

Public Accountability Committee

The impact of the WestConnex Project

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Terms of reference

1. That the Public Accountability Committee inquire into and report on the impact of the WestConnex project, including:
 - (a) the adequacy of the business case for the WestConnex project, including the cost-benefits ratio
 - (b) the cost of WestConnex project, including the size and reasons for overruns
 - (c) consideration of the governance and structure of the WestConnex project including the relationship between Sydney Motorway Corporation, Roads and Maritime Services, the Treasury and its shareholding Ministers
 - (d) the compulsory acquisition of property for the project
 - (e) the recommendations of the Audit Office of New South Wales and the Australian National Audit Office in regards to WestConnex
 - (f) the extent to which the project is meeting the original goals of the project as articulated in 2012
 - (g) the relationship between WestConnex and other toll road projects including the Sydney Gateway, Western Harbour Tunnel, F6 and Beaches Link
 - (h) the circumstances by which WestConnex and the Sydney Gateway were declared to be separate projects in 2017
 - (i) the cost of the project against its current valuation as determined through the sale of the Sydney Motorway Corporation and whether it represents a good investment for NSW taxpayers
 - (j) any other related matter.

2. That the committee report by 17 December 2018.¹

The terms of reference were self-referred by the committee on 21 June 2018.²

¹ The original reporting date was 1 December 2018 (*Minutes*, Legislative Council, 21 June 2018, p 2803). The reporting date was later extended to 17 December 2018 (*Minutes*, Legislative Council, 16 October 2018, p 3011).

² *Minutes*, NSW Legislative Council, 21 June 2018, p 2803.

Committee details

Committee members

Rev the Hon Fred Nile MLC	Christian Democratic Party	<i>Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	
Ms Cate Faehrmann MLC*	The Greens	
The Hon Trevor Khan MLC	The Nationals	
The Hon Shayne Mallard MLC*	Liberal Party	
The Hon Daniel Mookhey MLC*	Australian Labor Party	
The Hon Peter Phelps MLC*	Liberal Party	

* Ms Cate Faehrmann MLC is substituting for Mr Justin Field MLC for the duration of the inquiry.

* The Hon Shayne Mallard MLC is substituting for the Hon Natalie Ward MLC for the duration of the inquiry.

* The Hon Daniel Mookhey MLC is substituting for the Hon Courtney Houssos MLC for the duration of the inquiry.

* The Hon Peter Phelps MLC is substituting for the Hon Matthew Mason-Cox MLC for the duration of the inquiry.

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Chairman's foreword

WestConnex is one of the largest and most complex transport projects ever to be undertaken in Australia. This inquiry was established to examine the business case, costs and governance structure associated with the WestConnex project. It was also set-up to look at the impacts of the project on the local community.

The committee understands and accepts that major infrastructure projects, such as WestConnex, cannot be delivered without a certain amount of disruption. However, it is clear that construction for the WestConnex has had a significant and pronounced impact on local communities and families. This has undoubtedly been a very challenging time for those affected. I sincerely hope that some of the findings and recommendations contained in this report may make life a little easier for those impacted by the WestConnex project.

The committee has questions regarding the transparency of the WestConnex project and the processes that led to the NSW Government's investment in it. A particular concern is that the government failed to adequately consider alternate options at the commencement of the project. The committee also found deficiencies with the independent assurance process conducted for the first business case. The report includes recommendations that seek to strengthen the transparency arrangements regarding options analysis and the independent assurance process for future major infrastructure projects.

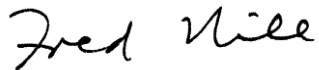
There is a genuine fear within the community that the proposed unfiltered tunnel ventilation stacks for the WestConnex do not meet best practice standards. It has been argued that this will result in negative health outcomes for those living within the vicinity of the stacks and in surrounding suburbs. Many called for the fitting of filtration systems and I agree with these calls. The committee has recommended that filtration systems be installed on all current and future motorway tunnels.

A number of residents and businesses have had their properties compulsorily acquired for the WestConnex project. Compulsory acquisition is a sensitive and stressful circumstance for any property owner. It is a matter that must be dealt with in a careful, considered and sensitive manner by any government. I was saddened to hear that compulsory acquisition has not always been managed with an appropriate level of care. This has left many property owners in state of distress and anxiety. This is unacceptable. The report includes recommendations that aim to make the compulsory acquisition process fairer and more transparent.

The context within which this inquiry was undertaken must be acknowledged. At the time of writing this report, construction of the WestConnex was almost 50 per cent complete. It remains a significant and important part of the government's program to improve the state's road infrastructure. While the committee acknowledges the concerns and frustrations of some in the community about the project, it remains clear that Stage 3 must proceed. The cost of stopping now would be borne by the taxpayers of New South Wales and would likely lead to the government having to withdraw planned expenditure and investment in other areas. The committee also found that if Stage 3 were not to proceed, then the projected benefits of the WestConnex as a whole would not be realised.

I sincerely thank the many participants in this inquiry who took the time to prepare detailed submissions and present their experiences to the committee. Your input is valued and helps us greatly in our work. I also thank my committee colleagues for their hard work during the course of the inquiry. On behalf of all members I thank the committee secretariat for their hard work and professional assistance throughout.

I commend the report.

A handwritten signature in black ink that reads "Fred Nile". The signature is written in a cursive, slightly slanted style.

Revd the Hon Fred Nile MLC
Committee Chairman

Findings

- Finding 1** 14
That the WestConnex project is, notwithstanding issues of implementation raised in this report, a vital and long-overdue addition to the road infrastructure of New South Wales. The committee supports complete construction, including Stage 3 and the Rozelle Interchange.
- Finding 2** 27
That the NSW Government failed to subject the WestConnex project to a comprehensive independent assurance process during the development of the first business case for the project.
- Finding 3** 27
That the NSW Government was not required to consider the full range of costs in the business case for the WestConnex project, including costs to public health, amenity, biodiversity, extra road building, and losses to public transport.
- Finding 4** 27
That the NSW Government failed to adequately consider alternative options at the commencement of the WestConnex project. This failure has undermined the justification for the project and has exacerbated community opposition.
- Finding 5** 31
That the transparency arrangements pertaining to the WestConnex business case have been unsatisfactory.
- Finding 6** 41
That the delivery of the WestConnex project by Sydney Motorway Corporation has weakened the accountability and disclosure rules that would have otherwise applied if the project had been delivered by a government agency, including the important provisions of the *Government Information (Public Access) Act 2009*.
- Finding 7** 41
That the recent sale of a majority interest in Sydney Motorway Corporation to the private sector will likely exacerbate existing transparency and accountability concerns relating to the WestConnex project.
- Finding 8** 44
The funding model used for the WestConnex project has enabled the government to bring forward investment, reduce the overall burden on the taxpayer, freed up funds to be allocated to other public services, removed the requirement to borrow money, and improved the State's financial position.
- Finding 9** 51
That, given the Sydney Gateway project was a key part of the original rationale and business case for the WestConnex project, its removal from the WestConnex project will likely have led to a significant change in the cost-benefit ratio for the entire project.

- Finding 10** 51
The Sydney Gateway project has been substantially enhanced with additional road and rail options which were not envisaged in the original concept. The new proposal is strategically important to New South Wales and should be constructed.
- Finding 11** 54
Stage 3 of the WestConnex is strategically important to New South Wales and should be constructed, not merely because of the massive financial penalties which would apply were it to be cancelled, but because without Stage 3 the benefits of the WestConnex project as a whole would not be realised.
- Finding 12** 59
It is unacceptable that members of the community feel it necessary to undertake air quality monitoring in lieu of the responsible government agencies.
- Finding 13** 76
The committee welcomes the additional green space that the WestConnex project will provide to the residents of the Inner West of Sydney.
- Finding 14** 79
That the various noise mitigation measures offered by Roads and Maritime Services are wholly inadequate to substantially reduce heavy construction noise.
- Finding 15** 109
Local government should not have to step in to alleviate concerns held by residents in relation to State Significant Infrastructure projects, such as the WestConnex, when it is the responsibility of the NSW Government.
- Finding 16** 121
That while extensive consultation for the WestConnex project has been undertaken, it appears that this consultation has been ineffective and has lacked an empathetic approach.

Recommendations

- Recommendation 1** **28**
That the NSW Government for future large scale infrastructure projects:
- hold public planning inquiries
 - prepare a detailed options analysis
 - ensure that this analysis is independently peer reviewed in accordance with the requirements of the Infrastructure Investor Assurance Framework
 - publish both the analysis and a summary of the peer review prior to the commencement of construction of that project.
- Recommendation 2** **30**
That the NSW Government mandate the completion of a public health impact analysis as part of the wider economic analysis undertaken for future large scale infrastructure projects.
- Recommendation 3** **32**
That the NSW Government:
- publish the strategic business cases, appropriately redacted of commercial in confidence information, for all major infrastructure projects,
 - publish the base-case financial models for future infrastructure projects, 18 months after either:
 - a) the commencement of construction on a project, or
 - b) after the opening of the first stage of a project, whichever comes first, and
 - publish the cost benefit analysis at the same time as the base-case financial model is published.
- Recommendation 4** **32**
That the NSW Government immediately publish the base-case financial model for the WestConnex project.
- Recommendation 5** **42**
That the NSW Government ensure that the delivery of future large-scale infrastructure projects, irrespective of whether they are delivered privately or publicly, be subject to the same levels of transparency and accountability that would be required of a project delivered by a public sector body.
- Recommendation 6** **42**
That the NSW Government ensure that the Audit Office of New South Wales has the resources required to undertake a detailed and comprehensive performance audit of the WestConnex project in 2019/2020.
- Recommendation 7** **42**
That the NSW Government should establish 'follow the dollar' powers for the Audit Office of New South Wales.

- Recommendation 8** 46
That the NSW Government conduct an extensive advertising campaign and work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties.
- Recommendation 9** 47
That the NSW Government urgently review the *Industrial Relations Act 1996* to clearly establish cost-recovery mechanisms for the NSW owner-drivers.
- Recommendation 10** 54
That the NSW Government proceed with Stage 3 of the WestConnex.
- Recommendation 11** 54
That the NSW Government immediately publish a full account of all costs to be incurred by NSW taxpayers if Stage 3 contracts were cancelled.
- Recommendation 12** 59
That the NSW Government should improve engagement and consultation with communities concerning air quality monitoring and ensure the real time publication of all air quality data for WestConnex in a single online location. This should include the retention of historical information and the development of user friendly tools to understand and interpret the data.
- Recommendation 13** 63
That the NSW Government install, on all current and future motorway tunnels, filtration systems in order to reduce the level of pollutants emitted from ventilation stacks.
- Recommendation 14** 63
That the NSW Government undertake a review and audit of the Air Quality Community Consultative Committees and the locations for air quality monitoring for the New M5.
- Recommendation 15** 75
That the NSW Government establish a WestConnex mental health support and wellbeing service.
- Recommendation 16** 76
That the NSW Government:
- conduct an immediate review of safety measures and conditions relating to the construction of WestConnex to ensure that these measures and conditions are being complied with
 - publicly disclose any instances of non-compliance found during the review including a response as to how these issues will be remedied.
- Recommendation 17** 77
That the NSW Government ensure that the commitments made by itself and WestConnex regarding the establishment or rehabilitation of green and open spaces be fully delivered as promised.
- Recommendation 18** 79
That the NSW Government monitors and publicly reports on its new noise minimisation measures for the WestConnex project to ensure that the improvements being sought are achieved.

- Recommendation 19** **100**
That the NSW Government ensure that acquiring authorities only issue Proposed Acquisition Notices when they can clearly demonstrate a need to acquire the property.
- Recommendation 20** **101**
That the NSW Government ensure that for any significant project the acquiring authority *must* provide clear and consistent information about the compulsory acquisition process by:
- ensuring relevant staff are sufficiently trained and experienced
 - confirming key information in writing in a timely manner
 - providing counselling and translation services where necessary.
- Recommendation 21** **101**
That the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.
- Recommendation 22** **101**
That the NSW Government:
- devise a mechanism, through which property owners can apply to have the process by which their property was compulsorily required, reviewed
 - examine whether Proposed Acquisition Notices are being speedily resolved in the interests of owners.
- Recommendation 23** **108**
That the NSW Government provide clear and consistent information to affected residents about:
- the process through which residents can claim compensation for property damage as a direct result of WestConnex construction
 - which entity would be responsible to pay for such damage.
- Recommendation 24** **109**
That the NSW Government consider extending the zone of influence from 50 metres to 100 metres, and change the dilapidation survey process to an opt-out or compulsory process.
- Recommendation 25** **129**
That the NSW Government ensure that the Community Complaints Mediator is independent from any parties involved in the construction or delivery of the WestConnex project.
- Recommendation 26** **129**
That the NSW Government monitors and publically reports on the new Community Complaints Mediator for the WestConnex project to ensure that the improvements being sought regarding community engagement and complaints handling are achieved.
- Recommendation 27** **129**
That all major infrastructure projects have a centralised complaints management system that is accessible 24/7, transparent and empowered to respond effectively in a short time frame.

Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 21 June 2018.

The committee received 557 submissions and 11 supplementary submissions.

The committee held four public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, and answers to questions on notice.

Chapter 1 The WestConnex Project

This chapter sets out introductory information on the WestConnex project. It describes the key features of the project and the NSW Government's justification for its implementation, including the intended project benefits. The chapter provides a summary of the roles and responsibilities of the key organisations involved in the design and implementation of the WestConnex project as well as its funding arrangements. The chapter concludes by providing a brief overview of public opinion on the project as presented within the evidence to this inquiry.

What is WestConnex?

- 1.1 With the current design estimated to cost \$16.8 billion, WestConnex is the largest and one of the most complex transport infrastructure projects ever to be undertaken in Australia.³ Upon completion, the WestConnex project will provide 30 kilometres of continuous motorway, including 22 kilometres of tunnel, which will link Sydney's west and south-west to the city and Sydney Airport.⁴ (See figure 1 below).

Figure 1 The WestConnex project



Source: *WestConnex Updated Strategic Business Case, November 2015, p 50.* Note: This map was published in 2015 and has been subject to change since that time.

³ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 2; Submission 124, NSW Government, p 7.

⁴ Evidence, Mr Kanofski, 9 October 2018, p 2; Submission 124, NSW Government, p 3.

- 1.2 The NSW Government contends that WestConnex will provide an important missing link in the Sydney motorway network. The government argues that closing this gap is 'absolutely necessary' to support Sydney's future transport needs, and its long-term population and economic growth.⁵
- 1.3 However, the project continues to be the subject of intense public debate. This inquiry received extensive evidence from organisations and individuals, voicing opposition and a broad range of concerns about the development and implementation of the WestConnex project. A summary of the concerns are discussed at the end of this chapter and are considered throughout this report. There was also support expressed for the WestConnex project from business, transport and infrastructure groups.

Project stages

- 1.4 WestConnex now comprises 'three stages, delivered in six projects over a 10 year period'.⁶ At the time of writing, the government reported that implementation of the project remained 'on time, and on budget' and that 'more than 40 per cent of the project was now complete'.⁷ The key features of the six WestConnex projects are summarised in Table 1 below.

Table 1 The WestConnex projects

Project/Stage	Description and status	Opening date /Expected opening date
M4 Widening (Stage 1A)	Involves the widening of the M4 Motorway between Parramatta and Homebush from three to four lanes in each direction. The estimated cost of the project is \$497 million. The road opened to traffic in July 2017 and tolling commenced in August 2017. ⁸	July 2017
M4 East (Stage 1B)	Involves the extension of 'the M4 Motorway in tunnels between Homebush and Haberfield via Concord'. The estimated cost of the project is \$3.802 billion. ⁹ Tunnelling activity is complete and mechanical and electrical fit-out of the tunnels is taking place. ¹⁰	2019

⁵ Evidence, Mr Kanofski, 9 October 2018, p 2.

⁶ Evidence, Mr Kanofski, 9 October 2018, p 2.

⁷ Evidence, Mr Kanofski, 9 October 2018, p 2.

⁸ WestConnex, Projects, M4 Widening, <https://www.westconnex.com.au/projects/m4-widening>.

⁹ WestConnex, Projects, M4 East, <https://www.westconnex.com.au/projects/m4-east>.

¹⁰ Evidence, Mr Kanofski, 9 October 2018, p 2.

Project/Stage	Description and status	Opening date /Expected opening date
New M5 (Stage 2)	<p>Involves the duplication of the M5 East, in twin underground tunnels, from the King Georges Road Interchange Upgrade at Beverly Hills to a new interchange at St Peters. The St Peters Interchange will provide connections to Alexandria and Mascot and include connections to the future Sydney Gateway and the M4-M5 Link. The estimated cost of the project is \$4.335 billion.¹¹</p> <p>Approximately 80 per cent of the tunnelling on the New M5 is complete. The first bridge segment of St Peters Interchange has also been completed.¹²</p>	Early 2020
King Georges Road Interchange Upgrade (Stage 2)	<p>Involves the 'upgrade of the King Georges Road Interchange between the newly widened M5 West and the M5 East at Beverly Hills in preparation for the New M5'.¹³ The estimated cost of the project is \$131 million.¹⁴</p> <p>The project opened to traffic in December 2016.¹⁵</p>	December 2016
M4-M5 Link Tunnels (Stage 3A)	<p>Involves the construction of tunnels connecting the 'New M4 at Haberfield and the New M5 at St Peters'.¹⁶</p> <p>The estimated cost of the full M4-M5 Link (i.e. Stage 3A and 3B) is \$7.2 billion. A breakdown of cost by stage has not been provided as Stage 3B is subject to an ongoing tender process.¹⁷</p> <p>The construction contract was awarded to the Lendlease Samsung Bouygues Joint Venture in June 2018.¹⁸</p>	Early 2023

¹¹ WestConnex, Projects, New M5, <https://www.westconnex.com.au/projects/new-m5>.

¹² Evidence, Mr Kanofski, 9 October 2018, p 2.

¹³ Submission 124, NSW Government, p 16.

¹⁴ WestConnex, Projects, King Georges Road Interchange Upgrade, www.westconnex.com.au/projects/king-georges-road-interchange-upgrade.

¹⁵ WestConnex, Projects, King Georges Road Interchange Upgrade, www.westconnex.com.au/projects/king-georges-road-interchange-upgrade.

¹⁶ WestConnex, Projects, M4-M5 Link Tunnels, www.westconnex.com.au/M4-M5LinkTunnels.

¹⁷ Answers to questions on notice, Roads and Maritime Services, 30 October 2018, p 6; Evidence, Mr Kanofski, 9 October 2018, p 7.

¹⁸ Evidence, Mr Kanofski, 9 October 2018, p 7.

Project/Stage	Description and status	Opening date /Expected opening date
M4-M5 Link Rozelle Interchange (Stage 3B)	<p>Involves the construction of the Rozelle Interchange and Iron Cove Link. The interchange will be mostly located underground and will connect the surrounding network and future Western Harbour Tunnel. It will also include an underground tunnel from the Rozelle Interchange to Victoria Road near the Iron Cove Link.¹⁹</p> <p>The estimated cost of the full M4-M5 Link (i.e. Stage 3A and 3B) is \$7.2 billion. A breakdown has not been confirmed.²⁰</p> <p>Tenders for the construction contract have now closed and are under evaluation by Roads and Maritime Services.²¹ A contractor is expected to be appointed by end of 2018 and construction is expected to commence in 2019.²²</p>	2023

Project justification and intended benefits

1.5 The NSW Government's justification for the WestConnex project is set out in a number of policy and project documents. These are noted below.

