impact of property acquisitions on affected parties in recent years. The parliamentary inquiry in 2018 into the impact of the WestConnex project included consideration of the impact of compulsory property acquisition. The report commented that property acquisitions were not always managed with an appropriate level of care and made recommendations that aimed to make the acquisition process fairer to affected parties and more transparent. The Parliamentary inquiry into the acquisition of land in relation to major transport projects was established in 2021. Its scope included acquisitions for the Sydney Metro project, along with several other transport projects. It made recommendations for improvements to government property acquisitions, including proposing legislative changes relating to the acquisition process.

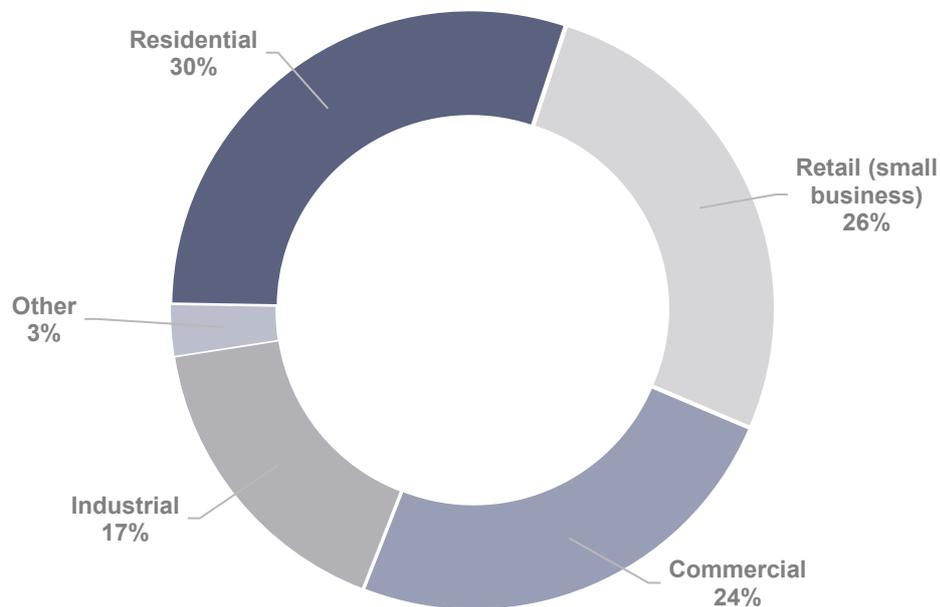
Property acquisitions for the Sydney Metro project

Sydney Metro is a NSW Government agency, constituted by the *Transport Administration Act 1988*, with responsibility for building the Sydney Metro railway project. This project includes the construction of 46 stations and 113 kilometres of new metro rail. The project is divided into four parts:

- Sydney Metro Northwest, completed
- Sydney Metro City and Southwest (Chatswood to Bankstown via the CBD, including stations at Barangaroo, Martin Place, Pitt Street and Waterloo), in progress
- Sydney Metro West (CBD to Westmead, including stations at the Bays, Pyrmont and Hunter St), in progress
- Sydney Metro – Western Sydney Airport (connecting St Marys to the new airport), in progress.

The *Transport Administration Act 1988* gives Sydney Metro the power to acquire properties for metro infrastructure. It must do this in accordance with the Just Terms Act. The project requires the acquisition of a large number of residential, commercial and industrial properties. Data provided to the Audit Office by Sydney Metro shows that between 2020 and 2022 it finalised 511 acquisitions of private properties with a total acquisition value of over \$2 billion. A summary of the characteristics of these acquisitions is shown in Exhibit 2. This shows that the largest category of acquisitions was residential, at 30%, followed by retail (small business) with 26%, commercial with 24%, and industrial with 17%.

Exhibit 2: Sydney Metro's completed property acquisitions, 2020 to 2022, by property category



Source: Sydney Metro data (unpublished - not audited).

Exhibit 3 shows the completed property acquisitions by property type and acquisition method. This shows that almost nine out of ten residential acquisitions were completed after reaching agreement on the compensation. More than half of the industrial acquisitions required the use of compulsory acquisition powers because agreement could not be reached on compensation. Around three quarters of the retail and commercial acquisitions were completed by agreement.