WestConnex – Sydney's next motorway priority

1.6 The WestConnex project was first recommended by Infrastructure NSW in 2012 and endorsed within the *State Infrastructure Strategy 2012-2032* as one of the highest investment priorities for the recently elected government.²³

1.7 The rationale for the project was set out within the *WestConnex – Sydney's next motorway priority* report dated October 2012. This report was prepared by Infrastructure NSW, Transport for NSW, and Roads and Maritime Services. This report stated that the WestConnex project sought to address 'the challenges that road users and the community encounter on a daily basis'. This included closing a missing link on the motorway network, congestion and unreliable travel times,

¹⁹ WestConnex, Projects, M4-M5 Link Rozelle Interchange, www.westconnex.com.au/projects/m4-m5-link-rozelle-interchange.

²⁰ Answers to questions on notice, Roads and Maritime Services, 31 October 2018, p 6.

²¹ Evidence, Mr Kanofski, 9 October 2018, p 8.

²² WestConnex, Projects, M4-M5 Link Rozelle Interchange, <https://www.westconnex.com.au/projects/m4-m5-link-rozelle-interchange>.

²³ Submission 124, NSW Government, p 3; Infrastructure NSW, *State Infrastructure Strategy 2012-2032*, <http://www.infrastructure.nsw.gov.au/expert-advice/state-infrastructure-strategy/>; Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 11 October 2018, p 31.

and poor urban amenity along the Parramatta Road.²⁴ Mr Jim Betts, Chief Executive Officer, Infrastructure NSW described this document as a feasibility study, noting that it included a target cost for the project of \$10 billion, and a 'very preliminary' economic analysis.²⁵

- 1.8** The 'missing link' is the connection between the end of the M4 at Strathfield and the end of the Western Distributor at Rozelle. Motorway plans for the Sydney Basin had, from the early 1950s, included a direct connection from the Sydney CBD to Penrith. In 1977, however, community concerns about the M4 East prompted the then government to abandon these plans and to sell the land reserved for the proposed motorway.
- 1.9** In December 2012, the WestConnex project was also identified within the NSW Government's Long Term Transport Masterplan. In this plan, WestConnex was identified as a priority project, under the government's broader policy commitment to complete Sydney's motorway network.²⁶
- 1.10** The committee also received evidence from Dr Michelle Zeibots, who was a member of the NSW Government Expert Advisory Panel for the development of the NSW Long Term Transport Masterplan, that WestConnex was not part of the Advisory Panel's discussions in relation to the Masterplan.²⁷ However in December 2012, the WestConnex was identified as a priority project in the NSW Government's Long Term Transport Master Plan. In her submission Dr Zeibots described her reaction to this:

I recall feeling deeply disappointed at the time on seeing a masterplan with almost every motorway that had ever been suggested since 1948 included in the document. This stood in stark contrast to everything we had been asked to make input on and I remember feeling 'let down' that the eventual outcome was so different to all of our discussions.²⁸

- 1.11** In regard to how this may have occurred, Dr Zeibots states in her submission that:

I believe that many people within TfNSW [Transport for NSW] at that time as well as the Minister did comprehend the need to improve public transport, but were 'out manoeuvred by others in their political party who preferred urban motorway development. That these same people do not rely on empirical data or a strong 'evidence base' when formulating their positions is evident in the stark difference between the materials outcomes that have been achieved by these motorways and the 'beliefs and ideals' expressed before construction that were used to justify them.²⁹

The WestConnex business cases

- 1.12** The NSW Government states that a business case for the WestConnex project was developed following the project's recommendation by Infrastructure NSW. This business case was

²⁴ Infrastructure NSW, Transport for NSW, Roads and Maritime Services, *WestConnex – Sydney's next motorway priority*, October 2012, p 3.

²⁵ Evidence, Mr Betts, 11 October 2018, p 31.

²⁶ NSW Government, NSW Long Term Transport Masterplan, December 2012, p 73, www.transport.nsw.gov.au/sites/default/files/media/documents/2017/nsw-transport-masterplan-final.pdf.

²⁷ Submission 497, Dr Michelle Zeibots, p 2.

²⁸ Submission 497, Dr Michelle Zeibots, p 5.

²⁹ Submission 467, Dr Michelle Zeibots, p 5.

developed by the Sydney Motorways Project Office and was approved by the NSW Government in August 2013.³⁰ An executive summary of the *WestConnex Business Case* is published on the WestConnex website.³¹

1.13 In 2015 the *WestConnex Updated Strategic Business Case* was produced by the then WestConnex Delivery Authority. The government states that this document 'consolidated work undertaken in the original business case, with significant modelling, analysis and scope enhancements'.³² A redacted version of this document has also been published on the WestConnex website.³³

1.14 A number of issues relating to the preparation of the WestConnex business cases were raised by inquiry participants. These are discussed in chapter 2.

Project benefits

1.15 According to the government, WestConnex will deliver a number of project benefits. These include:

- supporting Sydney's long-term economic growth with improved motorway access and connection to western Sydney and key employment hubs across the city
- delivering more than \$20 billion in economic benefits to New South Wales
- shifting through traffic and heavy vehicles to the underground motorway, thereby 'returning local streets to local communities'
- reducing the number of traffic lights that motorists have to use - 28 sets on the Parramatta Road, and 22 sets between Homebush and Haberfield - thereby reducing expected travel times on the network, including a travel time saving of 40 minutes between Penrith and Sydney Airport
- reducing traffic volumes on Victoria Road between Iron Cove Bridge and Anzac Bridge by up to 50 per cent upon completion of the M4-M5 Link
- improving speed and reliability and safety of travel across the city
- reducing greenhouse gas emissions by more than 610,000 tonnes a year by 2021
- delivering more than 18 hectares of open space for local communities in the inner west and around 23 kilometres of new and improved cycle ways and walkways
- supporting 10,000 jobs during the construction phase.³⁴

1.16 Regarding employment benefits, Mr Andrew Head, Chief Executive, WestConnex noted that 1,600 businesses are currently benefiting from the project, and contracts worth more than \$2

³⁰ Submission 124, NSW Government, p 3.

³¹ WestConnex, Business Case Executive Summary, September 2013, www.westconnex.com.au/sites/default/files/westconnex-executive-summary-september-2013.pdf

³² Submission 124, NSW Government, pp 3 and 5

³³ WestConnex, Updated Strategic Business Case, November 2015, www.westconnex.com.au/sites/default/files/WestConnex%20Updated%20Strategic%20Business%20Case%20-%20November%202015.pdf.

³⁴ Submission 124, NSW Government, pp 3-4.

billion have been signed with these companies. Mr Head also advised that 80 per cent of contracts on the New M5 have gone to New South Wales-based businesses.³⁵

Project design and delivery

1.17 A number of government bodies and private sector organisations are involved in the design, delivery and construction of the WestConnex project. Roles and responsibilities of the key organisations are summarised below.

Roads and Maritime Services

1.18 Roads and Maritime Services (RMS) is effectively the lead agency in the public sector for the WestConnex project and undertakes the 'client role' on behalf of the NSW Government.³⁶

1.19 In this role, Roads and Maritime Services grants concessions – these are the contractual arrangements which set out delivery and operational requirements for the relevant stage of the WestConnex project. These contractual agreements include the levels of tolls that can be implemented by the operators of the WestConnex project.³⁷

1.20 As client, Roads and Maritime Services is also responsible for making recommendations to the government on project scope, staging and any other matter in relation to the WestConnex works. It is also responsible for managing the government's budget for the project.³⁸

1.21 Roads and Maritime Services has granted three concessions to Sydney Motorway Corporation on behalf of the government. These are the:

- New M4 Concession – This comprises the 'rights and obligations to build, operate, maintain, finance and toll the New M4 Widening and the New M4 East tunnels'.³⁹
- New M5 Concession – This includes the 'obligation to build and finance the New M5 and the rights and obligations to operate, maintain and toll the New M5, the M5 East (from opening of the New M5) and the M5 West (from December 2026)'.⁴⁰
- M4-M5 Link Concession – This is the 'obligation to build and finance the main tunnel linking the New M4 and New M5, and the rights and obligations to operate, and maintain the Mainline Tunnel, Rozelle Interchange and Iron Cove Link and the right to toll the Mainline Tunnel and Rozelle Interchange'.⁴¹

1.22 Roads and Maritime Services will continue in the role of client for the lifetime of these concession agreements, which currently run to the year 2060.⁴² At the end of the concession

³⁵ Evidence, Mr Andrew Head, Chief Executive Officer, WestConnex, 15 October 2018, p 25.

³⁶ Submission 124, NSW Government, p 9.

³⁷ Submission 124, NSW Government, p 9.

³⁸ Evidence, Mr Kanofski, 9 October 2018, p 3

³⁹ Submission 124, NSW Government, p 10.

⁴⁰ Submission 124, NSW Government, p 10.

⁴¹ Submission 124, NSW Government, p 10.

⁴² Submission 124, NSW Government, p 10.

periods, Roads and Maritime Services will resume responsibility for those sections of the motorway.⁴³

- 1.23** As proponent of the WestConnex project, Roads and Maritime Services is responsible for undertaking significant work in relation to the planning approval process. This includes preparing and submitting the necessary documentation for the planning assessment process, completing environmental impact assessments, and undertaking community consultation activities. Roads and Maritime Services is also responsible for undertaking the land and property acquisitions for the project.⁴⁴
- 1.24** Unlike other stages of the WestConnex project, Roads and Maritime Services is responsible for the procurement and the delivery of the Rozelle Interchange (Stage 3B) project. However, once complete, this section of the WestConnex project will be transferred to Sydney Motorway Corporation for operation.⁴⁵

Sydney Motorway Corporation

- 1.25** Sydney Motorway Corporation (SMC) is a private company established by the NSW Government in 2014 under the *Corporations Act 2001* (Cth). The company was set up to undertake investments in roads projects, as designated by its shareholders (which upon establishment was the NSW Treasurer, the WestConnex Minister, and the Minister for Finance, Services and Property).⁴⁶ It was the successor to the WestConnex Delivery Authority, a public subsidiary corporation of Roads and Maritime Services under the *Transport Administration Act 1988*.⁴⁷
- 1.26** As noted above, Roads and Maritime Services has granted three concessions to wholly-owned subsidiary companies of Sydney Motorway Corporation for the delivery of the WestConnex project on behalf of the NSW Government.⁴⁸
- 1.27** In this role as 'project manager', Sydney Motorway Corporation is responsible for: procuring and managing contracts with private sector industry for the design, construction and operation of the WestConnex projects; securing the private sector debt to finance the projects; undertaking various stakeholder and communication activities; and preparing documents required for the planning assessment of the respective projects.⁴⁹ Construction company consortia including CPB and Lendlease had a major role in stakeholder engagement and complaints mechanisms during the construction phase.

⁴³ Submission 124, NSW Government, p 10.

⁴⁴ Evidence, Mr Kanofski, 9 October 2018, p 2.

⁴⁵ Submission 124, NSW Government, pp 9-10.

⁴⁶ Submission 124, NSW Government, p 10.

⁴⁷ NSW State Archives and Records, WestConnex Delivery Authority, www.records.nsw.gov.au/agency/6915.

⁴⁸ Submission 124, NSW Government, p 10.

⁴⁹ WestConnex, Delivering WestConnex, www.westconnex.com.au/delivering-westconnex.

Sale of Sydney Motorway Corporation

- 1.28** In May 2017, the government announced its plans to sell a majority stake of at least 51 per cent in Sydney Motorway Corporation with the proceeds to be used to fund the final stage of the WestConnex project (the M4-M5 Link).⁵⁰
- 1.29** Following a competitive tender process, in August 2018 the government announced it had agreed to sell a 51 per cent interest in Sydney Motorway Corporation to the Sydney Transport Partners Consortium for \$9.3 billion. The sale process was facilitated by NSW Treasury and financial close on this transaction was achieved on 27 September 2018.⁵¹
- 1.30** Sydney Transport Partners, is an Australian-based consortium comprising Transurban (50 per cent), AustralianSuper (20.5 per cent), Canada Pension Plan Investment Board (20.5 per cent) and Tawreed Investments Limited (9 per cent) – a wholly-owned subsidiary of the Abu Dhabi Investment Authority.⁵²
- 1.31** Mr Andrew Head, the newly appointed Chief Executive of WestConnex advised that in October 2018 Transurban (the largest equity holder in the Sydney Transport Partners Consortium) was now responsible for the operation of Sydney Motorway Corporation, under a management services agreement, on behalf of Sydney Transport Partners.⁵³
- 1.32** Until recently, Sydney Motorway Corporation was governed by a majority independent board of directors appointed by the shareholding ministers. However, these arrangements have changed to reflect the new ownership structure following the completion of the sale of Sydney Motorway Corporation.⁵⁴

Roads Retained Interests Party Limited

- 1.33** The NSW Government continues to hold a 49 per cent interest in Sydney Motorway Corporation. Roads Retained Interests Party Limited or RRIPL was established by the government immediately prior to the announcement of the sale transaction as an investment holding company for the 49 per cent interest in Sydney Motorway Corporation.⁵⁵ RRIPL was registered with ASIC on 1 June 2018.⁵⁶
- 1.34** The sole shareholder for RRIPL is the NSW Treasurer, the Hon Dominic Perrottet MP.⁵⁷ RRIPL has no responsibility for the running of the operations of Sydney Motorway Corporation.⁵⁸

⁵⁰ Media Release, NSW Government, 'NSW Government confirms funding strategy to deliver WestConnex', 16 August 2017.

⁵¹ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 19.

⁵² Submission 433, Sydney Transport Partners, p 1.

⁵³ Evidence, Mr Head, 15 October 2018, p 19.

⁵⁴ Submission 124, NSW Government, p 10.

⁵⁵ Evidence, Mr Gardner, 9 October 2018, p 19 and 22; Evidence, Mr Jim Dawson, Executive Director, Commercial Assets, NSW Treasury, 9 October 2018, p 22-23.

⁵⁶ Answers to questions on notice, NSW Treasury, 6 November 2018, p 4.

⁵⁷ Evidence, Mr Dawson, 9 October 2018, p 22.

⁵⁸ Evidence, Mr Dawson, 9 October 2018, p 22.

Other government bodies

- 1.35** A number of other government bodies have also had responsibilities relating to the development, assessment and implementation of the WestConnex project to date.
- 1.36** NSW Treasury has funding and financing responsibilities. This has included facilitating the transaction relating to the sale of the majority interest in Sydney Motorway Corporation and monitoring the application of the government's commercial policy framework. As noted above, NSW Treasury will also hold responsibility for the ongoing policy oversight and reporting of RRIPL and the provision of support for the shareholding Minister.⁵⁹
- 1.37** The Department of Planning and Environment has undertaken 'detailed assessments' of the five infrastructure applications submitted for the WestConnex project. These have been completed in line with the relevant legislation and planning instruments.⁶⁰ As the WestConnex project is classified as State Significant Infrastructure, the Minister for Planning is the consent authority.⁶¹
- 1.38** Approvals for the five stages of the project were provided by the Minister on the following dates: M4 Widening – 12 December 2014; King Georges Road Intersection – 3 March 2015; New M4 – 11 February 2016; New M5 – 20 April 2016; and M4-M5 Link – 17 April 2018. These infrastructure approvals include various conditions of approval, some of which are discussed in the ensuing chapters. A compliance team within the Department of Environment and Planning holds responsibility for ensuring that conditions of approval are correctly applied.⁶²
- 1.39** The Environment Protection Authority will hold responsibility for regulating ventilation facilities at tunnels upon completion. This is discussed further in chapter 4.
- 1.40** Transport for NSW and the Department of Premier and Cabinet also play a strategic role through participation on the WestConnex Interdepartmental Steering Committee and other governance arrangements.⁶³ Infrastructure NSW, as discussed in chapter 3, also facilitates the Infrastructure Investor Assurance Framework.⁶⁴

How is the WestConnex project being funded?

- 1.41** The funding arrangements for the WestConnex project are complex. However, ultimately, there are two primary sources from which transport services and infrastructure can be funded: general taxation of citizens – with costs borne by the community as a whole; and direct user charging

⁵⁹ Evidence, Mr Gardner, 9 October 2018, p 19.

⁶⁰ Evidence, Mr Marcus Ray, Deputy Secretary, Department of Planning and Environment, 11 October 2018, p 2.

⁶¹ Evidence, Mr Ray, 11 October 2018, p 5.

⁶² Evidence, Mr Ray, 11 October 2018, pp 2-3.

⁶³ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet, 9 October 2018, p 19.

⁶⁴ Evidence, Ms Walkom, 9 October 2018, p 19.

– such as road tolls. A combination of these sources is being used to fund the cost of the WestConnex project, with the user, through the payment of tolls, providing the majority share.⁶⁵

- 1.42** Simply put, funding for the project will largely be provided by the private sector, through private sector debt raised against the collection of future tolling revenue.⁶⁶ The remaining costs are to be funded from contributions from the NSW Government (final figure to confirmed post sale of Sydney Motorway Corporation) and the Federal Government (about \$1.5 billion). The sale of the 51 per cent of Sydney Motorway Corporation will in effect 'recycle' the government's contribution with proceeds being used to 'help fund the M4-M5 Link' (Stage 3). The Federal Government has also agreed to provide a concessional loan of up to \$2 billion.⁶⁷
- 1.43** The government contends that this financing approach and the collection of tolls, enables the government to bring forward investment in infrastructure and reduces the overall burden on the NSW taxpayer, thereby enabling funds to be allocated to other services.⁶⁸

Community opinion

- 1.44** Throughout the course of the inquiry, the committee heard from many community groups, local government representatives, and individuals who expressed opinion and concern about the design and delivery of the WestConnex project. This section presents a high level overview of some of the issues raised. The specific issues raised are discussed in further detail in relevant sections of the report.

Community based groups

- 1.45** A number of community based organisations and action groups have emerged in response to the WestConnex project. Groups such as the WestCONnex Action Group, Rozelle Against WestConnex, and No WestConnex: Public Transport have conducted a stream of campaigns and protests against the project.
- 1.46** The WestCONnex Action Group, is a group made up of residents from western, inner and south-west Sydney. The group has been campaigning against the project since 2014.⁶⁹ WestCONnex Action Group expressed a broad range of concerns about the project including: a lack of project transparency; conflicts of interests and bias towards pro-motorway planning interests through the planning process and development; underestimated project costs; inadequate consultation processes; and negative community health impacts. The group also sought to highlight the negative health impacts of the project on those residents who have been directly affected by the construction phase of the project. Ms Rhea Liebmann, spokesperson for the WestCONnex Action Group explained:

WestConnex has been characterised by secrecy, a failure to follow due process, lack of proper due diligence, a disregard for the public interest and taxpayer money, and a

⁶⁵ Submission 124, NSW Government, p 22.

⁶⁶ Submission 124, NSW Government, p 7.

⁶⁷ Submission 124, NSW Government, p 7.

⁶⁸ Submission 124, NSW Government, p 7.

⁶⁹ Submission 436, WAG, pp 1 and 5.

disregard for the community and environment. Over 35,000 objections to the various Environmental Impact Statements [EIS] seem to have been rejected by RMS and ignored by the Department of Planning...

...The perpetual noisy night and weekend works have terrible health impacts on residents. The noise management plans and the noise modelling approved by the Department of Planning are ineffective to protect residents...