Exhibit 3: Sydney Metro's competed property acquisitions, 2020 to 2022, by property category and acquisition method

| Property type | Acquisitions by agreement (%) | Compulsory acquisitions (%) |
|-----------------------------------|-------------------------------|-----------------------------|
| Residential | 89 | 11 |
| Retail (including small business) | 77 | 23 |
| Commercial | 77 | 23 |
| Industrial | 42 | 58 |

Notes:

- 1 The residential category in this table combines Sydney Metro categories of 'residential' and 'rural residential'.
- 2 A total of 14 acquisitions across five smaller categories were excluded from this table because of the low numbers.
- 3 The 'by agreement' category includes s.30 agreements.

Source: Sydney Metro data (unpublished - not audited).

Sydney Metro is responsible for all of the property acquisitions for the Sydney Metro project, but other government agencies and statutory officers have roles in the property acquisition process that are relevant to this audit.

The Valuer General is an independent statutory officer that determines compensation following the compulsory acquisition of properties. Under the Just Terms Act, the Valuer General is responsible for:

- ensuring property owners get fair compensation when property is compulsorily acquired
- setting an independent, fair and transparent process to decide compensation.

Valuer General NSW (VGNSW) is a unit within the Department of Planning and Environment (DPE) that supports the Valuer General by providing staff who manage the valuation process. This includes management of determinations for compulsory acquisitions. As noted above, DPE also supports the Minister for Lands and Water in administering the Just Terms Act.

The Centre for Property Acquisition is a unit within Transport for NSW that has whole-of-government responsibility to coordinate the implementation of the recommendations of the Pratt review. It does not have a direct role in acquiring properties, but its whole-of-government roles include:

- developing guidance to help acquiring authorities understand their obligations
- providing information for the public about the property acquisition process
- monitoring and reporting on property acquisitions by NSW government agencies.

1.2 About the audit

The objective of this audit was to assess the effectiveness of acquisitions of private properties for Sydney Metro projects. This included assessing:

- communication with and support for affected parties
- conduct of compensation processes (negotiation and determinations)
- adherence to governance and probity requirements.

The audit assessed agencies against the legislative and policy requirements in place for government acquisitions of private property in New South Wales. In line with the Audit Office's legislative mandate, the audit does not comment on the merits of the policy objectives, which in this audit were reflected in the Just Terms Act.

The audit examined a sample of 20 property acquisitions. This was not a statistically representative sample. While our report provides comments on Sydney Metro's overall acquisition processes, it does not provide assurance regarding the acquisitions that were not examined for this audit.

The audit did not re-perform the valuations done for individual properties that were acquired by Sydney Metro. Affected parties who disagree with the valuation of their property have the right to seek independent assessment of this via the Valuer General and the Land and Environment Court.

More information about the audit approach is provided in Appendix two.

2. Acquisitions of industrial and commercial properties

This chapter presents our findings on Sydney Metro's acquisition of industrial and commercial properties. Industrial properties include construction businesses and manufacturing facilities. Commercial properties were mostly properties such as shopping centres and office towers. Many of these acquisitions involve businesses and properties that are relatively complex and have high values. This means the valuation process can require multiple experts and can be lengthy and contested. Adherence to governance and probity requirements is important for these acquisitions in order to demonstrate that the acquiring authority has achieved value for money.

2.1 Negotiating compensation for properties acquired

Sydney Metro's property acquisition procedures align with legislative and policy requirements

Sydney Metro has detailed procedures for property acquisitions that are based on the requirements set out in the Just Terms Act and other relevant NSW Government policies. For the ten industrial and commercial property acquisitions we examined in detail, Sydney Metro followed these procedures consistently. This included providing the key information required under legislation and policy to people subject to acquisitions, such as commencement letters, information about the acquisition process, and formal letters of offer.

Sydney Metro staff provided affected parties with additional assistance such as relocation planning when this was requested during the acquisition process. In cases where Sydney Metro did not reach agreement with the property owner about the amount of compensation, it made advance compensation payments to property owners so they would not be financially disadvantaged while waiting for final determinations from the Valuer General or the Land and Environment Court. This is allowed under section 48 of the Just Terms Act.

Acquisition staff kept detailed logs of interactions with the affected parties. These indicated that the staff contacted the affected parties frequently to provide updates and seek information that was needed for the acquisitions. Key steps such as seeking legal advice on each acquisition, engaging a qualified valuer, and seeking approval in line with Sydney Metro's delegations manual were completed consistently in the ten commercial and industrial acquisitions we reviewed.

The amount of detail included about negotiations differed across the ten acquisitions we reviewed. In some cases, the acquisition logs and briefing notes included a large amount of detail including summaries of discussions and explanations of changes. For others, there were no records of minutes of negotiation meetings and it was less clear how decisions during negotiations were made. In all seven of the commercial and industrial acquisitions in our sample that were completed compulsorily, Sydney Metro did not comply with section 42 of the Just Terms Act, which requires the acquiring authority to provide a compensation notice to the affected party within 45 days of the acquisition. This is discussed in section 2.3 below.

Sydney Metro did not reach agreement on more than half of the industrial acquisitions completed between 2020 and 2022

Of the acquisitions completed for Sydney Metro projects between 2020 and 2022, 58% of the acquisitions of industrial property required a compensation determination from the Valuer General rather than being agreed with the affected party. Our sample of acquisitions included two industrial acquisitions that were not settled by agreement. In one case, the affected party rejected Sydney Metro's compensation offer, but did not exchange valuations with Sydney Metro or make a counter offer. This made it difficult for Sydney Metro to conduct meaningful negotiations and reach agreement on compensation. In the other industrial acquisitions we reviewed that were not acquired by agreement, the affected party did not provide access to the property for a valuation inspection for several months, and then provided additional relevant information after the valuation had been completed for Sydney Metro. These issues made it difficult to reach agreement within the time required for the project.

The objects of the Just Terms Act include encouraging acquiring authorities to reach agreement with the affected party on compensation. Specific provisions that set minimum time frames for negotiation of compensation are intended to support this objective. In these cases, our review indicates that Sydney Metro followed most of its procedures and attempted to negotiate agreed compensation with the affected party.

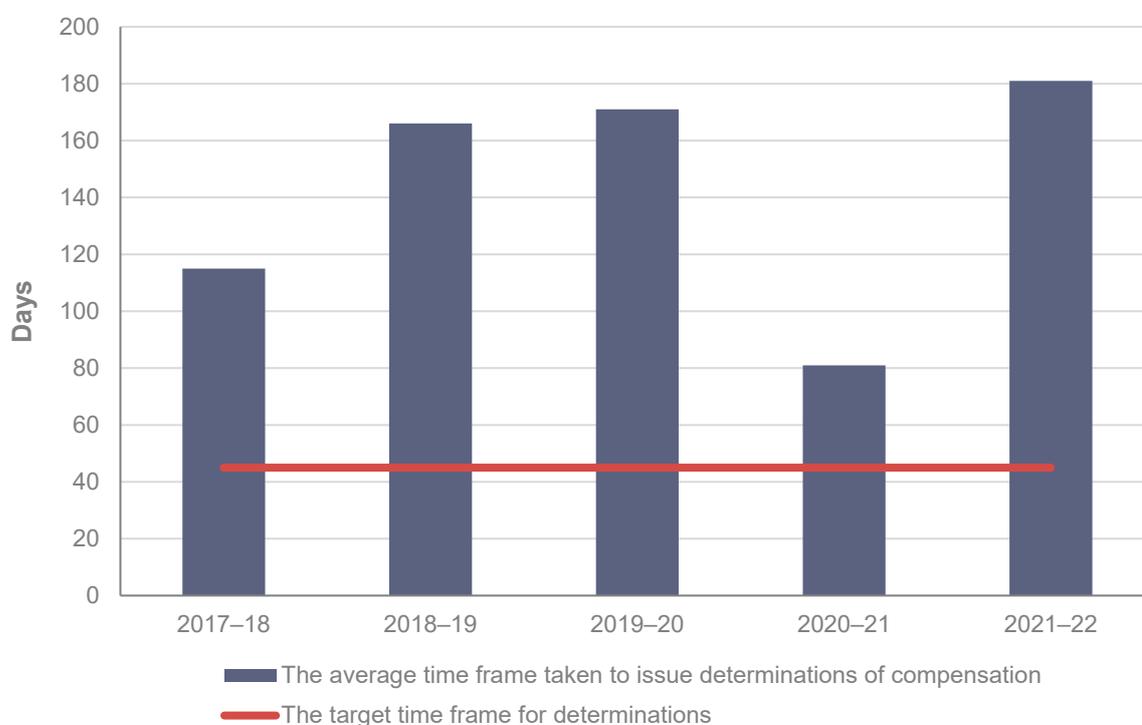
Acquisition staff at Sydney Metro advised that one of the most significant project risks is that acquisitions will not be completed in time to allow construction work to begin on schedule. Sydney Metro maintained risk registers that listed properties being acquired and identified potential issues that might cause delays. In some cases, the suggested mitigation was to determine a negotiation strategy and contingency before commencing negotiations. However, in the acquisitions we reviewed, Sydney Metro did not complete detailed plans or negotiation strategies for the acquisitions. Our '[Acquisition of 4–6 Grand Avenue, Camellia](#)' report (tabled May 2021) recommended that property acquisition procedures should include risk assessments and acquisition plans for all high value property acquisitions. We acknowledge that the acquisitions we assessed had commenced before this report was published.