...We also reject RMS's assurances on air quality, the safety of unfiltered stacks and health impacts. ...We find it hard to believe that construction in people's backyards sometimes for 24 hours at a time or exposure to concentrated unfiltered stacks do not have any health impacts.⁷⁰

- 1.47** Rozelle Against WestConnex, a community-based resident action group formed in 2016, also stated their strong opposition to the project. They argued that WestConnex would not relieve the congestion problems that it sought to address; and that the business case for the project was flawed. The organisation also expressed their strong concerns that unfiltered exhaust stacks to be located in Rozelle would present a health risk to residents in the local area. Mr Peter Hehir, Rozelle Against WestConnex, Convenor explained:

...the truth is that WestConnex is the southern hemisphere's biggest preventable unnatural disaster, a disaster from every conceivable point of view. It is a massive waste of taxpayer funds. Experts agree it will only worsen Sydney's traffic congestion. Both the benefit-cost ratio and the construction cost have been grossly misrepresented... There has been no governance ... Rozelle's four unfiltered exhaust stacks and tunnel portals will make the White Bay region the most heavily intentionally polluted area in Sydney, if not in the entire country...⁷¹

- 1.48** No WestConnex: Public Transport, flagged concerns relating to the administrative and delivery structures established by the NSW Government to deliver the WestConnex project. They were highly critical of the governance arrangements, stating that:

WestConnex has set dangerous precedents for future projects managed by the NSW Government. The WestConnex project has significantly lowered public administrative and management standards due to a lack of transparency, governance and public accountability.⁷²

Local government

- 1.49** The inquiry also received submissions from local councils located in the WestConnex project area. This included the City of Sydney, the Inner West Council, and Strathfield Council.
- 1.50** Councillor Clover Moore, Lord Mayor of the City of Sydney stated the council's strong opposition to the project, arguing that costs had been significantly underestimated, and that the project had been implemented 'beyond the scrutiny' of Parliament and the public. Furthermore, the Lord Mayor argued that the project was characterised by a 'shocking lack of due diligence'

⁷⁰ Evidence, Ms Rhea Liebmann, Spokesperson, WAG, 15 October 2018, pp 75-76.

⁷¹ Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, p 33.

⁷² Submission 386, No WestConnex Public Transport Inc, p 1.

and that taxpayers had been exposed to unnecessary risk and poor outcomes, as a result of inappropriate planning processes:

The City of Sydney strongly opposes WestConnex. It has become Australia's most expensive toll road project. The estimated cost now is \$16.8 billion. But as we outlined in our submission, the overall cost of all the proposed roads is likely to be in the range of \$40 billion to \$50 billion...It has been built beyond the scrutiny of Parliament, the Independent Commission Against Corruption [ICAC] or the public. It has been independently verified that there has been a shocking lack of due diligence and rigour associated with this matter of investment of public funds. The project fails to meet the Government's own processes. Contracts for the first two stages were entered into before planning approval was given, exposing taxpayers to unnecessary risk and producing poor design outcomes for the community.⁷³

- 1.51** The Inner West Council, also expressed its opposition to the project contending that investment in the WestConnex project was being inappropriately delivered at the expense of investment in public transport solutions. The Mayor of the Inner West Council, Councillor Darcy Byrne stated:

Inner West Council has continued the democratically determined position of the former constituent councils of Ashfield, Leichhardt and Marrickville in opposition to this project, and we do so on public policy grounds. In our view the project has been wasteful and shambolically planned. We do not stand opposed...to expenditure or investment in roads. What we do oppose is ideological obsession with investment in roads at the expense of public transport solutions...⁷⁴

- 1.52** Strathfield Council put forward its position, noting that whilst it did not stand in opposition to the WestConnex project per se, it did have a number of concerns regarding its implementation. These concerns primarily related to environmental issues and the location of an exhaust stack and its impact on the surrounding communities.⁷⁵

Individual submissions to the inquiry

- 1.53** The committee also received a large body of evidence from individuals, wishing to present their opinion, or tell their individual stories of how their daily lives had been impacted by the WestConnex project. The committee received over 550 submissions some of which are used to highlight and illustrate issues discussed within the body of this report.
- 1.54** The committee also received a large number of returns from individuals who supported a petition type return initiated by the Member for Balmain, Mr Jamie Parker MP, against the WestConnex project. Over 985 signatures were submitted that agreed with the following concerns regarding the WestConnex project:
- The **business case** does not properly consider alternatives such as public transport and demand management
 - The **budget** is now \$16.8 billion – a 68% increase on the original estimate

⁷³ Evidence, Councillor Clover Moore, Lord Mayor, City of Sydney, 15 October 2018, p 29.

⁷⁴ Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 50.

⁷⁵ Submission 35, Strathfield Council, pp 1-2.

- A project of this scale, using tax payer funds, should be subject to rigorous assessment but both the NSW Auditor-General and Infrastructure Australia have criticized the **governance** of this project
- Hundreds of homes, businesses and parklands will be compulsorily acquired
- It is diverting funding from **public transport** which is desperately needed across Sydney
- WestConnex will turn Rozelle into a dumping ground for toxic exhaust fumes with three unfiltered exhaust stacks at the Rozelle Rail Yards and one at Victoria Road at Iron Cove Bridge just meters from home and a primary school.⁷⁶

1.55 A number of individuals with significant expertise made submissions and/or gave evidence before the committee. These included Professor Paul Torzillo, Dr Ray Nassar, Dr Glen Searle and Dr Michelle Zeibots.

Committee comment

1.56 As stated at the outset of this report, WestConnex is one of the largest and most complex transport infrastructure projects ever to be undertaken in Australia. It is clear that it is also one of the most controversial.

1.57 The issues facing Sydney's roads are widely acknowledged and the committee notes the intended benefits of the WestConnex as presented by the NSW Government.

1.58 The committee accepts that a large scale infrastructure project such as the WestConnex cannot be delivered without a certain amount of disruption and impact. However over 550 submissions were received by this inquiry. Almost all of these were in opposition to the project. This makes it very clear that there is considerable local community opposition to the project. It is also apparent that a broad range of impacts are being felt by those communities directly impacted by the construction of the project and some of these impacts will continue for many years. The benefits were also contested by other stakeholders and a number of independent transport planning experts.

1.59 The committee notes with concern the circumstances surrounding the way in which the government made its decision to build WestConnex.

1.60 The committee finds that the WestConnex project is, notwithstanding issues of implementation raised in this report, a vital and long-overdue addition to the road infrastructure of New South Wales. The committee supports complete construction, including Stage 3 and the Rozelle Interchange.

Finding 1

That the WestConnex project is, notwithstanding issues of implementation raised in this report, a vital and long-overdue addition to the road infrastructure of New South Wales. The committee supports complete construction, including Stage 3 and the Rozelle Interchange.

⁷⁶ Submission 546, Mr Jamie Parker MP on behalf of 985 constituents, p 1.

Chapter 2 The WestConnex business case

The NSW Government has developed two business cases for the WestConnex project. This chapter begins by presenting a high level overview of the results of each of these business cases. It then provides an overview of the findings of independent reviews conducted on the adequacy of the business cases and associated assurance processes. The chapter concludes by discussing the concerns most frequently raised by inquiry participants about the business case and other related matters. This includes the adequacy of the options development process; issues relating to the costs benefit analysis including the omission of certain costs; and the transparency and accessibility of the business case material.

The business cases

2.1 Business cases are undertaken to provide decision makers with the information they need to make robust investment decisions on behalf of the people of New South Wales. While there are many definitions of a business case, NSW Treasury Guidelines state that the state's decision makers use the following definition:

A **business case** is a documented proposal to meet the Government's objectives that is used to inform an investment and/or policy decision. It contains an analysis of the costs, benefits, risks and assumptions associated with various investment and policy options linked to policy or program outcomes and informs further implementation, monitoring and evaluation.⁷⁷

2.2 The WestConnex businesses cases have been subject to considerable community and political debate since the announcement of the project. A number of concerns have been raised relating to the adequacy of the business cases as well as the transparency of the documents and supporting material. These concerns are discussed throughout this chapter.

2.3 Two business cases for the WestConnex project have been published by the NSW Government. These are:

- WestConnex Business Case Executive Summary, dated September 2013⁷⁸
- WestConnex Updated Strategic Business Case, dated November 2015.⁷⁹

⁷⁷ NSW Treasury, *TPP 18-06 NSW Government Business Case Guidelines*, August 2018, p 5, <https://www.treasury.nsw.gov.au/sites/default/files/2018-08/TPP18-06%20%20NSW%20Government%20Business%20Case%20Guidelines.pdf>.

⁷⁸ *WestConnex Business Case Executive Summary*, September 2013, <https://www.westconnex.com.au/sites/default/files/westconnex-executive-summary-september-2013.pdf>.

⁷⁹ *WestConnex – Updated Strategic Business Case*, November 2015, <https://www.westconnex.com.au/sites/default/files/WestConnex%20Updated%20Strategic%20Business%20Case%20-%20November%202015.pdf>.

WestConnex Business Case Executive Summary

- 2.4** According to the NSW Government's submission, 'a detailed business case' for WestConnex was prepared for the consideration of the NSW Government in 2013.⁸⁰ The business case was prepared by the Sydney Motorways Project Office⁸¹, using the NSW Treasury and Transport for NSW policies for the preparation of business cases, and followed the initial recommendation by Infrastructure NSW for the development of the project.⁸² The government also invited a number of companies into the Sydney Motorways Project Office to participate in the scoping stages, including Macquarie, Leightons and AECOM.⁸³
- 2.5** The WestConnex Business Case Executive Summary sets out a strategic overview of the project including the project objectives. It also sets out summary information on the proposed funding strategy, delivery timeframe, and economic analysis undertaken on the project. Sections on the urban revitalisation of the Parramatta Road and key stages of the WestConnex project were also included.⁸⁴
- 2.6** The Executive Summary stated that the WestConnex project would cost between \$11- \$11.5 billion (in 2012 dollars)⁸⁵ and be delivered in three stages over a 10 year period.⁸⁶ It confirmed that a high proportion of the funding requirement for the WestConnex project would be sourced from user charges and the document set out an indicative tolling strategy.⁸⁷
- 2.7** The Executive Summary stated that an economic appraisal had been completed based on New South Wales and Federal guidelines and indicated that the WestConnex project will deliver benefits of more than \$20 billion to New South Wales.⁸⁸ It identified a Benefit Cost Ratio (BCR)⁸⁹ of 2.55 meaning that for every dollar invested by the government, a return of \$2.55

⁸⁰ Submission 124, NSW Government, p 5.

⁸¹ Media Release, Transport for NSW, 'WestConnex project office up and running and community consultation underway', 13 December 2012, <https://www.transport.nsw.gov.au/newsroom-and-events/media-releases/westconnex-project-office-up-and-running-and-community>.

⁸² Submission 124, NSW Government, p 5.

⁸³ Roads and Maritime Services / RMS.13.2909.0220 - RMS.13.2909.0220, <https://tenders.nsw.gov.au/rms/?event=public.cn.view&CNUUID=9E8AB610-B320-7DE0-E39C78CD1A92895F>; Submission 436, WAG, p 20.

⁸⁴ Sydney Motorways Project Office, *WestConnex Business Case Executive Summary*, September 2013, p 1.

⁸⁵ This equates to \$14.9 billion in nominal outturn costs which is the aggregate of costs incurred, including inflation, over the construction period from 2014-2023; Submission 124, NSW Government, p 7.

⁸⁶ Sydney Motorways Project Office, *WestConnex Business Case Executive Summary*, September 2013, p 15.

⁸⁷ Sydney Motorways Project Office, *WestConnex Business Case Executive Summary*, September 2013, pp 16-17.

⁸⁸ Sydney Motorways Project Office, *WestConnex Business Case Executive Summary*, September 2013, p 20.

⁸⁹ Benefit Cost Ratios are indicators used in cost benefit analysis that summarise the overall value for money of a project or proposal. In simple terms, this analysis considers the value of a project's benefits against the value of its costs. A project is potentially worthwhile if the BCR is greater than one as this means that project benefits exceed project costs.⁸⁹

could be expected.⁹⁰ The economic analysis underpinning these results has not been published by the NSW Government.

WestConnex Updated Strategic Business Case

- 2.8** In 2015, the *WestConnex Updated Strategic Business Case* was prepared by the then WestConnex Delivery Authority. This followed reviews by the Auditor General of NSW and Infrastructure Australia which are discussed in the next section.⁹¹
- 2.9** A redacted version of the *Updated Strategic Business Case* was published by the NSW Government in 2015.⁹² Redactions were made to cost estimates for the project. Technical papers relating to traffic modelling, and economic analysis were also published at this time.⁹³
- 2.10** The *WestConnex Updated Strategic Business Case* included further analysis to assess the economic viability of the WestConnex project. This analysis was completed by KPMG and included a cost benefit analysis and wider economic impacts analysis.⁹⁴ The government advised that updated project costs to reflect a number of changes to the scope of the WestConnex project, as well as revised traffic modelling which included a consideration of the impacts of induced demand for the motorway upon completion, were used to inform this work.⁹⁵
- 2.11** The 2015 Business Case costed the WestConnex project at \$16.8 billion.⁹⁶ Comparing like for like figures, this represented an increase of approximately \$2 billion from the cost of project identified within the 2013 WestConnex Business Case Executive Summary. The government advised that this was on account of an expanded project scope which in particular included the realignment of the M4-M5 Link (at a cost of \$1.2 billion).⁹⁷ This realignment is described in the table below as an extension of Stage 3 to Anzac Bridge, Victoria Road and the future Western Harbour Tunnel and Beaches Link. The table below sets out the changes in scope between the original and updated business cases and the related cost increases.

⁹⁰ Sydney Motorways Project Office, *WestConnex Business Case Executive Summary*, September 2013, p 20; Submission 124, NSW Government, p 5.

⁹¹ Submission 124, NSW Government, p 5.

⁹² Submission 124, NSW Government, p 5.

⁹³ Submission 124, NSW Government, p 6.

⁹⁴ A Wider Economic Impacts (WEI) analysis is defined in Transport for NSW, *Principles and Guidelines for Economic Appraisal of Transport Investment and Initiatives*, March 2016, p 229 as ‘impacts of transport investments on agglomeration economies, increased competition as a result of better transport system, increased output in imperfectly-competitive markets and economic welfare benefits arising from an improved labour supply’.

⁹⁵ Submission 124, NSW Government, pp 5-6.

⁹⁶ Submission 124, NSW Government, p 7.

⁹⁷ Submission 124, NSW Government, p 7.

Table 2 Scope and cost changes between original and updated business cases

Original WestConnex (\$m)	Original WestConnex + Additions (\$m)
Stage 1	Enhanced Sydney Gateway connection
4,197	
Stage 2	Extension of Stage 3 to Anzac Bridge, Victoria Road and the future Western Harbour Tunnel and Beaches Link
4,737	
Stage 3	Acceleration costs and associated delivery costs for scope enhancements
5,947	
Original Business Case Total	14,881
	Enhanced WestConnex Total
	16,812

Source: Submission 124, NSW Government, p 7.

- 2.12 According to the government, 'the updated economic analysis undertaken demonstrated that the project was economically viable'.⁹⁸ The economic analysis concluded that the WestConnex project has a BCR of 1.71 without consideration of wider economic benefits. It reached 1.88 when wider economic benefits were taken into account, indicating that for every \$1 dollar invested a return of \$1.88 could be expected.⁹⁹

Independent review of the business case

- 2.13 A number of independent bodies have undertaken reviews of the WestConnex business case and associated processes. This includes the Audit Office of New South Wales, Infrastructure Australia, and SGS Economics and Planning. A summary of their findings is provided below.

Audit Office of New South Wales

- 2.14 The role of the Audit Office is to support the NSW Parliament by providing independent assurance over the activities of government. It does this by conducting annual financial audits, and undertaking performance audits which examine the efficiency and effectiveness of particular government activities and compliance with relevant law.¹⁰⁰ In 2014 the Audit Office undertook a performance audit titled *WestConnex: Assurance to the Government*. This report assessed how effectively project assurance processes were applied to the WestConnex project.

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The Major Project's Assurance Framework

- 2.15 At the time the audit was completed, the NSW Government's assurance principles were set out in the Major Projects Assurance Framework. This framework was approved by the NSW Government in December 2011. It was developed with the objective of increasing the government's confidence and assurance in the planning and implementation of major projects.

⁹⁸ Submission 124, NSW Government, p 6.

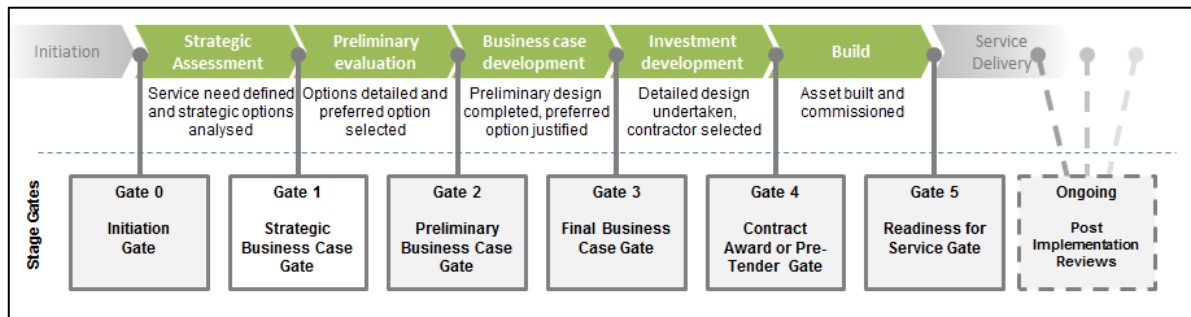
⁹⁹ Submission 124, NSW Government, p 6.

¹⁰⁰ Evidence, Ms Margaret Crawford, Auditor-General of NSW, Audit Office of New South Wales, 11 October 2018, p 55.

¹⁰¹ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, December 2014, <https://www.audit.nsw.gov.au/publications/performance-audit-reports/2014-reports/westconnex-assurance-to-the-government/westconnex-assurance-to-the-government>.

- 2.16 A key feature of the framework was the Gateway review system which comprised a series of independent, structured reviews at key decision points (or Gates) in a project's lifecycle. The purpose of these reviews was to provide independent assurance on matters such as: 'whether an investment in a project is warranted, the strategic options considered, and whether a project was on track and ready to move to the next phase'.¹⁰²
- 2.17 The 2014 Audit Office report stated that Infrastructure NSW was responsible for Gateway reviews on projects costing \$100 million at this time. It also noted that the government had agreed that Infrastructure NSW use the Transport for NSW investment Gating and Assurance System for review of major infrastructure projects. Figure 2 below sets out the key features of the Transport for NSW investment Gating and Assurance System.¹⁰³

Figure 2 Transport for NSW investment Gating and Assurance System



Source: Audit Office of NSW, *WestConnex: Assurance to the Government*, p 13.

What did the Audit Office find?

- 2.18 The audit did not look at the project's business case in detail to assess value for money or the accuracy or reliability of data presented within it. However, the audit did find 'shortcomings in the assurance processes that were applied' to the WestConnex business case. Specifically, that a number of Gateway reviews over the business case had not been completed.¹⁰⁴
- 2.19 The audit report concluded that assurance 'processes applied to WestConnex to provide independent assurance to Government did not meet best practice standards'. It stated that the agencies concerned (Roads and Maritime Services, WestConnex Delivery Authority, Infrastructure NSW, Transport for NSW, NSW Treasury and the Department of Premier and Cabinet) adopted a number of good practice internal governance and assurance arrangements.¹⁰⁵
- 2.20 The audit report also stated that the government 'would have received greater assurance about the risks, costs and benefits of the project had these agencies devoted time and effort to also implementing the Major Projects Assurance Framework effectively as designed'.¹⁰⁶
- 2.21 The audit report found that only one independent Gateway review was completed during the initiation and business case stages of the project, instead of four as full implementation of the

¹⁰² Audit Office of New South Wales, *WestConnex: Assurance to the Government*, December 2014, p 11.