2.2 Valuer General's determinations of compensation for compulsory acquisitions

The Valuer General has not met targets for the timeliness of compensation determinations in recent years

In 2021–22, the Valuer General issued 247 determinations of compensation under the Just Terms Act for properties above ground. The average time to deliver a determination was 181 days. The Valuer General has a target of 45 days for compensation determinations, which aligns with the statutory time frame that applies to acquiring authorities. The timeliness of compensation determinations for compulsory acquisitions has been a persistent issue for several years. Exhibit 4 shows that the average time taken for compensation determinations was above the target time in every year between 2017–18 and 2021–22. This adds a considerable amount of time to the acquisition process and contributes to non-compliance with legislative provisions for the timeliness of finalising compensation (discussed in section 2.3 below).

Exhibit 4: Timeliness of compensation determination by the Valuer General, 2017–18 to 2021–22



Source: Valuer General of NSW Annual Reports data 2017–18 to 2021–22 (not audited).

The average time taken for the Valuer General to complete compensation determinations is influenced by multiple factors including the number of matters received each year. The number of acquisitions requiring a compensation determination fluctuated in the period from 2017–18 to 2020–21, with a low of 77 in 2020–21, a high of 247 in 2021–22, and an average of 155 across the five years. However, we did not observe a direct correlation between the number of determinations required and the Valuer General's timeliness. For example, in 2019–20 there were a relatively low 96 determinations but the average time for completion was 171 days, the second highest in the past five years.

The NSW Parliament Joint Standing Committee on the Office of the Valuer General, which monitors, reviews and reports on how the Valuer General carries out its land valuation functions, has raised concerns about the timeliness of compensation determinations in several recent hearings and reports.

Valuer General reforms are underway and are overseen by a parliamentary committee

The Valuer General made changes to the process for conducting determinations of compensation and these were implemented during 2022. These involved creating standard letters for key correspondence and setting tighter timelines for affected parties to submit information for consideration. Sydney Metro advised it has worked with the Valuer General to notify it earlier about acquisitions that may proceed to compulsory acquisition and require a determination of compensation from the Valuer General. This gives the Valuer General extra time to conduct preparatory work on valuation of the property. However, this sometimes means the Valuer General conducts, and charges Sydney Metro for, work that is not required because Sydney Metro subsequently reaches agreement on compensation and does not require a determination from the Valuer General.

The Valuer General's new processes have been implemented for the latest round of acquisitions that require compulsory acquisition and a compensation determination from the Valuer General. We did not include assessment of these reforms in this audit because they were being implemented while the audit was being conducted. DPE advised that its data indicates improvements in the average timeliness of the Valuer General's compensation determinations in the last year, which it attributes to the process reforms. They appear to address some of the timeliness issues in compensation determinations, but it is unlikely that they will, on their own, lead to all compensation determinations being completed in a time that allows an acquiring authority to issue its compensation notice with 45 days, as required by section 42 of the Just Terms Act.

The compulsory acquisitions that require a determination from the Valuer General are contested by the affected party and they often include complex or unique features. Completing an independent assessment of the compensation due for these complex acquisitions may require the use of multiple experts, all of whom must be engaged in line with NSW Government procurement rules. This means it may not be realistic for the Valuer General to complete compensation determinations within 45 days for complex acquisitions. If this is the case, it is likely that acquiring authorities will frequently not comply with the time frame for sending compensation notices set out in section 42 of the Just Terms Act. This is discussed further in the following section.