¹⁰³ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 12.

¹⁰⁴ Evidence, Ms Crawford, 11 October 2018, p 58.

¹⁰⁵ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 3.

¹⁰⁶ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 3.

framework would have intended. The audit found that the one Gateway review that was undertaken identified that the 'the preliminary business case was deficient and fell well short of the standard expected for such a document'. Furthermore, if all gateway reviews and external assurance arrangements had occurred, they should have identified deficiencies in the business case put to government.¹⁰⁷ Deficiencies identified within the audit report related to the underlying analysis and the way 'the business case dealt with risks around traffic projections, project cost, economic benefits, financial analysis, governance arrangements and the procurement strategy'.¹⁰⁸

2.22 The responsible agencies argued that the 'Government's approved Business Case Implementation Plan¹⁰⁹ replaced the Major Projects Assurance Framework' and this was the reason that the Major Projects Assurance Framework, was not implemented in full. The Audit Office concluded that this had led to a 'sub optimal process'.¹¹⁰

2.23 The Audit Office found:

[S]ome issues with the underlying analysis which we believe a full Gateway review should have identified. These deficiencies related to the way the business case dealt with risks around traffic projections, project cost, economic benefits, financial analysis, governance arrangements and the procurement strategy.

We have discussed these deficiencies with the auditees. We have chosen to follow the established convention and not publish information that would reveal Cabinet decisions or deliberations. Most of the information would reveal Cabinet-in-confidence matters.¹¹¹

2.24 However, and notwithstanding the above observations relating to the development of the business case, the performance audit also stated that: 'while our audit did not seek to establish whether the WestConnex project presented value-for-money, nothing came to our attention during the audit which led to significant concerns with respect to this issue'.¹¹² Furthermore, the audit stated that the project was likely to have a positive benefit cost ratio:

...based on the information we have received our analysis found that the project is still likely to have a positive benefit-cost ratio using industry standard economic modelling techniques, although this could be lower than that identified in the publicly released business case executive summary.¹¹³

2.25 Ms Margaret Crawford, Auditor General of New South Wales, commented on the implications of not undertaking a Gate 0 – (Initiation Gate review). Ms Crawford explained that had a Gate

¹⁰⁷ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 3.

¹⁰⁸ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 31.

¹⁰⁹ The Business Case Implementation Plan for the WestConnex project outlined governance and assurance arrangements for the business case stage of the WestConnex project.

¹¹⁰ WestConnex Assurance to Government, Auditor-General's Report to Parliament, 18 December 2018; Audit Office of New South Wales, *WestConnex Assurance to the Government*, www.audit.nsw.gov.au/news/news-archive/2014/westconnex-assurance-to-the-government.

¹¹¹ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 31.

¹¹² Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 4.

¹¹³ Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 31.

0 review been undertaken, one deficiency that could have been picked up was a lack of consideration of a broad range of options at the outset of the project:

The focus of the 2014 audit was on the assurance processes that applied to that project at its very early stages ... One of the gateway review stages that was missed was the zero business case stage, and one would have expected, had an independent gateway review process been undertaken, that one of the issues that would arise from that was the lack of consideration of a range of options.¹¹⁴

2.26 The audit report also stated that:

On balance, we believe that a Gate Zero Gateway review should have been conducted. It would have provided independent assurance that the project was justified ... Infrastructure NSW's roles at this stage of the WestConnex project were in conflict. It was responsible for developing the WestConnex concept and at the same time it was the key agency responsible for providing assurance to Government over major capital projects including WestConnex.¹¹⁵

Infrastructure Australia

2.27 Infrastructure Australia is an independent statutory body established by the Australian Government to prioritise and progress nationally significant infrastructure. The organisation has completed a number of assessments related to the WestConnex project for advice for successive Australian Governments.¹¹⁶

2.28 In 2014, Infrastructure Australia reviewed the WestConnex project.¹¹⁷ This included a consideration of the WestConnex project's business case including the cost benefit analysis. A summary of the assessment published by Infrastructure Australia stated that: 'the estimated benefits of the project are currently 80 per cent higher than the estimated costs. This provides a high degree of comfort that the project will have net benefits'.¹¹⁸

2.29 However, Infrastructure Australia did suggest that further work should be completed in two areas. This included:

- additional transport modelling and economic appraisal to account for additional trips and redistribution of trips that result from the project (induced demand)
- adjustment of the cost estimates from a P50 basis to a P90 basis.¹¹⁹

2.30 P50 and P90 values are defined in Transport for NSW guidelines as follows:

¹¹⁴ Evidence, Ms Crawford, 11 October 2018, p 58.

¹¹⁵ Audit Office of New South Wales, WestConnex: Assurance to the Government, 2014, p 17.

¹¹⁶ Submission 124, NSW Government, pp 5-6.

¹¹⁷ Submission 124, NSW Government, p 5; Infrastructure Australia, WestConnex, 2014-2015 Assessment Brief, <http://infrastructureaustralia.gov.au/policy-publications/publications/files/NSW-WestConnex.pdf>.

¹¹⁸ Infrastructure Australia, WestConnex, 2014-2015 Assessment Brief, <http://infrastructureaustralia.gov.au/policy-publications/publications/files/NSW-WestConnex.pdf>, p 5.

¹¹⁹ Infrastructure Australia, WestConnex, 2014-2015 Assessment Brief, p 5.

P50 represents the project cost such that there is a 50 per cent likelihood that the project cost will not be exceeded. P90 represents the project cost with sufficient risk provisions such that there is a 90 per cent likelihood that the project cost will not be exceeded. P90 represents a conservative position, one that has only a 10 per cent change of being exceeded.¹²⁰

- 2.31** Notwithstanding this request, the Infrastructure Australia report stated: 'there is a degree of confidence that following an adjustment to the BCR for P90 and any negative adjustment due to induced trips, the BCR will remain positive'.¹²¹
- 2.32** In April 2016, Infrastructure Australia conducted a Project Business Case Evaluation. This was informed by information contained within the 2015 *Updated Strategic Business Case*.¹²²
- 2.33** Commenting on the updated economic analysis, Infrastructure Australia reported that there were some areas where benefits for the project could be overstated or understated. Despite this, Infrastructure Australia concluded that it was confident that benefits for the entire WestConnex project will exceed costs:

There are some areas where benefits for the project could be overstated, or understated. Areas where benefits could be overstated include the annualisation factor used in the analysis to convert weekday traffic estimates to yearly estimates that take account of weekends and public holidays, the methodology for estimating vehicle operating costs, and the high share of travel time benefits accruing to business travel. An area where benefits could be understated is in urban renewal, where costs for urban renewal are included but not consequential benefits. Overall, Infrastructure Australia is confident that benefits for the entire WestConnex project will exceed costs.¹²³

- 2.34** The 2016 Business Case Evaluation also commented on the efficacy of the options development process. It stated that 'Infrastructure Australia believes a more robust analysis would have seen WestConnex considered against, and in conjunction with, a broader set of options for addressing Sydney's longer term transport needs'. Infrastructure Australia continued that a more comprehensive options analysis earlier in the process may have mitigated some risks around project certainty and scope:

The design for the WestConnex has evolved from the original business case, and the cost of the project has increased. A more comprehensive options analysis may have identified these evolutions or other approaches earlier in the planning and delivery process, potentially mitigating some risks around project certainty and scope.¹²⁴

¹²⁰ Transport for NSW, *Principles and Guidelines for Economic Appraisal of Transport Investment and Initiatives*, June 2018, p 22.

¹²¹ Infrastructure Australia, WestConnex, 2014-2015 Assessment Brief, p 5.

¹²² Infrastructure Australia, *Project Business Case Evaluation*, April 2016, http://infrastructureaustralia.gov.au/projects/files/Final_WestConnex_Project_Evaluation_Summary.pdf.

¹²³ Infrastructure Australia, *WestConnex Business Case Evaluation*, April 2016, p 5, http://infrastructureaustralia.gov.au/projects/files/Final_WestConnex_Project_Evaluation_Summary.pdf

¹²⁴ Infrastructure Australia, *WestConnex Business Case Evaluation*, April 2016, p 2, http://infrastructureaustralia.gov.au/projects/files/Final_WestConnex_Project_Evaluation_Summary.pdf

SGS Economics and Planning

- 2.35** SGS Economics and Planning was commissioned by both the City of Sydney and the then Leichhardt Council to conduct reviews of the WestConnex business case material.
- 2.36** The final report prepared for Leichhardt Council, dated January 2016,¹²⁵ was highly critical of the WestConnex Updated Strategic Business Case stating that it 'fails to address many of the key requirements of a business case'.¹²⁶
- 2.37** The report identified a series of issues. In summary, these included:
- alternatives to WestConnex have not been considered
 - project objectives prevent a non-road based solution from being considered
 - other global cities are focusing on integrated transport solutions
 - the longevity of the project is unclear
 - costs are high and likely to be even higher as costs presented are provided at a P50 basis
 - the traffic modelling has a range of issues
 - the cost benefit analysis is 'littered' with issues.¹²⁷
- 2.38** In conclusion, the January 2016 SGS Economics and Planning report stated that 'the Updated Strategic Business Case fails to establish WestConnex as the best transport solution for Sydney'.¹²⁸
- 2.39** The report commissioned by City of Sydney, dated February 2016 was equally critical.¹²⁹ The report stated that it was 'a confused document filled with contradictions which does little to address the wide ranging concerns about WestConnex'.¹³⁰
- 2.40** The report discussed similar issues, however it was particularly critical of the cost benefit analysis stating that 'the transport modelling contains many unexplained and counterintuitive results, which raises doubts about the effectiveness and accuracy of the results'. Furthermore 'it appears that the BCR has been incorrectly quoted as 1.71 instead of 1.64'.¹³¹

¹²⁵ Submission 379, Inner West Council, Attachment, p 46, SGS Economics and Planning, *WestConnex Business Case Review, Final Report, Leichhardt City Council*, January 2016.

¹²⁶ Submission 379, Inner West Council, Attachment, p 46, SGS Economics and Planning, *WestConnex Business Case Review, Final Report, Leichhardt City Council*, January 2016, p 1.

¹²⁷ Submission 379, Inner West Council, Attachment, p 46, SGS Economics and Planning, *WestConnex Business Case Review, Final Report, Leichhardt City Council*, January 2016, pp 1-2.

¹²⁸ Submission 379, Inner West Council, Attachment, p 46, SGS Economics and Planning, *WestConnex Business Case Review, Final Report, Leichhardt City Council*, January 2016, p 2.

¹²⁹ SGS Economics and Planning, *WestConnex Business Case Review, Final Report, City of Sydney*, February 2016, p 1.

¹³⁰ SGS Economics and Planning, *WestConnex Business Case Review, Final Report, City of Sydney*, February 2016, p 1.

¹³¹ SGS Economics and Planning, *WestConnex Business Case Review, Final Report, City of Sydney*, February 2016, p 1.

2.41 The City of Sydney submission provided further detail on the nature of concerns relating to the transport economics and stated 'in calculating the BCR the alleged benefits of WestConnex have been overstated while costs were underestimated'.¹³² The City of Sydney pointed to the treatment of travel time savings and induced demand as two examples of costs being underestimated:

- **Treatment of travel time savings** – The City of Sydney stated that '58 per cent of the benefits claimed for WestConnex are travel time savings. 60 per cent of these travel time savings are less than three minutes'. The City of Sydney therefore argued that small travel time savings are often not realized and that 'removing them from the transport modelling would reduce the BCR from 1.64 to 1.12'.¹³³
- **Treatment of induced demand**¹³⁴ – Induced demand in this context refers to the concept that once a motorway is constructed, more people will use it as a result. The City of Sydney stated that induced demand was not appropriately considered within the analysis. The City of Sydney noted that a three per cent reduction in transport benefits had been applied to the analysis to account for induced demand. However, SGS Economics and Planning had suggested 'that a figure ten times that amount would be more likely'. The application of a 30 per cent decrease in benefits, such as that suggested by SGS Economics and Planning, would have the effect of reducing the BCR as calculated from 1.64 to 1.15.¹³⁵

2.42 The SGS Economics and Planning report concluded that when all the economic analysis issues as identified within their report were taken into account (including those noted above) the benefits to be gained from the WestConnex project are likely to be 'marginal at best', and possibly even negative:

All these issues with the economic appraisal of WestConnex suggest that the project is likely to be marginal at best. When considering the number of benefits that are likely to be overestimated and costs that may have been underestimated, it is quite possible that the actual BCR for the WestConnex is less than one... Given this and the lack of strategic justification, the decision to proceed with WestConnex is questionable. However, the decision has been taken and construction has commenced.¹³⁶

2.43 The SGS Economics and Planning report also identified a lack of consideration of alternative options as a 'fundamental gap' in the published business case information. The report stated:

It is highly concerning that an analytical study of potential alternatives is not considered in the *updated Strategic Business Case*. The strategic alternatives presented are at a high level and quickly dismissed through an objectives-led analysis that is not clearly linked to land use and transport planning goals for Sydney.¹³⁷

¹³² Submission 311, City of Sydney, p 8.

¹³³ Submission 311, City of Sydney, p 9.

¹³⁴ Induced demand in this context refers to the concept that after the WestConnex is constructed, more vehicles will travel on the motorway as a result.

¹³⁵ Submission 311, City of Sydney, p 10.

¹³⁶ SGS Economics and Planning, *WestConnex Business Case Review, Final Report, City of Sydney*, February 2016, p 2.

¹³⁷ SGS Economics and Planning, *WestConnex Business Case Review, Final Report, City of Sydney*, February 2016, p 10.

Other experts

- 2.44** Dr Glen Searle gave evidence that costs had not been included in the business case which would have altered conclusions about cost/benefit ratio.
- 2.45** Dr Searle told the inquiry that the WestConnex business case had 'serious inadequacies', lacked transparency and suffered from the problem of being used to justify a decision that had already been made rather than weighing up the costs and benefits before it was made.¹³⁸
- 2.46** This meant that there was 'little incentive for the government to prepare an exhaustive analysis that compared this project with alternatives, and much incentive to prepare a narrowly based case'.¹³⁹
- 2.47** Dr Searle listed costs that have been ignored, including the cost of building extra roads to cope with traffic flowing from WestConnex, increased congestion on some local roads, loss of property value, health impacts including the costs of increased noise and pollution, costs to public transport revenue, loss of heritage and biodiversity and the impact of project construction on communities and business. He told the inquiry that while some costs are hard to estimate, most of these costs could be financially assessed using standards models.¹⁴⁰
- 2.48** A number of individual submitters including Professor Paul Torzillo, Dr Ray Nassar and Dr Michelle Zeibots made similar points.¹⁴¹

Community views on the adequacy of the business case

- 2.49** One of the most frequent concerns raised by community representatives regarding the WestConnex business cases was the absence of a comprehensive consideration of alternative transport options.
- 2.50** For example, the WestCONnex Action Group (WAG) stated that the business case had failed to consider alternative options. The group stated this 'is based on an assumption that the project was required; that Sydney needed more toll roads to the exclusion of public transport'.¹⁴² The group then posed the following question: 'how is it possible to know whether WestConnex is a more effective solution, both in terms of finance, mobility and sustainability, than other alternatives such as demand management, public transport or a combination of options not considered?'¹⁴³
- 2.51** The Inner West Council expressed a similar opinion, noting that 'it is concerning that other solutions and in particular, demand management (electronic road pricing) or public transport solutions, have not been assessed'. The Inner West Council continued that had strategic

¹³⁸ Evidence, Dr Glen Searle, 9 October 2018, pp 70-71

¹³⁹ Submission 3, Dr Glen Searle, p 11

¹⁴⁰ Submission 3, Dr Glen Searle, p 11

¹⁴¹ Evidence, Professor Paul Torzillo, Head of Respiratory Medicine and Critical Care, Royal Prince Alfred Hospital, 11 October 2018, p 74; Submission 210, Dr Raymond Nassar, p 13; and Submission 497, Dr Michelle Zeibots, p 5

¹⁴² Submission 436, WAG, p 6.

¹⁴³ Submission 436, WAG, p 6.

alternative option analysis been completed, that the need for an integrated transport solution may have been identified.¹⁴⁴

- 2.52** The City of Sydney also contended that a key flaw in the business case was that it 'didn't analyse Sydney's growth and transport challenges and assess WestConnex as one of many potential options [among other options] to meet them'. Instead, the Business Case 'assumed that a motorway was needed. It did not consider whether a more effective or cheaper option was available – options such as demand management, public transport or combination thereof'.¹⁴⁵
- 2.53** Further, the City of Sydney argued that the Strategic Business Case 'failed to consider future developments that will affect land use in Greater Sydney, such as the Western Sydney airport', and pointed to the example of the Victorian Government's East West links Needs Assessment which examined a range of road and public transport options to improve east-west connectivity in Melbourne and the costs and benefits of each option.¹⁴⁶
- 2.54** As noted in chapter 1, the submission provided by Mr Jamie Parker MP, Member for Balmain, signed by 985 constituents agreed with the statement that 'the business case does not properly consider alternatives such as public transport and demand management'.¹⁴⁷

Committee comment

- 2.55** Comprehensive business cases are vital to ensuring that decision makers make robust investment decisions on behalf of the people of New South Wales. It is therefore concerning that the assurance processes undertaken during the development stage of the first business case for the WestConnex project did not meet best practice.
- 2.56** The committee considers that sub optimal assurance processes during the early stages of the project was a major oversight by the responsible agencies. We agree with the NSW Auditor General's finding in that had effective assurance processes been in place, errors and omissions in the first business case put forward to government may have been identified.
- 2.57** While the committee fully endorses the findings of the NSW Auditor General, it is difficult to understand why it was thought appropriate to not subject a very large and complex infrastructure project to the independent assurance framework that was in place at the time. The committee finds that the NSW Government failed to subject the WestConnex project to a comprehensive independent assurance process during the first business case development stage of the WestConnex project.

¹⁴⁴ Submission 379, Inner West Council, Attachment, p 46, SGS Economics and Planning, *WestConnex Business Case Review, Final Report, Leichhardt City Council*, January 2016, p 8.

¹⁴⁵ Submission 311, City of Sydney, p 6.

¹⁴⁶ Submission 311, City of Sydney, pp 6-7.

¹⁴⁷ Submission 546, Mr Jamie Parker on behalf of 985 constituents, p 1.

Finding 2

That the NSW Government failed to subject the WestConnex project to a comprehensive independent assurance process during the development of the first business case for the project.

- 2.58** The consideration of the full range of costs and benefits is fundamental to the credibility of a business case and is a crucial step in the investment decision making process for public infrastructure projects. The committee shares the concerns raised by numerous inquiry participants that the NSW Government was not required to consider the full range of costs in the business case for the WestConnex project, including costs to public health, amenity, biodiversity, extra road building, and losses to public transport.
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Finding 3

That the NSW Government was not required to consider the full range of costs in the business case for the WestConnex project, including costs to public health, amenity, biodiversity, extra road building, and losses to public transport.

- 2.59** The analysis of different options to address a problem or policy issue is an important step in the investment decision making process. This ensures that a project represents value for money for the people of New South Wales. It also strengthens a project's justification, providing confidence that a chosen solution is the best solution.
- 2.60** The committee shares the concerns raised by numerous inquiry participants relating to the absence of a comprehensive options analysis. While the committee acknowledges the importance of investment in the state's motorway network, it is clear that the NSW Government failed in its obligation to undertake a full and robust options analysis at the outset of the WestConnex project. Had such an assessment been completed, many of the concerns raised about the WestConnex project as the right solution to address Sydney's long term transport needs, may have been avoided or at least ameliorated.
- 2.61** The committee finds that the NSW Government failed to adequately consider alternative options at the commencement of the WestConnex project. This failure has undermined the justification for the project and has exacerbated community opposition.
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Finding 4

That the NSW Government failed to adequately consider alternative options at the commencement of the WestConnex project. This failure has undermined the justification for the project and has exacerbated community opposition.

- 2.62** The committee firmly believes that all future large scale infrastructure projects costing more than \$1 billion should be subject to public planning inquiries, and a detailed options analysis completed. The detailed options analysis should be subject to independent review and be made
-

public. It is recommended that the NSW Government for future large scale infrastructure projects:

- hold public planning inquiries
- prepare a detailed options analysis
- ensure that this analysis is independently peer reviewed in accordance with the requirements of the Infrastructure Investor Assurance Framework
- publish both the analysis and a summary of the peer review prior to the commencement of construction of that project.

Recommendation 1

That the NSW Government for future large scale infrastructure projects:

- hold public planning inquiries
 - prepare a detailed options analysis
 - ensure that this analysis is independently peer reviewed in accordance with the requirements of the Infrastructure Investor Assurance Framework
 - publish both the analysis and a summary of the peer review prior to the commencement of construction of that project.
-

Consideration of public health costs

- 2.63** The public health impacts resulting from the construction of the WestConnex, were canvassed during the inquiry. Some inquiry participants called for public health impacts to be more comprehensively considered as part of a project's cost benefit analysis.
- 2.64** The Public Health Association of Australia (PHAA) contended that the business case did not adequately address the broad range of human health impacts resulting from the WestConnex project.¹⁴⁸ Such impacts included barriers to physical activity, exposure to environmental hazards, and barriers to social connectedness. The association called for the inclusion of comprehensive public health impacts in future cost benefit analysis for future infrastructure projects, with particular focus on the inequitable distribution of impacts.¹⁴⁹
- 2.65** Dr Patrick Harris, Vice-President of the PHAA NSW Branch explained that the existing methodologies for assessing the costs and benefits of a project emphasised project benefits such as travel time savings, while also not duly factoring in other costs and benefits that are known to impact on public health.
- 2.66** Dr Harris also explained that the wider economic impact analysis undertaken (as detailed earlier in the chapter) for the WestConnex project ignored 'the known evidence that transport

¹⁴⁸ Submission 381, Public Health Association of Australia, p 5.

¹⁴⁹ Submission 381, Public Health Association of Australia, pp 4 and 7.

infrastructure influences many different dimensions of health by shaping the environment in which we live, work, move and socialize'.¹⁵⁰

2.67 Talking further about the types of relevant health impacts that could be addressed by such analysis, Dr Harris suggested that impacts such as mental wellbeing, social connectedness, and what is happening in local communities when projects such as WestConnex are implemented, should be considered. Dr Harris emphasised the considerable impact that projects such as WestConnex can have on the daily lives of those affected:

It is more than just the nimby response; it is about what is happening when people do not fully understand what is happening in their lives and suddenly a decision is thrust upon them, to be quite frank, it is challenging for them.¹⁵¹

2.68 This view was shared by the WAG which also asserted that a range of social and psychological impacts had not been adequately accounted for within the business case. The group further argued that such 'costs had [nonetheless] been carried by the public both collectively and individually'.¹⁵²

2.69 The WAG claimed that no evaluation of the health impacts on the community, particularly those communities impacted by the construction phase of the project, had ever been completed and that 'costs to the community are pushed aside at every point'.¹⁵³

2.70 The WAG provided the example of the St Peters community to illustrate this issue. The group advised that the St Peters community has been impacted by the WestConnex project since October 2014 and argued that 'the most outstanding issue in this regard has been the failure [of the government] to take into account the impact of long term construction on the community'. WAG contended that this was 'an unforgivable oversight'.¹⁵⁴

Other costs not considered

2.71 Dr Glen Searle and Dr Crystal Legacy identified a series of costs that they believed had not been adequately considered in the business case. These costs included:

- costs accruing during the construction phase of the project (for example, costs over and above capital costs such as noise, traffic detours, slow-downs and loss of business for adjacent businesses)
- reductions in the use of public transport
- costs to upgrade connecting roads.¹⁵⁵

¹⁵⁰ Evidence, Dr Patrick Harris, Senior Research Fellow, Menzies Centre for Health Policy, University of Sydney School of Medicine, representing the Public Health Association of Australia, 9 October 2018, p 43.

¹⁵¹ Evidence, Dr Harris, 9 October 2018, p 44.

¹⁵² Submission 436, WAG, p 8.

¹⁵³ Submission 436. WAG, p 9.

¹⁵⁴ Submission 436. WAG, p 9.

¹⁵⁵ Submission 3, Dr Glen Searle, p 11.

- 2.72 Dr Searle and Dr Legacy also argued that a major omission from the business case was the cost of decreased property values as a result of proximity to the WestConnex project. They concluded that the 'omission of so many costs from the business case puts the case to construct into serious doubt'.¹⁵⁶

Committee comment

- 2.73 The committee acknowledges the argument that public health costs were not required to be considered within the economic analysis for the WestConnex project. The committee believes that the assessment of public health costs, as well as health benefits, should form an important component of the decision making process for large scale infrastructure projects. This is particularly true for projects where the impact of construction on the affected communities is likely to be significant.
- 2.74 It is recommended that the NSW Government mandate the completion of a public health impact analysis as part of the wider economic analysis undertaken for future large scale infrastructure projects.

Recommendation 2

That the NSW Government mandate the completion of a public health impact analysis as part of the wider economic analysis undertaken for future large scale infrastructure projects.

Transparency of the business case

- 2.75 As noted earlier, business cases provide decision makers with the information they need to make robust investment decisions on behalf of the people of New South Wales. These documents provide important economic, financial, and other analysis to assist in the determination of a project's merit or otherwise. The transparency and publication of information contained within the WestConnex business cases was a matter of concern for many inquiry participants.
- 2.76 The WAG argued that the Strategic Business Case was not released until 2015, three years after the project was first proposed, and only then, it was released after intense public pressure.
- 2.77 The WAG stated that the business case that was published contained many redactions, including the key costs and revenue figures. This hindered the ability of independent experts to undertake a serious review of the projected costs and benefits of the WestConnex project.¹⁵⁷ Others agreed, including SGS Economics and Planning who stated in their review that a copy of the 2013 Business Case was not released publically 'so the detailed thinking and modelling could not be independently assessed'.¹⁵⁸

¹⁵⁶ Submission 3, Dr Glen Searle, pp 11.

¹⁵⁷ Submission 436, WAG, p 6.

¹⁵⁸ SGS Economics and Planning, *WestConnex Business Case Review, Final Report, City of Sydney*, February 2016, p 1. See also, Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 50.

- 2.78** The WAG also argued that it was only when the Updated Strategic Business Case was published in November 2015 that it became clear to the public that the costs had increased to the current figure of \$16.8 billion. Further adding, that the 'secrecy and lack of transparency exposes the taxpayers of New South Wales to unknown financial risk'.¹⁵⁹
- 2.79** The Base-case Financial model for the WestConnex project has never been released by the government. Mr Gardner, Deputy Secretary, NSW Treasury advised that even though the sale of Sydney Motorway Corporation had completed, it was still NSW Treasury's position that the Base-case Financial model should remain confidential.¹⁶⁰
- 2.80** Mr Gardner explained that the primary reason for this position was that information was treated as commercially confidential as certain aspects of a financial bid, such as the base-case financial model or the nature of bids in the transaction, could be used to baseline bids in other, future competitive processes.¹⁶¹
- 2.81** Mr Gardner confirmed that it was NSW Treasury's view that the base-case financial model for the WestConnex project should now stay confidential for the next 42 years (i.e. to the end of the concession period).¹⁶²

Committee comment

- 2.82** Openness and transparency in government decision making and processes is key to building accountability and trust. It enhances public confidence in government and helps ensure that the government of the day is properly responsive to the interests of the people of New South Wales.
- 2.83** The committee notes the concerns of many inquiry participants regarding the transparency of the business case supporting the government's decision to invest in the WestConnex project. While the committee accepts that there are appropriate reasons for commercial information to be withheld from publication, the committee finds that the transparency arrangements pertaining to the WestConnex business case have been unsatisfactory.

Finding 5

That the transparency arrangements pertaining to the WestConnex business case have been unsatisfactory.

- 2.84** This lack of transparency has restricted the ability of key stakeholders, local councilors, and other interested parties to independently assess the analysis underpinning the government's decision making process. This has helped exacerbate community opposition to the project.

¹⁵⁹ Submission 436, WAG, p 6.

¹⁶⁰ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 22.

¹⁶¹ Evidence, Mr Gardner, 9 October 2018, p 22.

¹⁶² Evidence, Mr Gardner, 9 October 2018, p 22.

2.85 It is recommended that the NSW Government:

- publish the strategic business cases, appropriately redacted of commercial in confidence information, for all major infrastructure projects,
- publish the base-case financial models for future infrastructure projects, 18 months after either:
 - a) the commencement of construction on a project, or
 - b) after the opening of the first stage of a project, whichever comes first, and
- publish the cost benefit analysis at the same time as the base-case financial model is published.

Recommendation 3

That the NSW Government:

- publish the strategic business cases, appropriately redacted of commercial in confidence information, for all major infrastructure projects,
- publish the base-case financial models for future infrastructure projects, 18 months after either:
 - a) the commencement of construction on a project, or
 - b) after the opening of the first stage of a project, whichever comes first, and
- publish the cost benefit analysis at the same time as the base-case financial model is published.

2.86 The committee is not persuaded by NSW Treasury's refusal to publish the base-case financial model for the next 42 years for reasons of commercial confidentiality.

2.87 With the NSW Government ruling out the further sale of its remaining equity in the WestConnex project, there is no future competitive process to harm. Furthermore the enforceable undertaking by Sydney Transport Partners to the Australian Competition and Consumer Commission to publish vehicle use data for WestConnex tolled roads reduces the value of the base-case financial model for participants in any future competitive process.

2.88 With penalties to be incurred by NSW taxpayers calculated with reference-in-contract to the base-case financial model, taxpayers deserve to have this information. The NSW Government should immediately publish the base-case financial model for the WestConnex project.

Recommendation 4

That the NSW Government immediately publish the base-case financial model for the WestConnex project.

Chapter 3 Project delivery

This chapter discusses the delivery arrangements for the WestConnex project. It begins by discussing matters relating to the respective roles and responsibilities of the key delivery bodies, as well as financing arrangements for the WestConnex project. It sets out concerns raised by inquiry participants regarding oversight and accountability obligations, and changes in project scope, notably the separation of the Sydney Gateway project from the WestConnex project. The chapter concludes by discussing community concerns regarding the continued implementation of Stage 3 (M4-M5 Link) of the WestConnex project.

The delivery model

- 3.1** The delivery model established for the WestConnex project has been the subject of much commentary and debate. On the one hand, the government purports that the model is 'innovative', enabling the government to commit record levels of infrastructure expenditure while reducing the level of debt on the state's balance sheet. On the other hand, some have argued that it has enabled the government to reduce its transparency and accountability obligations for the project.
- 3.2** This section presents an overview of the delivery model for the WestConnex project including the primary governance arrangements. It also sets out information relating to the rationale for the delivery model, including a more detailed look at the funding and financing arrangements for the project.

Roles, responsibilities and governance arrangements

- 3.3** As discussed in Chapter 1, a number of organisations are involved in the development and delivery of the WestConnex project. The two key organisations are:
- Roads and Maritime Services – overall client for the project with responsibility for project development and granting the various concessions to Sydney Motorway Corporation
 - Sydney Motorway Corporation and its subsidiaries – a private company established by the NSW Government to undertake investments in road projects with responsibility for project delivery, financing and operations.

3.4 Table 3 below, provides a breakdown of the key responsibilities of both organisations.

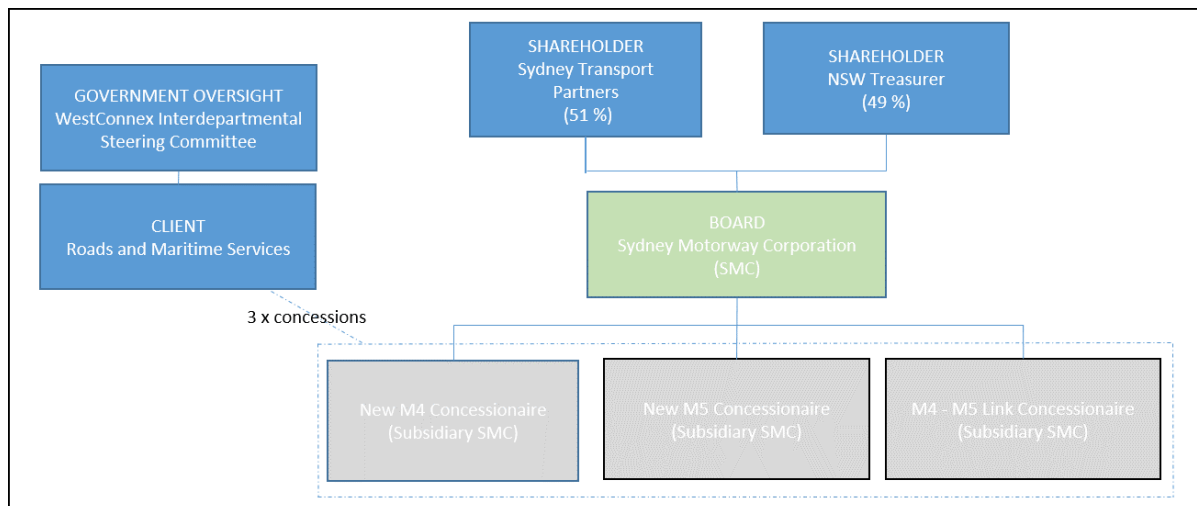
Table 3 Breakdown of responsibilities between Roads and Maritime Services

Roads and Maritime Services	Sydney Motorway Corporation
Client	Project Deliverer
<ul style="list-style-type: none"> - Acts on behalf of government as the client - Commissioning agency for the motorway - Property acquisition on behalf of government - Management of concession agreement from government side of contract - Operation of linked claims regime for contractor disputes - Proponent for Environmental Impact Statements/Planning approvals - Any further project development work - Commonwealth borrowing and NSW Government equity contributor 	<ul style="list-style-type: none"> - Project management of the delivery of the WestConnex - Contract engagement and management of the design and construction contractors - Private funding and financing of WestConnex, including non-recourse financing requirements - Strategic direction for communication and stakeholder engagement in liaison with Roads and Maritime Services - Management of day-to-day communication and customer inquiries, under the direction of government

Source: Adapted from WestConnex Updated Strategic Business Case, 2015, p 300.

3.5 Figure 3 below, provides a diagram of the current WestConnex delivery model and governance arrangements. These are discussed further below.

Figure 3 WestConnex delivery model



Source: Adapted from Submission 124, NSW Government, p 9.

Governance and oversight

3.6 The Audit Office of NSW defines governance as:

...the high level frameworks, processes and behaviours established to ensure an entity performs by meeting its intended purpose, conforms with legislative and other requirements and meets expectations of probity, accountability and transparency.¹⁶³

3.7 According to the government, the governance arrangements adopted for the WestConnex project are similar to those for 'all recent New South Wales motorway concessions'.¹⁶⁴

3.8 Government oversight for the WestConnex project is facilitated by the WestConnex Interdepartmental Steering Committee.¹⁶⁵ This steering committee comprises senior officials from Transport for NSW (Chair), Department of Premier and Cabinet, Roads and Maritime Services, NSW Treasury, Department of Planning and Environment, and the Australian Government's Department of Infrastructure and Regional Development and until the recent sale, a representative from Sydney Motorway Corporation as an observer.¹⁶⁶

Infrastructure NSW

3.9 The role of the Steering Committee is to provide governance and support to Roads and Maritime Services in its role as client, ensuring the alignment of WestConnex to broader transport and planning needs. Specific functions include the provision of oversight and assurance to the government that WestConnex is being delivered effectively.¹⁶⁷

3.10 The government states that all major decisions regarding the WestConnex project 'are subject to government approval processes'. These are aligned with the Infrastructure Investor Assurance Framework which is facilitated by Infrastructure NSW.¹⁶⁸ The figure below illustrates the key stages of the project lifecycle assurance process.

¹⁶³ Audit Office of New South Wales, *New South Wales Auditor-General's Report, Financial Audit, Volume One 2015, Areas of focus from 2014*, February 2015, p 5.

¹⁶⁴ Submission 124, NSW Government, p 9.

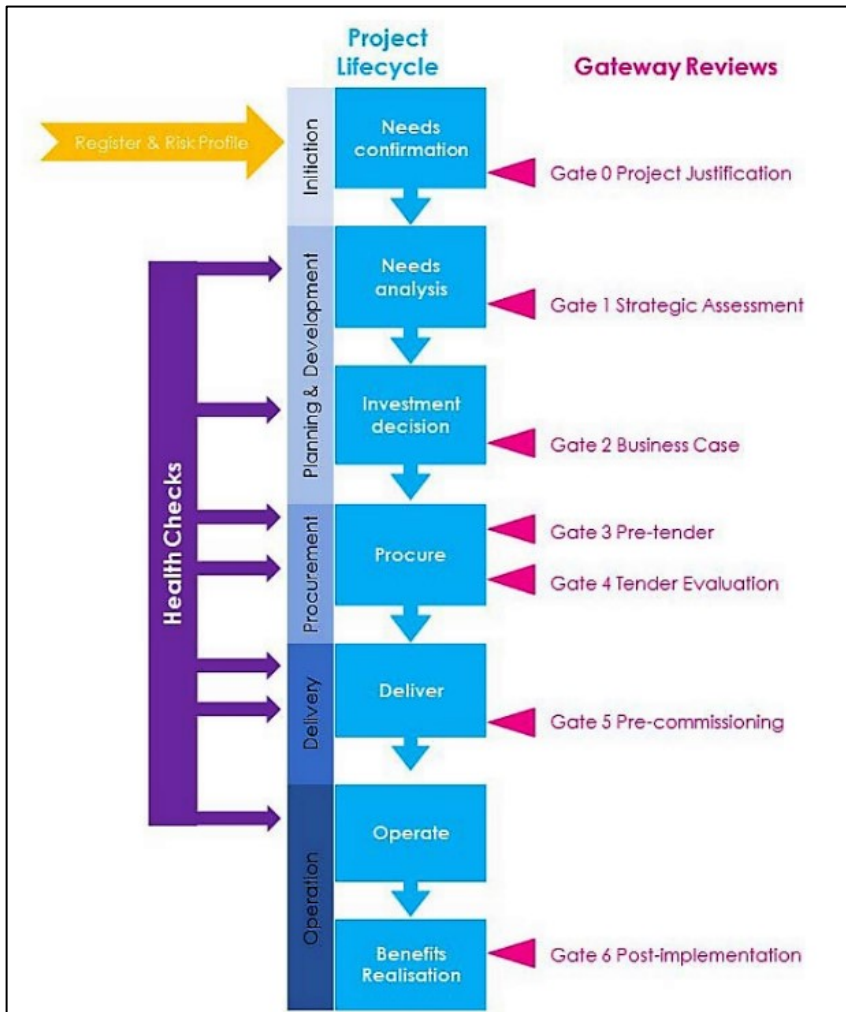
¹⁶⁵ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 33 and 45.