2.3 Governance and probity

Sydney Metro did not comply with the legislative time limit for issuing compensation notices in several cases

In all seven of the commercial and industrial acquisitions in our sample that were completed compulsorily, Sydney Metro did not comply with section 42 of the Just Terms Act, which requires the acquiring authority to provide a compensation notice to the affected party within 45 days of the acquisition. Sydney Metro can only issue a compensation notice when the Valuer General has completed its determination of the compensation. The Valuer General took longer than 45 days in these cases. Sydney Metro mitigated the impact of the delay on the affected parties by making advance payments of a proportion of the expected compensation amount.

Sydney Metro advised that it is aware that determinations from the Valuer General frequently take longer than 45 days. This creates an ongoing risk of legislative non-compliance for all compulsory acquisitions. Sydney Metro advised that its senior executives have worked with the Valuer General and DPE to attempt to improve the timeliness of determinations. For example, the delays in determinations became a standing agenda item on the DPE and Sydney Metro Leaders Monthly Forum meetings.

Under section 42 of the Just Terms Act, an acquiring authority can seek ministerial approval to extend the period for providing the compensation notice by up to 60 days. Sydney Metro did not seek this approval in the cases we examined. DPE advised that it is not aware of any acquiring authorities using this provision to seek ministerial approval to extend the timeline for issuing compensation notices. Sydney Metro advised that it does not use this provision for the following reasons:

- it would require Sydney Metro to seek approval from the minister responsible for the Just Terms Act. Sydney Metro does not ordinarily report to or provide services to this Minister, so the approval would be sought via the ministerial services team at DPE and this could be a lengthy process
- gaining ministerial approval to extend by 60 days may still not be enough time to avoid legislative non-compliance, because there would be no guarantee that the Valuer General would complete the determination within the extended time. The Valuer General is an independent statutory officer and cannot be directed by ministers or public service staff. As shown in Exhibit 4, the Valuer General's average time for issuing compensation determinations has been well over 45 days in each of the past four years. In the cases we examined, six of the seven industrial or commercial acquisitions that required a determination from the Valuer General took longer than 105 days, which would be the maximum time allowed if an extension was granted by the minister responsible for the Just Terms Act.

While these are difficult issues to resolve, Sydney Metro is responsible for ensuring it complies with relevant legislation.

Sydney Metro kept accurate records of its acquisitions and applied probity controls consistently

Sydney Metro has an electronic workflow management system that records sign-offs for internal briefings. For the ten industrial and commercial acquisitions we assessed in detail, records of completed briefing notes and electronic sign-offs were provided for all acquisitions. Standard probity processes such as statements of interest were completed by the staff working on the acquisitions. When engaging valuers or other expert advisors, Sydney Metro requirements included statements that the service provider held the appropriate professional qualifications and licences, did not have a financial or other interest in the property being valued, and was only providing valuation services for the specified properties to Sydney Metro. Probity arrangements for staff and contractors at DPE, who provided services to the Valuer General, were similar and were used consistently in the acquisitions we reviewed.

The approvals for the acquisitions we reviewed complied with Sydney Metro's delegations in most respects. The exception was for the authorisation of compensation payments for six acquisitions where the compensation was determined by the Valuer General. In these cases, CEO or board approval was required under Sydney Metro's delegations because of the value of the payment, but the authorisation was given by a staff member with a lower financial delegation. The compensation amount had been determined by the Valuer General, which meant Sydney Metro was legally required to make the payments. Sydney Metro acknowledges that these cases did not comply with its existing delegations and it has advised that the delegations will be revised to specify that CEO or board approval is not required to execute payments where the compensation has been determined by the Valuer General.

3. Acquisitions of residential properties and small business leases

This chapter presents our findings on Sydney Metro's acquisition of residential properties, which include apartments and houses, and small business leases, which mostly affected businesses in small shopping centres or arcades. Most of these acquisitions were lower value compared to industrial and commercial property acquisitions and did not require as much expert advice on complex technical issues. However, residential property acquisitions can be personally distressing for the affected parties and require staff from the acquiring authority to provide support and show empathy while ensuring legislative compliance and value for money.

3.1 Communication and support during residential and small business acquisitions

Sydney Metro staff followed requirements for communication and support consistently

Our review of selected residential and small business acquisitions found that a consistent approach was used to communicate with, and support, people affected by acquisitions. In each of the ten acquisitions we examined:

- written information that is required under the Just Terms Act and the NSW Property Acquisition Standards was provided at the correct times
- acquisition managers offered in-person meetings and arranged these when requested to do so (subject to COVID-19 restrictions that were in place during the period we assessed). Acquisition managers also provided tailored guidance and support to affected parties when this was requested. This included providing additional information about the acquisition process and having conversations with the affected parties and their family members about the challenges they were facing
- personal managers were appointed for residential and small business acquisitions. The personal managers for residential acquisitions maintained records of their communication with affected parties. This indicated that they offered and provided support such as personal counselling and wellbeing checks.

A key role of the personal manager is to be the primary point of contact for all non-commercial discussions. The main role of the acquisition team is to guide affected parties through the details of the acquisition process. While the roles and responsibilities of personal managers and acquisitions managers are outlined in Sydney Metro's communication and implementation plan, there is some overlap in the work done by personal managers and acquisition managers. There is a risk that this may cause duplication and/or gaps and inconsistency in the information provided, which could be confusing for the affected parties. Sydney Metro staff advised they have regular meetings between staff to share relevant information and escalate issues that require further attention.

The CPA has developed standards, guidance materials and training

The CPA was established to implement the recommendations of the Pratt review of property acquisitions. Its work since this time has included:

- developing the New South Wales Property Acquisition Standards and minimum requirements to support compliance with legislation and policy commitments
- developing and providing training courses for acquisition and personal managers. Staff working on acquisitions at Sydney Metro reported that they had participated in CPA training and events and found them useful
- supporting a 'community of practice' relating to property acquisitions across the NSW Government.

The CPA's assessment of the effectiveness of reforms to improve the experience of people subject to acquisitions has not been comprehensive

The CPA has commissioned an annual survey over the last three years which sought the views of people who were subject to property acquisitions. The CPA also commissioned an in-depth qualitative research report to complement the survey. This research gives some information about experiences of people subject to acquisitions and indicates that most respondents had a positive view of the staff assigned to manage the acquisitions. However, it has several weaknesses that limit its usefulness. These include:

- The number of responses to the survey is small, with around 30 responses out of 200 to 500 completed acquisitions each year.
- The profile of respondents has changed, with more responses from the affected parties of commercial properties in the most recent year of the survey. While all property acquisitions are conducted using the same legislative powers, there are significant differences in the nature of residential acquisitions compared to the acquisition of commercial or industrial properties. This makes it difficult to make meaningful comparisons between the survey results each year.
- The survey asks about the work done by staff from the acquiring department or agency, but it does not distinguish between the positions of 'acquisition manager' and 'personal manager'. This means the survey does not contribute to assessing the effectiveness of personal managers in improving the experiences of people who are subject to acquisitions.

The CPA is responsible for overseeing the implementation of the recommendations of the Pratt review. It has overseen several reforms, but it does not have quality data on the impact of changes made following the review. During the audit, the CPA advised that it has commissioned a review of the current survey with the goal of identifying areas for improvement. A key area of focus is increasing the response rate to the survey.

3.2 Compensation for residential and small business properties acquired

Legislative and policy requirements for the acquisitions were followed

Our review of ten acquisitions of residential properties and small businesses found that Sydney Metro met the legislative and policy requirements for these acquisitions. Sydney Metro has a detailed procedures document for acquisitions which sets out processes that must be followed to ensure compliance with legislation and policy. This is supported by templates for documents such as letters required under the Just Terms Act, and planning and decision-making documents.

Sydney Metro's workflow management system provides a record of approvals of decisions relating to the acquisition. Sydney Metro staff completed probity requirements such as conflict of interest statements in the samples we reviewed.

The only exception to Sydney Metro's legislative compliance was one residential acquisition which was acquired using compulsory powers, with the compensation determined by the Valuer General. In this case, Sydney Metro did not provide a compensation notice within the statutory time frame of 45 days and did not seek ministerial approval for an extension to the time frame. This issue was discussed in detail in section 2.3 in relation to several commercial and industrial acquisitions.

Some affected parties, lawyers working in this area, and legal peak bodies have raised concerns about several aspects of government acquisition of private properties. These have been raised in the media and through submissions to current and previous Parliamentary and NSW Government inquiries and reviews. Issues that were raised in public submissions include:

- the use of market value to determine the compensation due. Some affected parties and legal professionals have argued that a 'reinstatement' method, in which compensation would be based on the estimated cost to replace the land or property being acquired, would be fairer
- the exclusion of any future uplift in property value due to the infrastructure work the government is doing from the assessment of compensation due. Some affected parties and legal professionals have argued this results in inequitable outcomes for people who are already being disadvantaged by having their property acquired.