¹⁶⁶ Submission 124, NSW Government, p 12

¹⁶⁷ *WestConnex Updated Strategic Business Case*, November 2015, p 303.

¹⁶⁸ Submission 124, NSW Government, p 11.

Figure 4 Project lifecycle assurance



Source: Infrastructure NSW, *Infrastructure Investor Assurance Framework*, 2016, p 15.¹

3.11 The Infrastructure Investor Assurance Framework is an independent, risk based assurance process for capital projects with an estimated cost of over \$10 million. The framework is designed to provide a level of confidence to cabinet that capital projects are being effectively developed and delivered. There are three main components to the assurance provided under this framework. These are:

- project monitoring
- regular project reporting
- expert and independent Gateway reviews, health check and deep dive reviews.¹⁶⁹

3.12 The framework uses a risk based approach. This means that projects are grouped into one of four tiers, depending on their perceived level of risk. Tier 1 is subject to the highest level of scrutiny and assurance and Tier 4 the lowest.¹⁷⁰

¹⁶⁹ Submission 124, NSW Government, p 11.

¹⁷⁰ Infrastructure NSW, *Infrastructure Investor Assurance Framework*, 2016, p vi.

- 3.13** WestConnex is classified as a Tier 1 project. This means that it is subject to the highest level of assurance. This includes the completion of compulsory project health checks every six months. Mr Jim Betts, Chief Executive Officer, Infrastructure NSW confirmed that Infrastructure NSW has 'undertaken 36 reviews on different aspects of the WestConnex project' to date, with four more underway at the time of writing this report.¹⁷¹
- 3.14** The NSW Government's policy is for the Infrastructure Investment Assurance Framework to operate as a confidential process, with all reports confidential.¹⁷² Infrastructure NSW explains the rationale for this confidentiality. It notes that there is a need to maintain confidentiality so that issues can be openly identified and mitigation measures can be developed, against the need for transparency for the government as the project investor.¹⁷³
- Sydney Motorway Corporation***
- 3.15** The oversight and accountability arrangements for Sydney Motorway Corporation have been subject to change during the course of this inquiry.
- 3.16** At the time of the establishment of Sydney Motorway Corporation and until recently, the shareholders were the NSW Treasurer, the WestConnex Minister and the Minister for Finance, Services and Property. Shareholders were responsible for designating the road investments to be implemented by Sydney Motorway Corporation.¹⁷⁴
- 3.17** Roads and Maritime Services has granted three concession agreements to wholly owned subsidiary companies of Sydney Motorway Corporation. The three concession agreements relate to the New M4, New M5 and M4-M5 Link. The government advised that the allocation of responsibilities outlined within these concession agreements have been used in New South Wales 'for decades'.¹⁷⁵ The concession agreements allocate responsibility for:
- Design, construction, operation and maintenance of the motorway to the concessionaire
 - RMS to allow access to land, and give possession (but not freehold title) of land, required for the construction, operation and maintenance of that motorway in a timely fashion, and in any event by deadlines set out in the project deed, with adverse financial implications arising from failure to hand over possession of the land by those deadlines.¹⁷⁶
- 3.18** Sydney Motorway Corporation is governed by its Board of Directors which are appointed by its shareholders. The Board of Directors is responsible for providing an 'immediate level of oversight' to the delivery and financing of the WestConnex project.¹⁷⁷

¹⁷¹ Evidence, Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 11 October 2018, p 31; Evidence, Mr Ken Kanofski, Chief Executive, 7 November 2018, p 33.

¹⁷² Evidence, Mr Jim Betts, Chief Executive, Infrastructure NSW, 11 October 2018, p 33.

¹⁷³ Infrastructure NSW, *Infrastructure Investor Assurance Framework*, December 2016, p 7, http://www.infrastructure.nsw.gov.au/media/1269/final-pub-iiif-paper-v-522_web.pdf.

¹⁷⁴ Submission 124, NSW Government, p 10.

¹⁷⁵ Submission 124, NSW Government, p 9.

¹⁷⁶ Submission 124, NSW Government, pp 22-23.

¹⁷⁷ WestConnex, *WestConnex Updated Strategic Business Case*, November 2015, p 302.

- 3.19** On 27 September 2018, financial close was reached on a transaction which saw Sydney Transport Partners purchase a 51 per cent interest in Sydney Motorway Corporation from the government.¹⁷⁸
- 3.20** Board representation arrangements have now changed to reflect the new ownership structure. As of 27 October 2018, the Sydney Motorway Corporation Board of Directors comprised an independent Chairperson, five directors from Sydney Transport Partners and four representing the government's investment holding entity, Roads Retained Interest Pty Ltd.¹⁷⁹
- 3.21** The government's submission which was received on 30 August 2018 prior to the completion of the majority interest sale of Sydney Motorway Corporation stated that Sydney Motorway Corporation 'currently has a significant level of accountability under a number of Acts of both State and Federal Parliament'. These include: the *Public Finance and Audit Act 1983*, *Independent Commission Against Corruption Act 1988*, *Ombudsman Act 1974* and the *Corporations Act 2001 (Cth)*.¹⁸⁰ The Sydney Motorway Corporation is not subject to the *Government Information (Public Access) Act 2009*.¹⁸¹
- 3.22** The government's submission also explained that NSW Treasury has a role to play in monitoring the performance of Sydney Motorway Corporation on behalf of the government shareholders to ensure compliance with various policies and regulations. This includes the relevant policies within the NSW Treasury Commercial Policy Framework:
- Reporting and Monitoring Policy for Government Businesses (TPP18-02)
 - Guidelines for Governing Boards of Government Businesses (TPP17-10)
 - CEO Appointment Guidelines for Government Businesses (TPP17-11)
 - Major Projects Policy for Government Businesses (TPP18-05).¹⁸²

Audit Office of NSW

- 3.23** As discussed in chapter 2, the role of the Audit Office is to support the NSW Parliament by providing independence assurance over the activities of government.¹⁸³
- 3.24** Prior to the sale of Sydney Motorway Corporation, the Audit Office of NSW held responsibility for auditing the financial statements of Sydney Motorway Corporation. However, this arrangement will not continue under the new ownership structure. Current legislation does not provide the Auditor General of NSW with the necessary 'follow the dollar' powers to audit private bodies. The Audit Office will however retain the power to audit the Roads Retained

¹⁷⁸ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 19.

¹⁷⁹ Sydney Motorway Corporation, Board of Directors, <http://www.sydneymotorway.com.au/smc-board>.

¹⁸⁰ Submission 124, NSW Government, p 12.

¹⁸¹ Public Accountability Legislation Amendment (Sydney Motorway Corporation) Bill 2017.

¹⁸² Submission 124, NSW Government, p 11.

¹⁸³ Evidence, Ms Margaret Crawford, Auditor-General of NSW, Audit Office of New South Wales, 11 October 2018, p 55.

Interest Party Limited (the government's holding entity for the 49 per cent interest in Sydney Motorway Corporation).¹⁸⁴

- 3.25** Ms Margaret Crawford, Auditor General for NSW, advised of her intention to undertake a performance audit of the WestConnex project during the 2019/2020 financial year. Ms Crawford explained that she considered such an audit to be timely as there had been a number of changes to the project scope, financial arrangements, and governance arrangements relating to the WestConnex project. The Auditor General expects to finalise the scope of this audit in early 2019.¹⁸⁵

Transparency and accountability concerns

- 3.26** Many inquiry participants expressed concern about the WestConnex delivery model. In particular, the accountability and transparency requirements resulting from the implementation of the project outside of the public sector by Sydney Motorway Corporation.
- 3.27** By way of example, the City of Sydney was highly critical and argued that the project delivery model was characterised by opaque governance and a structure that avoids accountability. It stated:

The Government created the SMC [Sydney Motorway Corporation] to build WestConnex and legislated to remove it from public scrutiny, avoiding checks and balances that have either limited or exposed poor governance and planning processes in other government agencies ... The structure of the project is diffuse and opaque, seemingly designed for cost shifting and lack of accountability.¹⁸⁶

- 3.28** The City of Sydney acknowledged that it was entirely appropriate for certain commercial aspects of public private partnerships to be kept confidential, however argued that a project such as WestConnex, should be subject to a high degree of transparency in order to protect the public interest. The City of Sydney recommended that greater transparency should be provided through the establishment of an independent WestConnex Ombudsman, which could protect commercially confidential information, but at the same time make sure information on what is being spent, and why, is available to the public.¹⁸⁷
- 3.29** The WestCONnex Action Group expressed similar concerns stating that 'there has been an alarming lack of transparency and accountability' since the beginning of the WestConnex project.¹⁸⁸ The group argued that it was 'completely unsatisfactory that Australia's largest transport infrastructure project has been planned and managed through a publicly owned private company'.¹⁸⁹ They contended that the public had a right to access project information and that this was necessary to hold those responsible to account:

¹⁸⁴ Evidence, Ms Margaret Crawford, Auditor General of NSW, Audit Office of New South Wales, 11 October 2018, p 57

¹⁸⁵ Evidence, Ms Margaret Crawford, Auditor General of NSW, Audit Office of New South Wales, 11 October 2018, p 57.

¹⁸⁶ Submission 311, City of Sydney, p 11.

¹⁸⁷ Submission 311, City of Sydney, p 12.

¹⁸⁸ Submission 436, WAG, p 19.

¹⁸⁹ Submission 436, WAG, p 19.

It is a public project and as such the public must have the right to obtain and scrutinise information relating to the project and to hold those in charge of undertaking the project to account ... The structure adopted by the NSW Government for the development, funding, building and operation of the WestConnex is the antithesis of this principle and in fact shields the project and the Government from public scrutiny.¹⁹⁰

- 3.30** Comparing the respective transparency responsibilities of Roads and Maritime Services and Sydney Motorway Corporation, WestCONnex Action Group explained that Roads and Maritime Service are accountable to the public as legislation requires it to release competitive tenders and government contracts. Freedom of information laws under GIPA also apply. However, private companies such as Sydney Motorway Corporation are not subject to these same requirements.¹⁹¹
- 3.31** WestCONnex Action Group concluded that the delivery structure had 'exacerbated ill-feeling in the community and permitted the secrecy and lack of transparency which has characterised this project'.¹⁹²
- 3.32** Other action groups agreed. No WestConnex: Public Transport stated that the government created Sydney Motorway Corporation solely to reduce public scrutiny on a government funded project:

The creation of a private company to manage a fully Government funded project, delivers no benefits to the people of NSW. Its sole purpose is to obscure information surrounding its operations from the people of NSW...¹⁹³

- 3.33** Similarly, Newtown Residents Against WestConnex, stated 'there has been a lack of transparency in documentation that denies the community access to information that they have a right to know'.¹⁹⁴

Committee comment

- 3.34** Good governance enables an entity to meet its intended purpose, conform with legislative and other requirements, and meet accountability expectations. The question before the committee is whether the existing governance arrangements in place are sufficient for the delivery of the WestConnex project.
- 3.35** The committee notes the government's evidence which states that the governance mechanisms for the WestConnex project are similar to those applied to comparable motorway projects. It is further noted that Infrastructure NSW has undertaken 36 reviews on various aspects of the WestConnex project with four more being undertaken at the time of writing this report.
- 3.36** This provides the committee with some comfort that the governance arrangements are operating as intended. However it is very difficult to ignore the fact that the delivery of the

¹⁹⁰ Submission 436, WAG, pp 21-22.

¹⁹¹ Submission 436, WAG, p 22.

¹⁹² Submission 436, WAG, p 22.

¹⁹³ Submission 386, No WestConnex Public Transport, p 7.

¹⁹⁴ Evidence, Ms Marilyn Fairskye, Co-convenor, Newtown Residents Against WestConnex, 11 October 2018, p 72.

WestConnex project by Sydney Motorway Corporation, a private company, has provided the government with a potential means to obscure its operations and remove delivery of the project from public scrutiny. The committee finds that the delivery of the WestConnex project by Sydney Motorway Corporation has weakened the accountability and disclosure rules that would have otherwise applied had the project been delivered by a government agency, including the important provisions of the *Government Information (Public Access) Act 2009*.

Finding 6

That the delivery of the WestConnex project by Sydney Motorway Corporation has weakened the accountability and disclosure rules that would have otherwise applied if the project had been delivered by a government agency, including the important provisions of the *Government Information (Public Access) Act 2009*.

-
- 3.37** The committee asserts that infrastructure projects being delivered on behalf of the public, and funded through public monies collected from taxes and user charges with the NSW Government retaining major ongoing equity interest, should be subject to robust levels of transparency and scrutiny. Despite the WestConnex project's multi-billion dollar price tag, Sydney Motorway Corporation it is not subject to the same levels of transparency and accountability arrangements that govern the rest of the public sector. This is unsatisfactory.
- 3.38** The sale of Sydney Motorway Corporation is discussed in the next section, and the committee acknowledges that the sale of a majority interest to the private sector is a fundamental component of the financing and delivery strategy for the WestConnex project. However, it is likely that the sale will exacerbate existing transparency and accountability concerns. The sale also further reduces the ability of this Parliament to scrutinise and hold to account those responsible for the delivery of the WestConnex project.
- 3.39** The committee finds that the recent sale of a majority interest in Sydney Motorway Corporation to the private sector will likely exacerbate existing transparency and accountability concerns relating to the WestConnex project.

Finding 7

That the recent sale of a majority interest in Sydney Motorway Corporation to the private sector will likely exacerbate existing transparency and accountability concerns relating to the WestConnex project.

-
- 3.40** The committee asserts that lessons must be learnt for the delivery of future infrastructure projects. It is recommended that the NSW Government ensure that the delivery of future large-scale infrastructure projects, irrespective of whether they are delivered privately or publicly, be subject to the same levels of transparency and accountability that would be required of a project delivered by a public sector body.

Recommendation 5

That the NSW Government ensure that the delivery of future large-scale infrastructure projects, irrespective of whether they are delivered privately or publicly, be subject to the same levels of transparency and accountability that would be required of a project delivered by a public sector body.

3.41 The committee welcomes the NSW Auditor-General's intention to complete a further performance audit of the WestConnex project in the 2019/2020 financial year. The changes to the project's governance mechanisms, project scope, and financial arrangements definitely warrant a deep and comprehensive technical audit.

3.42 The Audit Office must be resourced appropriately to conduct this important audit. It is recommended that the NSW Government ensure that the Audit Office of New South Wales has the resources required to undertake a detailed and comprehensive performance audit of the WestConnex project in 2019/2020.

Recommendation 6

That the NSW Government ensure that the Audit Office of New South Wales has the resources required to undertake a detailed and comprehensive performance audit of the WestConnex project in 2019/2020.

3.43 The committee also recommends that the NSW Government should establish 'follow the dollar' powers for the Audit Office of New South Wales.

Recommendation 7

That the NSW Government should establish 'follow the dollar' powers for the Audit Office of New South Wales.

Funding and financing arrangements

3.44 The cost of the WestConnex project is \$16.8 billion. The government stated that 'this is not the cost to the New South Wales taxpayer'.¹⁹⁵

Funding sources and asset recycling

3.45 As discussed in Chapter 1 a large portion of the cost of the WestConnex project will be financed through private sector debt, as well as private equity achieved through the sale of Sydney Motorway Corporation. Both of these funding sources are supported by future toll revenue.¹⁹⁶

¹⁹⁵ Submission 124, NSW Government, p 21.

¹⁹⁶ Submission 124, NSW Government, p 21.

- 3.46** Following a competitive tender process, in August 2018 the government announced it had agreed to sell a 51 per cent interest in Sydney Motorway Corporation to the Sydney Transport Partners Consortium for \$9.3 billion.¹⁹⁷ The sale of the 51 per cent of Sydney Motorway Corporation will 'effectively recycle' the government's contribution with proceeds to be directed towards funding Stage 3 of the WestConnex project.¹⁹⁸
- 3.47** The state and federal governments have made significant contributions to the WestConnex project. The final figure on the contribution to be made by the NSW Government will be determined post sale. In addition to the state's contribution, a further \$1.5 billion has been committed by the Australian Government while a further \$2 billion concessional loan from the Australian Government has also been made available.¹⁹⁹
- 3.48** The government contends that this financing approach enables the government to bring forward investment in infrastructure and reduces the overall burden on the NSW taxpayer, thereby enabling funds to be allocated to other services.²⁰⁰
- 3.49** According to the government, asset recycling in this way is a fundamental component of the government's fiscal strategy and has enabled it to: 'fast track critical infrastructure projects, including bringing forward project start dates, accelerating project timeframes, and funding projects that were previously unfunded'.²⁰¹
- 3.50** Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, advised that asset recycling has also enabled the government to 'substantially reduce the current and future level of debt of the state sector'²⁰² which is an important factor in maintaining the state's triple A credit rating.²⁰³
- 3.51** Mr Gardener, said it was important to maintain the state's credit rating noting that the cost of borrowing would increase if the current rating was lost, and that this would result in 'either having to defer to delay other priority projects or to borrow more to fund them'.²⁰⁴
- 3.52** Mr Gardner expressed his confidence that the sale of the 51 per cent stake in Sydney Motorway Corporation to Sydney Transport represented 'a great outcome for the State'.²⁰⁵
- 3.53** Mr Gardner advised that the sale objectives did not solely relate to price achieved. Factors such as the ability of the successful party to oversee the completion of the project and its future operation, as well as the ability of the party to work collaboratively with government were also taken into consideration.²⁰⁶

¹⁹⁷ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 19.

¹⁹⁸ Submission 124, NSW Government, p 7.

¹⁹⁹ Submission 124, NSW Government, p 7.

²⁰⁰ Submission 124, NSW Government, p 7.

²⁰¹ Submission 124, NSW Government, p 21.

²⁰² Submission 124, NSW Government, p 21.

²⁰³ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 31.

²⁰⁴ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 31.

²⁰⁵ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 30.

²⁰⁶ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 29.

- 3.54 Mr Gardner further advised that two bids were received that largely met the Government's requirements in terms of proceeds and transaction criteria. Mr Gardner stated 'we are very confident, very happy, that we ran a competitive process and had a very, very good outcome'.²⁰⁷

Committee comment

- 3.55 Financial close on the sale of the majority interest in Sydney Motorway Corporation was achieved during the course of this inquiry. The committee notes the rationale put forward by the government. Namely that it has enabled the government to bring forward investment, reduce the overall burden on the taxpayer, and free up funds to be allocated to other public services.
- 3.56 The \$9.3 billion that was raised through the sale is a welcome boost to the state's financial position. Despite this it remains unclear as to what the NSW Government's total contribution to the WestConnex project will be upon completion.
- 3.57 The committee finds that the funding model used for the WestConnex project has enabled the government to bring forward investment, reduce the overall burden on the taxpayer, freed up funds to be allocated to other public services, removed the requirement to borrow money, and improved the State's financial position.

Finding 8

The funding model used for the WestConnex project has enabled the government to bring forward investment, reduce the overall burden on the taxpayer, freed up funds to be allocated to other public services, removed the requirement to borrow money, and improved the State's financial position.