The Just Terms Act states that affected parties must be given compensation that reflects the market value at the time of the acquisition. The Act does not allow an acquiring authority to consider the amount of money an affected party would need to purchase a similar property as a replacement for the one being acquired. It specifically excludes consideration of any change in the value of the property as a result of the government's future use of the land. This means that projected increases or decreases in land value that may arise because the government is building new infrastructure cannot be considered in valuations.

Some people affected by government acquisitions of property have stated that these aspects of the Just Terms Act have led to unfair outcomes. The *Government Sector Audit Act 1983* prevents the Auditor-General from questioning the merits of policy objectives of the government. This audit report assesses compliance with the relevant legislation and NSW Government policies, but it does not comment on the merits of these.

The report of the Parliamentary inquiry into the acquisition of land in relation to major transport projects (August 2021) recommended that the NSW Government introduce a 'reinstatement' approach to determining the value of properties being acquired. The NSW Government response stated that the government supported this recommendation in principle, and that it would consider concepts including the 'reinstatement' approach as a part of a legislative review that will be undertaken in 2023.

Section two

Appendices

Appendix one – Responses from agencies

Response from Sydney Metro



Your Ref: D2226172/PA6703
Our Ref: SM-23-00005862

25 January 2023

Ms Margaret Crawford
Auditor-General for New South Wales
GPO Box 12
SYDNEY NSW 2001

Dear Ms Crawford

I refer to your letter dated 19 December 2022 and thank you for the opportunity to provide a response on behalf of Sydney Metro to the Performance Audit Report (the Report).

Sydney Metro acknowledges the comprehensive work undertaken by the Audit Office and welcomes the Report's findings. In particular, the Report reinforced that Sydney Metro's property acquisition processes were conducted in compliance with legislative requirements and that governance and probity processes were followed consistently.

In addition to the above, the Report also confirmed that Sydney Metro consistently provided the necessary communication and support for those people directly affected by residential and small business acquisitions.

Sydney Metro accepts the Report's recommendation and is committed to implementing the necessary processes to support the recommendation by 30 June 2023.

Sydney Metro also recognises the non-compliance matter raised in the Report regarding issuing compensation notices within the statutory 45-day period. While Sydney Metro does not have full control over this process (as acknowledged in the Report), Sydney Metro will continue to explore internal and cross-agency mitigation options to address this non-compliance.

Finally, Sydney Metro would like to take this opportunity to thank you and your staff for the transparent and cooperative manner in which the Audit Office conducted this Performance Audit.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Regan', is written over a horizontal line.

Peter Regan
Chief Executive
Sydney Metro

Sydney Metro
Level 43, 680 George Street, Sydney NSW 2000 | PO Box K659, Haymarket NSW 1240
T 02 8265 9400 | sydneymetro.info | ABN 12 354 063 515

Response from Department of Planning and Environment



Department of Planning and Environment

Your ref: D2226174/PA6703

Margaret Crawford
Auditor-General for NSW
Level 19, Darling Park Tower 2
201 Sussex Street, Sydney NSW 2000

Subject: Performance audit – Property acquisitions for the Sydney Metro project

Dear Ms Crawford

Thank you for your correspondence regarding the Audit Office's final report into property acquisitions for the Sydney Metro project (Report) and opportunity to formally respond on behalf of the Department of Planning and Environment (Department).

I very much appreciate the opportunities the Audit Office has provided for the Department to provide input during the audit process.

Following a thorough review of the Report, I'm pleased to advise that the Department accepts the findings and recommendations made.

With reference to recommendation 2. (p.4), I note the Department has already commenced work to review the *Land Acquisition (Just Terms Compensation) Act 1991* in line with the Government's response to the *Inquiry into acquisition of land in relation to major transport projects*. This will include consideration of legislative timelines for issuing compensation determinations and is anticipated to be complete by end 2024.

With reference to recommendation 3. (p.4), I note the Department is continuing to monitor implemented reforms while undertaking regular and extensive consultation with major acquiring authorities.