The WestConnex tolling regime

- 3.58 The WestConnex project will primarily be funded through toll revenue collected from users of the motorway.
- 3.59 It is the government's policy that tolls raised on each individual section of the WestConnex project will go towards the cost of funding the entire WestConnex scheme.²⁰⁸ Tolling on the WestConnex will be distance-based, with users paying for those section of the motorway that they use. The toll will be capped at a maximum of \$8.95 across the WestConnex scheme.²⁰⁹ Trucks will pay three times more than cars, reflecting the greater wear and tear trucks have on the motorway.²¹⁰ This is consistent with tolling regimes applied to other toll roads in New South Wales.

²⁰⁷ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, pp 29-30.

²⁰⁸ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 38.

²⁰⁹ Evidence, Ms Camilla Drover, Executive Director, Motorway Division, Roads and Maritime Services, 7 November 2018, p 37.

²¹⁰ WestConnex, Tolling on WestConnex, <https://www.westconnex.com.au/WestConnexTolls>.

- 3.60** Mr Kanofski, Chief Executive, Roads and Maritime Services advised that maximum toll amounts are set out in within the respective concession agreements, not by the private sector operator.²¹¹ The government's submission states that toll and escalation rates are determined by 'business cases and policy decisions prior to the granting of the concession'.²¹²
- 3.61** Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet, advised that as of July 2018, the government has implemented a toll relief program to 'ease the cost of living on frequent users of toll roads'.²¹³
- 3.62** Under the toll relief program, people can be eligible for 'one free 12-month registration' if they spend more than \$1,300 on tolls on a single tag account. According to Ms Walkom, depending on the type of vehicle owned, users can save between \$127 and \$715 per year.²¹⁴
- 3.63** However, some inquiry participants raised concerns about the potential impact of tolls. For example, Inner West Mayor Darcy Byrne, argued that there has been 'no consideration of the equity of the impact of tolls'.²¹⁵ The Inner West Council submission stated that the impact of tolls was being particularly felt by lower-income families in Western Sydney:
- Council is also concerned about the equity impacts of WestConnex, where the toll burden will fall primarily on lower-income earners in western Sydney. This is becoming an issue for western Sydney councils and their communities – not only through the direct impact of the tools, but through the revenue indirectly lost to western Sydney Business, increased costs of living and a consequent decline in economic activity.²¹⁶
- 3.64** Similarly, Ms Mary Court, Secretary of the Penrith Valley Community Unions, considered that tolls would be a 'burden' on people living in Western Sydney, and will have 'a long-term chronic effect on household stress'.²¹⁷
- 3.65** Ms Court also explained that she had been speaking to people in the local community who could be paying an extra \$100 in tolls each week.²¹⁸ Ms Court said that she had been informed that many people will bypass WestConnex if they can find a way, causing congestion on other parts of the road network:

The lot of them say that if they can find a way of not going on that WestConnex, they will do it. But the thing is, when they bypass it, everywhere they go it has put too much congestion on the rest of the road.²¹⁹

²¹¹ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 2.

²¹² Submission 124, NSW Government, p 22.

²¹³ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Finance, 9 October 2018, p 29.

²¹⁴ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Finance, 9 October 2018, p 29.

²¹⁵ Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 50.

²¹⁶ Submission 379, Inner West Council, p 7.

²¹⁷ Evidence, Ms Mary Court, Secretary, Penrith Valley Community Unions, 9 October 2018, p 77.

²¹⁸ Evidence, Ms Mary Court, Secretary, Penrith Valley Community Unions, 9 October 2018, p 79.

²¹⁹ Evidence, Ms Mary Court, Secretary, Penrith Valley Community Unions, 9 October 2018, p 80.

- 3.66** Mr Richard Olsen, State Secretary of the Transport Workers Union, believed that it was unfair that heavy vehicles are charged three times more in tolls than privately registered light vehicles.²²⁰ The WestConnex website states that this reflects the greater wear and tear that trucks have on the motorway.²²¹ Mr Olsen explained that many owner-drivers are unable to recover the cost of tolls from the people they work for. He asserted that the impact on these drivers can be hundreds of dollars per week lost to tolls, affecting their ability to maintain their vehicles and meet their debt obligations.²²²
- 3.67** Another issue raised was the concept of toll fatigue or toll saturation.²²³ Toll saturation suggests that irrespective of the benefits to be gained from using a particular toll road there is a fixed amount that people are willing to pay on travel including toll roads. Mr Kanofski, advised that Roads and Maritime Services had not looked at the matter of toll fatigue and its effect as a concept.²²⁴

Committee comment

- 3.68** Governments have long delivered investments in the state's road network through the use of tolling. Although the use of tolls is nothing new, the committee notes the impact of a toll on the people and businesses of western Sydney who travel east of Parramatta. The committee also notes that all major arterial connections from north, south and eastern Sydney are also currently subject to tolls (being the M2, M7, Lane Cove Tunnel, Harbour Bridge and Harbour Tunnel, Cross City Tunnel, Eastern Distributor and M5). The introduction of the NSW Government's toll relief program is a welcome development to help address this issue. It is important that the government work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties.
- 3.69** It is recommended that the NSW Government conduct an extensive advertising campaign and work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties.

Recommendation 8

That the NSW Government conduct an extensive advertising campaign and work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties.

- 3.70** The committee is concerned that truck drivers have not received an adequate explanation of why they are charged tolls three times other motorists to recover the impact heavy vehicle drivers have on roads, given these costs are recovered through diesel taxation. Evidence about the onerous impact these tolls have on indebted owner-drivers, and the impact on road safety, is deeply concerning.

²²⁰ Evidence, Mr Richard Olsen, State Secretary, Transport Workers Union, 11 October 2018, p 46.

²²¹ WestConnex, Future Tolls, <https://www.westconnex.com.au/future-tolls>.

²²² Evidence, Mr Richard Olsen, State Secretary, Transport Workers Union, 11 October 2018, pp 46-47.

²²³ Submission 311, City of Sydney, p 9.

²²⁴ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 50.

- 3.71** It is recommended that the NSW Government urgently review the *Industrial Relations Act 1996* to clearly establish cost-recovery mechanisms for NSW owner-drivers.

Recommendation 9

That the NSW Government urgently review the *Industrial Relations Act 1996* to clearly establish cost-recovery mechanisms for the NSW owner-drivers.

The Sydney Gateway Project

- 3.72** The Sydney Gateway Project was originally identified as a component of the WestConnex Project. However, it was subsequently removed from the WestConnex project. Since that time there has been community debate as to the rationale for this separation.

Evolution of the Gateway Project

- 3.73** The Sydney Gateway Project was originally identified as a Stage 2 project within the 2015 *WestConnex Updated Strategic Business Case*.²²⁵ The project was described as an important component of WestConnex project and its aim was to correct the heavy congestion in the Sydney Airport and Port Botany areas and provide 'high quality, high capacity connection between the airport and port precinct and the St Peters interchange'.²²⁶ An amount of \$800 million was identified within the WestConnex budget for implementation of the project.²²⁷
- 3.74** Mr Kanofski, Chief Executive, Roads and Maritime Services, explained that a decision was made 'by Government' in 'around 2015' to implement Sydney Gateway as a separate project.²²⁸ Mr Kanofski advised that this decision occurred around the time that the 'WestConnex Delivery Authority was dissolved by Sydney Motorway Corporation'. This occurred in 1 October 2015. 'Subsequently, in November 2015, Roads and Maritime Services began developing a separate business case for Sydney Gateway'.²²⁹
- 3.75** Mr Kanofski advised that the decision to separate the project from the WestConnex project was informed by stakeholder consultation and the 'evolving view that the project needed to fulfil a range of other objectives'.²³⁰
- 3.76** Mr Kanofski advised that the current Sydney Gateway Project had a broader scope to that which was originally intended, and that the current project had been expanded to include not

²²⁵ WestConnex, *WestConnex Updated Strategic Business Case*, November 2015, p 152.

²²⁶ WestConnex, *WestConnex Updated Strategic Business Case*, November 2015, p 139.

²²⁷ WestConnex, *WestConnex Updated Strategic Business Case*, November 2015, p 185.

²²⁸ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, pp 3-4.

²²⁹ Answers to questions on notice, Roads and Maritime Services, 30 October 2018, p 2.

²³⁰ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 10.

only a motorway standard link between St Peters interchange and Airport drive, but also enhanced rail infrastructure and other upgrades.²³¹ Mr Kanofski explained:

What was described in the WestConnex business case was a basic link between St Peters interchange and Airport Drive. What we have now is a very substantial motorway standard link between those two points, but in addition ... we have very substantial upgrades to accessibility to T1, which is the international terminal for operational vehicles. We have very substantial changes to the entrance to T2 and T3, which is the domestic terminal. Grade separating the flows of traffic between that traffic which is going to enter the domestic airport and that which is going to continue to flow past. We have a widening of Airport Drive. What we have is a range of very substantial additional things. In addition to that, the Sydney Gateway project includes duplication of the three kilometres of freight line to Port Botany.²³²

3.77 Mr Jim Betts, Chief Executive Officer, Infrastructure NSW reiterated this position, stating that the project was so strategically significant, that it became apparent that it should be treated as a project in its own right:

... it became apparent to government that while the \$800 million provision in WestConnex could provide connectivity to the port and the airport, it was so strategically significant that the project should effectively be treated as a mega-project in its own right. It should include not only a motorway-standard connection to the airport but also the duplication of the Port Botany rail line, which was identified by Infrastructure Australia as one of the most critical projects in the country. The project has evolved from being a subset of WestConnex at \$800 million into a fully-fledged project that stands on its own strategic merits.²³³

3.78 There has been much discussion surrounding the date at which the separation of the Sydney Gateway Project occurred. As noted above, Mr Kanofski explained that the removal of the Sydney Gateway Project from the WestConnex project occurred around October 2015.²³⁴

3.79 Other inquiry participants suggested that the separation occurred in 2017, as the first time that the public were informed of the removal of the Sydney Gateway project was when the Hon Stuart Ayres MP, at the 2017/2018 Budget Estimates hearing stated: 'The Sydney Gateway project is not part of the delivery of the WestConnex'.²³⁵

3.80 Mr Jim Betts, Chief Executive Officer, Infrastructure NSW also advised the committee that the Gateway project was registered as a separate project from September 2017.²³⁶

²³¹ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 4.

²³² Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 5.

²³³ Evidence, Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 11 October 2018, pp 33-34.

²³⁴ Answers to questions on notice, Roads and Maritime Services, 30 October 2018, p 2.

²³⁵ Evidence, the Hon Stuart Ayres MP, Minister for Western Sydney, WestConnex and Sport, 6 September 2017, Budget Estimates Hearing, p 6; Submission 469, Ms Wendy Bacon, p 2.

²³⁶ Evidence, Mr Jim Betts, Chief Executive Officer, Infrastructure NSW, 11 October 2018, p 33.

Community opinion on the separation of the Sydney Gateway project

3.81 A number of inquiry participants expressed concerns about the removal of the Sydney Gateway from the overall WestConnex project. Some argued that it was misleading to continue to attribute benefits from the Sydney Gateway to the WestConnex project. Others argued that the justification for the WestConnex project no longer stacked up with the project's removal from the WestConnex program of works.

3.82 WestConnex Action Group argued that the government had been 'secretive and misleading about this part of the project':

... never did Sydney Motorway Corporation, NSW Planning or RMS ever state that the Sydney Gateway was no longer part of the WestConnex, leaving readers' of the various project documentation to reasonably expect that it remained part of the WestConnex ...²³⁷ leaked Government documents and Government media statements clearly show that the Government has consistently misled the public about the WestConnex connection to the Airport and Port Botany, and that the real reason for dropping the Sydney Gateway from the project was the inability of the government to acquire the airport land needed for the project at an acceptable cost, again indicating that the government announced and proceeded with the project before it had undertaken proper due diligence and costings.²³⁸

3.83 Others, such as Ms Wendy Bacon, journalist, and frequent critic on the WestConnex project, argued that why the split occurred 'has not been addressed by the government or the corporations involved, but it brings into question the stated rationale for the whole [WestConnex] project'.²³⁹

3.84 Similarly, the City of Sydney argued that the justification for the WestConnex project was brought into question as a result of the decision to remove the Sydney Gateway project:

There is a lack of clarity about the status of the Sydney Gateway project. It has been described as both a WestConnex project and a separate project by different arms of the state government ... Given that a key justification of WestConnex is to improve access to Sydney Airport, the separation of Sydney Gateway from WestConnex calls into question the value of WestConnex without it.²⁴⁰

3.85 However, Mr Ken Kanofski refuted claims that the WestConnex business case should be amended in light of the removal of the Sydney Gateway project. He argued that it was entirely appropriate that the Sydney Gateway project continue to be referred to within the WestConnex business case:

There is an intersection between those two projects and I think we have gone over this at some length in the past. One of the objectives of the Sydney Gateway project is for it to link the WestConnex St Peters interchange with Sydney airport. It is entirely appropriate, and the project is making a contribution of \$800 million in order to facilitate that process. It is entirely appropriate that that link is fully acknowledged and

²³⁷ Submission 436, WAG, p 43.

²³⁸ Submission 436, WAG, p 44.

²³⁹ Submission 469, Ms Wendy Bacon, p 2.

²⁴⁰ Submission 311, City of Sydney, p 16.

that the business case takes account of that \$800 million. There is nothing inconsistent in the statements that I am making.²⁴¹

- 3.86** Furthermore, Mr Kanofski stated that he did not accept claims that the Benefit Cost Ratio for the entire WestConnex project should be recalculated as a result of this change stating: 'We have not had any change in costs. I am not aware of any material change in benefits. Therefore, I would say, in broad terms, the business case has continued to outline the costs and benefits'.²⁴²

Current status of the Sydney Gateway project

- 3.87** The Sydney Gateway Project is being delivered by Roads and Maritime Services. The duplication of the rail line to Port Botany is being delivered and funded by the Australian Government.
- 3.88** The Final Business Case for the Sydney Gateway Project is under development. Mr Kanofski advised that the timeframe for completion of the business case and the final investment decision, was a matter for government.²⁴³ However, it has been announced that the estimated costs for the Sydney Gateway project is between \$2.2 billion and \$2.6 billion.²⁴⁴
- 3.89** Roads and Maritime Services advised that the target date for exhibition of the environmental impact assessment for the road component of the Sydney Gateway project was late 2019. Roads and Maritime Services also understands that the Australian Rail Track Corporation (ARTC) is aiming to exhibit the rail component in the second half of 2019.²⁴⁵ Mr Ken Kanofski advised that the target date of completion for Sydney Gateway project was the end of 2023.²⁴⁶
- 3.90** The expected funding arrangements for the Sydney Gateway have yet to be published, however Mr Phil Gardener, Deputy Secretary, Commercial NSW Treasury, advised that Sydney Gateway will be funded from a combination of the \$800 million allocated within the WestConnex budget and 'at this stage' an allocation from the Consolidated Fund. Mr Gardner continued that there is no reservation in the Restart NSW budget for the Sydney Gateway project.²⁴⁷ The NSW Government has announced that the Sydney Gateway will be toll free.²⁴⁸

Committee comment

- 3.91** The Sydney Gateway is strategically important to New South Wales. A number of inquiry participants did, however, question the government's motivations for removing the Sydney Gateway from the WestConnex project. For some the removal of the Sydney Gateway provides reason to challenge the premise for the WestConnex project as a whole.

²⁴¹ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 4.

²⁴² Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 11.

²⁴³ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 3.

²⁴⁴ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 3.

²⁴⁵ Answers to questions on notice, Roads and Maritime Services, 30 October 2019, p 4.

²⁴⁶ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 7.

²⁴⁷ Evidence, Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury, 9 October 2018, p 26.

²⁴⁸ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 5.

- 3.92** The Sydney Gateway was clearly a key part of the rationale and business case for the WestConnex project and the committee finds that its removal will likely have led to a significant change in the cost-benefit analysis for the entire project.

Finding 9

That, given the Sydney Gateway project was a key part of the original rationale and business case for the WestConnex project, its removal from the WestConnex project will likely have led to a significant change in the cost-benefit ratio for the entire project.

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- 3.93** The committee notes the rationale put forward by the government in that the Sydney Gateway project is now broader in scope and scale than was originally envisaged at the time the WestConnex project was developed. However, a reasonable argument could be made that this separation represented an attempt to hide further WestConnex project cost increases.
- 3.94** It remains unclear as to when the decision was made to remove the Sydney Gateway from the WestConnex project. Representatives from Roads and Maritime Services advised that the decision was made in October 2015 at the time the WestConnex Delivery Authority was dissolved. Yet it was not until 2017 that the separation was made public by the Minister for WestConnex during a Budget Estimates hearing. If the October 2015 separation is to be taken at face value it is therefore pretty clear that the communication to the public regarding this decision was inadequate.
- 3.95** The committee finds that the Sydney Gateway project has been substantially enhanced with additional road and rail options which were not envisaged in the original concept. The new proposal is strategically important to New South Wales and should be constructed

Finding 10

The Sydney Gateway project has been substantially enhanced with additional road and rail options which were not envisaged in the original concept. The new proposal is strategically important to New South Wales and should be constructed.

Calls by inquiry participants to cancel implementation of Stage 3

- 3.96** There were a number of calls from inquiry participants to cancel or at least reduce the scope of the Stage 3 – the M4-M5 Link, of the WestConnex project.²⁴⁹
- 3.97** For example, City of Sydney recommended that the NSW Government cancel current and future stages of the WestConnex project on account of the various concerns raised and changes in project scope since its initiation. It also noted that global practice was moving away from urban motorway projects as they did not provide a cost effective transport solution:

Given the significant concerns raised...it is clear that the NSW Government must review the planning case for WestConnex, given so many fundamental considerations

²⁴⁹ For example: Submission 311, City of Sydney, p 5.

have changed since the original decision...Evidence from around the world shows that urban motorway projects like WestConnex do not deliver cost effective or lasting transport solutions. Rather they impact on the efficiency and livability of our cities and contribute to poor economic outcomes.²⁵⁰

- 3.98** Mr Kanofski, Roads and Maritime Services, advised that there were a number of reasons why cancellation of Stage 3 would not be desirable. The first of these was that without delivery of this stage, the full benefits of the WestConnex project could not be realised:

We have heard people say that work on WestConnex should stop and that Stage 3 should not proceed. Without Stage 3 the benefit in terms of reducing congestion, saving time, freeing up local roads and delivering on our commitments regarding green space will not be realised ... WestConnex is designed as an integrated system for motorways; it is a central part of a broader plan for Sydney. Motorway connections as part of an integrated transport network will provide critical support to a growing global city like Sydney.²⁵¹

- 3.99** Furthermore, Mr Kanofski explained that as a number of contracts were in place between the government and Sydney Motorway Corporation 'the financial damages of not proceeding with Stage 3 would be massive and into the billions' of dollars.²⁵²

- 3.100** Mr Andrew Head, Chief Executive Officer, WestConnex, reiterated this position stating that he also estimated the cost of cancelling Stage 3 to be into the billions of dollars.²⁵³ Mr Head also advised of the negative impacts to the reputation of the NSW government should contracts be cancelled:

In addition to the financial cost, there would be significant negative traffic impacts in the inner west, and I believe there would be negative impacts on the reputation of the NSW Government and NSW as a good place to do business.²⁵⁴

- 3.101** Mr Kanofski argued that private sector investment was important in the delivery of transport infrastructure in New South Wales. The risk, termed 'sovereign risk' was that private companies would not want to do business with the state and that this could lead to sub optimal outcomes not just for the WestConnex project, but for future infrastructure projects:

... private investment is really important to delivering transport infrastructure in New South Wales— the private sector needs to have confidence that if they enter into a contract with the Government then the Government will honour that contract. It is the issue of what is termed "sovereign risk". Australia in general, and New South Wales in particular, has a very good reputation on the issue of sovereign risk. What that means is that companies want to do business with the Government in New South Wales and, more broadly, within Australia generally, compared to other countries.