The Department, in consultation with the Valuer General and Acquiring Authorities is focused on continual improvement of timeframes for compensation determinations. I believe good progress has been made in this regard and the Department makes the following comments for consideration:

Whilst the reforms known as Just Terms 21(JT21) were enacted on 10 January 2022 for new compulsory acquisitions, the Department has and continues to observe enhanced outcomes as a result. As examples:

- a. There were 118 matters that proceeded to compulsory acquisition for the Sydney Metro West acquisition program in 2021. These matters were not undertaken within the JT21 framework and resulted in an average of 96 days to issues a preliminary report and 168 days to issues a final determination by the Valuer General.
- b. In comparison, there were 58 matters that proceeded to compulsory acquisition for the Hunter Street and Pyrmont acquisition program in 2022. These matters were undertaken within the JT21 framework and resulted in an average of 62 days to issues a preliminary report and 87 days to issues a final determination by the Valuer General.

Department of Planning and Environment



This demonstrates the reforms are working, with similar acquisitions being determined more than 80 days faster on average. Whilst there is opportunity for further improvement, the Department notes the marked improvement achieved year-on-year for the Sydney Metro project – a trend that is broadly being observed across all compulsory acquisitions undertaken since the reforms.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Cassel'.

Mick Cassel
Secretary
3 February 2023

Response from Transport for NSW



Transport
for NSW

Your ref: D2226173/PA6703
Our Ref: A47537820

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 Government acquisition of private property.

Transport for NSW (TfNSW) has considered the Report and accepts the recommendations.

Transport for NSW's Centre for Property Acquisition (the Centre) does not have a direct role in acquiring properties but recognises its responsibilities, including developing guidance for acquiring agencies and monitoring and reporting on their activities.

TfNSW is committed to making the necessary changes to ensure the Centre is continually assessing its effectiveness and improving the experiences of people subject to residential property acquisition.

The Centre for Property Acquisition has work underway to improve its Annual Property Acquisition Survey to clearly separate the assessment of Personal Managers from Acquisition Managers. The Centre is also establishing a mechanism to seek feedback from its key stakeholders regarding the effectiveness and value it delivers. A process review will be undertaken to identify the potential inefficiencies and gaps limiting the survey response rate.

If you have any further questions, Richard Host, A/Deputy Secretary Customer Strategy and Technology would be pleased to take your call.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Sharp'.

Rob Sharp
Secretary

Transport for NSW
231 Elizabeth Street, Sydney NSW 2000 | PO Box K659, Haymarket NSW 1240
T 02 8202 2200 | F 02 8202 2209 | W transport.nsw.gov.au | ABN 18 804 239 602

Appendix two – About the audit

Audit objective

This audit assessed the effectiveness of acquisitions of private properties for Sydney Metro project.

Audit criteria

We addressed the audit objective by assessing:

1. communication with and support for affected parties
2. conduct of compensation processes (negotiation and determinations)
3. adherence to governance and probity requirements.

Audit scope and focus

This audit focused on completed acquisitions conducted for selected transport projects. The audit assessed agencies against the legislative and policy requirements in place for government acquisitions of private property in New South Wales. It assessed a sample of acquisitions conducted by Sydney Metro, including residential properties and businesses. It also considered the role of the Centre for Property Acquisition (within Transport for NSW), the Department of Planning and Environment in supporting acquisition processes.

Audit exclusions

The audit did not:

- examine certain specific types of acquisition such as the acquisition of government-owned properties
- re-perform individual valuations conducted for the Valuer General or acquiring authorities
- examine decisions of the Land and Environment Court.

Audit approach

Our procedures included:

1. interviewing senior staff at relevant agencies to understand the approach taken to achieving policy objectives and staff involved in acquisitions, e.g. acquisition managers, personal managers to understand the processes used
2. examining relevant legislation, policies, procedures and documents for a sample of completed acquisitions to assess whether processes required under legislation and government policy were followed
3. analysing data on completed acquisitions to identify any trends or indicators of performance.

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 *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We acknowledge the cooperation and assistance provided by Sydney Metro, Transport for NSW, the Department of Planning and Environment and the Valuer General. In particular, we would like to thank our liaison officers and staff who participated in interviews and provided evidence for the audit.

Audit cost

The estimated cost of this audit, including staff costs and overheads, was \$420,000.

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 38EA of the *Government Sector Audit Act 1983* for State government entities, and in section 421BD 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 and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW 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 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 to entities 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.

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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