²⁵⁰ Submission 311, City of Sydney, p 18.

²⁵¹ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 33.

²⁵² Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 33.

²⁵³ Answers to questions on notice, Mr Andrew Head, Chief Executive, WestConnex, 14 November 2018, p 1.

²⁵⁴ Answers to questions on notice, Mr Andrew Head, Chief Executive, WestConnex, 14 November 2018, p 1.

What that means is we then have access to those private entities on commercially competitive terms. It is actually incredibly important that if the issue of sovereign risk comes into play it is not just the immediate damages but then there is also the damage to reputation for the State.²⁵⁵

3.102 In response to questions about the recent cancellation of a section of the East-West Link motorway by the Victorian Government, Mr Kanofski acknowledged that whilst the final figure was never published, that it was his understanding that the financial cost ran into the billions of dollars.²⁵⁶

3.103 However, Mr Rawnsley, Partner, SGS Economics and Planning offered an alternative position on sovereign risk stating that he thought it was a 'risky argument to run' as concerns around sovereign risk in Victoria following the cancellation of contracts did not materialise:

Just to touch on the sovereign risk aspect, Victoria, in the last four years, cancelled a large-scale motorway project—the eastern section of the East-West Link. Compensation was paid to the consortium, which was about to start construction of that project. There were concerns around sovereign risk for Victoria and future projects, but since then there has been a steady flow of investment into Victoria. Transurban put in an unsolicited bid to that government in Victoria for a large-scale road project with funds coming in from all over the world. There is no smoking gun that cancellation of a project with compensation paid would lead to a sovereign risk for New South Wales.²⁵⁷

Committee comment

3.104 The committee acknowledges that some have called for Stage 3 of the WestConnex project to be cancelled. While the committee acknowledges the concerns and frustrations of some in the community regarding the WestConnex, the fact remains that the project is almost 50 per cent complete.

3.105 Contracts for Stage 3 have been signed. If Stage 3 was not to proceed it would likely cost the government an enormous amount of money. This cost would be borne by the taxpayers of New South Wales and would likely lead to the government having to withdraw planned expenditure and investment in other areas.

3.106 Further if Stage 3 did not proceed the projected benefits of the WestConnex project as a whole would not be realised. WestConnex has been designed as an integrated system for motorways and is strategically important to New South Wales. If it were not to be completed a major component of the government's integrated transport network plan would not be realised. It is recommended that the NSW Government proceed with Stage 3 of the WestConnex.

²⁵⁵ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 46.

²⁵⁶ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 46.

²⁵⁷ Evidence, Mr Terry Rawnsley, Principal and Partner, SGS Economics and Planning, 15 October 2018, p 34.

Finding 11

Stage 3 of the WestConnex is strategically important to New South Wales and should be constructed, not merely because of the massive financial penalties which would apply were it to be cancelled, but because without Stage 3 the benefits of the WestConnex project as a whole would not be realised

Recommendation 10

That the NSW Government proceed with Stage 3 of the WestConnex

- 3.107** The committee also recommends that the NSW Government immediately publish a full account of all costs to be incurred by NSW taxpayers if Stage 3 contracts were cancelled.
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Recommendation 11

That the NSW Government immediately publish a full account of all costs to be incurred by NSW taxpayers if Stage 3 contracts were cancelled.

Chapter 4 Air quality, health and other impacts

This chapter discusses community concerns regarding air quality at ventilation facilities and the efficacy of filtration arrangements. It then considers other health impacts including: noise and pollution from construction; the effects of night works; mental health issues; loss of green space; disruption to daily lives; and the risk of safety breaches for both WestConnex employees and communities. The chapter concludes by considering the adequacy of government mitigation measures to address construction impacts.

Air quality at ventilation facilities

- 4.1** A number of inquiry participants raised the issue of air quality in relation to the proposed ventilation facilities (also referred to as exhaust stacks) for the WestConnex tunnels. As noted in chapter 1, the first tunnel to become operable will be the M4 East tunnel in 2019.
- 4.2** Community members disputed the NSW Government's assertion that ventilation facilities for WestConnex were following world's best practice, and that emissions released by the stacks would be safe.
- 4.3** Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C commented that it was 'difficult to believe that in 2018 unfiltered stacks are considered world-class practice'.²⁵⁸
- 4.4** Mr Brian Gorman, Representative, North West Rozelle Residents objected to claims on the WestConnex website that pollution caused by WestConnex would 'pose no risk to the health of the people living in these areas'. Mr Gorman argued this was 'blatantly false' when compared to the Environmental Impact Statement which specifically states 'there would be an increase in concentrations of pollutants ... as a result of the general increase of traffic'.²⁵⁹
- 4.5** Further, Professor Paul Torzillo, Head of Respiratory Medicine and Critical Care, Royal Prince Alfred Hospital, noted a NSW Health Ministry document released two years ago entitled *Health effects of traffic related air pollution*. This document stated that 'traffic-related air pollution is a major contributor to air pollution which is responsible for potentially avoidable deaths from heart disease, lung disease and cancer'.²⁶⁰
- 4.6** This was also supported by multiple stakeholders who referred to the World Health Organisation which has stated that 'there is no safe level of exposure to fine Particulate Matter and diesel exhaust emissions'.²⁶¹

²⁵⁸ Evidence, Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C, 15 October 2018, p 86.

²⁵⁹ Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, pp 33-34.

²⁶⁰ Evidence, Professor Paul Torzillo, Head of Respiratory Medicine and Critical Care, Royal Prince Alfred Hospital, 11 October 2018, p 77.

²⁶¹ Submission 182, Ms Deborah Mills, p 1; Submission 210, Dr Raymond Nassar, p 9; Submission 384, Haberfield Association, p 5; Submission 457, Name suppressed, pp 2 and 8; Submission 506, Name suppressed, p 10; Submission 549, Mr Anthony Sexton, p 1; Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, pp 33-34.

- 4.7 Cr Pauline Lockie, Councillor, Inner West Council argued that WestConnex will 'worsen health' for all those people who either live, work or study near the project's route and its 'feeder' roads; and those who will use WestConnex regularly.²⁶²
- 4.8 Further, stakeholders were angered by an earlier statement made in Parliament in 2008 by the now Premier, the Hon Gladys Berejiklian MP, Member for Willoughby, in support of filtration stacks for the Lane Cove Tunnel:
- Members of Parliament should examine their conscience and consider how they would feel if their children or the children of loved ones were exposed to this level of fumes every day and they were part of a government that could have put in place measures to reduce the impact of the fumes. It is not too late: the Government can still ensure that filtration is a possibility.²⁶³
- 4.9 Likewise in 2017, it was reported that the Hon Rob Stokes MP, Minister for Education had claimed "'there is no way in hell" he will countenance exhaust stacks from the Beaches Link tunnel being built anywhere near a school!'.²⁶⁴
- 4.10 Cr Darcy Byrne, Mayor, Inner West Council advised that the community did not understand why 'two very senior members of the Government have come to that unambiguous conclusion' about how unsafe unfiltered smoke stacks can be but 'that they are willing to subject community members in the inner west to the very same impacts without concern'.²⁶⁵
- 4.11 Stakeholders argued that the government should install a filtration system for WestConnex tunnel ventilation stacks to reduce the projected health impacts that are likely to occur from unfiltered stacks.²⁶⁶
- 4.12 Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association insisted that without filtered exhaust stacks, 'air quality will deteriorate further and we will suffer an increase in dangerous pollutants in the suburb and its surrounds'.²⁶⁷

²⁶² Submission 429, Pauline Lockie, p 13. Ms Lockie is independent Councillor for the Stanmore ward of the Inner West Council. Prior to this, she was one of the founding members of the WAG (WAG), a community group that campaigns against the WestConnex project, and for sustainable city planning. Ms Lockie is also personally affected by WestConnex.

²⁶³ *Hansard*, NSW Legislative Assembly, 8 May 2008, p 7301 (Gladys Berejiklian). See, for example Submissions 371, St Peters Public School Parents and Citizens Association, p 4; Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, pp 33-34;

²⁶⁴ John Morcombe, 'Exhaust stacks won't be near schools, says Stokes', *Manly Daily*, 19 July 2017, <https://www.dailytelegraph.com.au/newslocal/manly-daily/exhaust-stacks-wont-be-near-schools-says-stokes/news-story/403aed0865801ab88f413aea19dc63a9>; Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 51.

²⁶⁵ Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 55.

²⁶⁶ See, for example, Submission 86, Dr Mark Titmarsh, p 1; Submission 123, Mr Lloyd Downey, p 17; Submission 156, Ms Carolyn Allen, p 2; Submission 209, Mr Konrad Hartmann, p 1; Submission 225, Sally Okeby, p 1; Submission 229, Mr Richard Dudley-Smith, p 31; Submission 345, Ms Maggie Aitken, p 2; Submission 411, Ms Margaret Vickers, p 1; Submission 511, Annandale North Public School P&C Association, p 2; Submission 384, Haberfield Association, p 2; Submission 364, Parents and Citizens Association of Sydney Secondary College, Balmain Campus, p 10.

²⁶⁷ Evidence, Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association, 11 October 2018, p 63.

- 4.13** Annandale North Public School P&C Association were of the view that unfiltered ventilation stacks will 'impact negatively on the health and wellbeing of residents in the inner west' due to increasing toxic pollution levels.²⁶⁸
- 4.14** Likewise, Parents and Citizens Association of Sydney Secondary College, Balmain Campus were concerned about the location of the stacks and increased pollution upon students. They advised that one stack was about 300 metres from the school while the other three were 'about 1km away'.²⁶⁹
- 4.15** Dr Raymond Nassar, specialist anaesthetist, informed of a 'recent health impact statement from Belgium', where modelling of filtered ventilation facilities for road tunnels resulted in 'major improvements in health and a reduction in death rates'. Dr Nassar also referred to international studies that 'are using modelling that encompasses filtration and they are putting out health impact assessments that show an improvement in health'.²⁷⁰
- 4.16** Further, Dr Nassar spoke of international examples where filtration systems were being installed in urban tunnels, such as Hong Kong, Tokyo and Madrid.²⁷¹ Dr Nassar concluded that the various road infrastructure projects for Sydney should use 'current state-of-the-art technology' for filtration systems to capture toxins in tunnels and remove them entirely.²⁷²

Community efforts to undertake air quality monitoring

- 4.17** A number of inquiry participants claimed that the ventilation stacks posed a health risk to communities – those in which the stack was located as well as nearby communities. As a result, many were undertaking air quality monitoring.
- 4.18** Ms Jane Crawford, President, Sydney Secondary College Leichhardt P&C noted that the P&C did not have confidence in the NSW Environment Protection Authority (EPA) air quality monitoring responsibilities.²⁷³
- 4.19** In response, the Sydney Secondary College Leichhardt P&C had paid up to \$60,000 on air quality monitoring for the school, with the 'information and data collected ... [to] be part of public data available for everyone to assess'.²⁷⁴

²⁶⁸ Submission 511, Annandale North Public School P&C Association, p 2.

²⁶⁹ Submission 364, Parents and Citizens Association of Sydney Secondary College, Balmain Campus, p 10.

²⁷⁰ Evidence, Dr Raymond Nassar, Specialist anaesthetist, 11 October 2018, p 16.

²⁷¹ Evidence, Dr Raymond Nassar, Specialist anaesthetist, 11 October 2018, p 16.

²⁷² Evidence, Dr Raymond Nassar, Specialist anaesthetist, 11 October 2018, p 16.

²⁷³ Evidence, Ms Jane Crawford, President, Sydney Secondary College Leichhardt P&C, 9 October 2018, p 68.

²⁷⁴ Evidence, Ms Jane Crawford, President, Sydney Secondary College Leichhardt P&C, 9 October 2018, p 68.

- 4.20** When questioned about air quality monitors in Rozelle, Mr Gorman and Mr Peter Hehir, Convenor, Rozelle Against WestConnex (RAW), stated that residents have had to purchase and install monitors themselves in order to measure particulate matter.²⁷⁵
- 4.21** Mr Hehir indicated that RAW were about to install 10 air quality monitors in the area with a number of other residents making inquiries about them. Mr Hehir expected that there could be 'as many as 100 homes of members of RAW who would be installing these monitors in Lilyfield, Rozelle, Annandale, Balmain and so on'.²⁷⁶ This would allow residents to measure known carcinogens PM2.5 and PM10.
- 4.22** Haberfield Public School Parents and Citizens Association told how the recently installed monitoring station at the school had detected dangerously high levels of pollutant.²⁷⁷
- 4.23** According to the Department of Planning and Environment, the Office of Environment and Heritage had advised 'that the air quality monitoring station in Callan Park, Rozelle was closed from 14 February to 25 May 2018 for upgrade works'. After which the station has been operative with data from the station live on the Office of Environment and Heritage website since 31 May 2018.²⁷⁸

Committee comment

- 4.24** The committee understands the concerns of residents who fear air quality at the proposed unfiltered tunnel ventilation stacks will decline and subsequently result in negative health impacts for those living in the immediate vicinity of the stacks as well as in surrounding suburbs.
- 4.25** References by inquiry participants to findings of the World Health Organisation and the NSW Ministry of Health regarding the health effects of traffic related pollution challenge the NSW Government's assertion that the WestConnex tunnel ventilation facilities are following world's best practice. This is particularly troublesome considering some ventilation stacks will be located next to or near schools.
- 4.26** The committee recognises that as a result of community concern, in addition to a lack of trust in the government's air monitoring responsibilities, communities affected by the construction of WestConnex have undertaken their own air quality monitoring as a means to measure the prevalence of known carcinogens PM2.5 and PM10.
- 4.27** The committee finds it unacceptable that members of the community feel it necessary to undertake air quality monitoring in lieu of the responsible government agencies.
- 4.28** To foster greater community trust in the processes and actions of government agencies relating to air quality monitoring, it is recommended that the NSW Government should improve

²⁷⁵ Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, p 37; Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, p 37.

²⁷⁶ Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, p 37.

²⁷⁷ Evidence, Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association, 11 October 2018, p 63; Evidence, Ms Sherrill Nixon, Member, Haberfield Public School Parents and Citizens Association, 11 October 2018, p 63.

²⁷⁸ Answers to questions on notice, Department of Planning and Environment, 7 November 2018, p 3.

engagement and consultation with communities concerning air quality monitoring and ensure the real time publication of all air quality data for WestConnex in a single online location. This should include the retention of historical information and the development of user friendly tools to understand and interpret the data.

Finding 12

It is unacceptable that members of the community feel it necessary to undertake air quality monitoring in lieu of the responsible government agencies.

Recommendation 12

That the NSW Government should improve engagement and consultation with communities concerning air quality monitoring and ensure the real time publication of all air quality data for WestConnex in a single online location. This should include the retention of historical information and the development of user friendly tools to understand and interpret the data.

Efficacy of filtration arrangements

4.29 Government representatives were confident that the ventilation facilities chosen for the WestConnex project were safe for communities, despite the lack of a filtration system. It was argued that reforms to air quality in motorway tunnels would further strengthen air quality standards.

Predicted air quality outcomes

4.30 Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, advised that pre-construction air quality assessments predicted air quality outcomes would be acceptable:

[T]he air quality assessments undertaken for each project predicted that the air quality outcomes would be acceptable, with only minor impacts occurring in a limited number of locations, and improvements in roadside-level air quality at other locations due to the shift in traffic from surface roads to the tunnels.²⁷⁹

4.31 Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services explained that emissions within the tunnel will be removed via the ventilation outlet, 'which is ... above seven stories high' and be ejected with some degree of force high into the atmosphere, where it will mix with background ambient air.²⁸⁰

4.32 According to Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, the 'standard to which those ventilation facilities are being built and being operated ... has been set by the

²⁷⁹ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 11 October 2018, pp 2-3.

²⁸⁰ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 7 November 2018, p 57.

Department of Planning and Environment, and by the EPA, in accordance with independent advice from the air quality committee'.²⁸¹ The independent air quality committee consists of representatives from NSW Department of Health, NSW Environment Protection Authority, and the NSW Department of Planning and Environment, and is chaired by Professor Hugh Durrant-Whyte, the New South Wales Chief Scientist & Engineer.²⁸²

- 4.33** Mr Kanofski added that the 'air quality standards which WestConnex will meet are equivalent to the best in the world'.²⁸³ He opposed claims that ventilation facilities would concentrate vehicle emissions, including PM2.5. He instead asserted that 'ventilation facilities are a method for dispersing emissions ... much more widely than the vehicle emissions on a surface road ... to say that the emissions are concentrated is, in my view, incorrect'.²⁸⁴
- 4.34** However, both Mr Kanofski and Mr David Gainsford, Executive Director, Priority Projects Assessment, Department of Planning and Environment acknowledged that filtration systems could be retrofitted to the WestConnex tunnel ventilation stacks if required.²⁸⁵
- 4.35** When questioned as to the location of the ventilation stacks and if they were near schools and other places with children, Mr Kanofski responded that 'the facilities are located in the best possible locations. I think the thing to be clear about is that these facilities are safe. That is the important thing. They are safe for the entire community'.²⁸⁶
- 4.36** Mr Ray clarified that there will be six air quality monitoring stations established on the M4 East. These will be situated at 'Haberfield Public School; Ramsay Street, Haberfield; Concord Oval, Concord; St Lukes Park, Concord; Powells Creek, Homebush; and Allen Street, North Strathfield'.²⁸⁷
- 4.37** Further, Mr Kanofski explained that 'in accordance with the M4 East conditions of approval, ambient air quality monitoring is being carried out at six locations along the M4 East corridor ... to record data for 12 months before the tunnel is open to traffic and for at least two years after opening'.²⁸⁸
- 4.38** Mr Stephen Lancken, Independent Chair, M4 East Air Quality Community Consultative Committee (AQCCC) advised that the AQCCC would then 'examine the results of that air

²⁸¹ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 9.

²⁸² Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 9.

²⁸³ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 33.

²⁸⁴ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 53.

²⁸⁵ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 54; Evidence, Mr David Gainsford, Executive Director, Priority Projects Assessment, Department of Planning and Environment, 7 November 2018, p 12.

²⁸⁶ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 12.

²⁸⁷ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 7 November 2018, p 12.

²⁸⁸ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 34.

quality monitoring pre- and post-construction' to identify if there was any degradation in air quality.²⁸⁹

- 4.39** The role of AQCCC's was described by a community representative currently serving on the M5 AQCCC.

Case study: Air Quality Community Consultative Committee²⁹⁰

Mr Rasmus Torkel, a member of the new M5 Air Quality Community Consultative Committee (AQCCC) for the Arncliffe community, explained the role of the AQCCC:

The main task of the AQCCC so far has been to establish locations for the Air Quality Monitoring Stations. The approval conditions require eight monitoring stations, two for each ventilation outlet, one at the St Peters interchange and one somewhere within the general area of the New M5 but away from any particular stack and the St Peters interchange.

The AQCCC has held three meetings; September and October 2017; and March 2018.

Mr Torkel advised that at the October meeting, the project team proposed a number of locations for air monitoring stations with community representatives given seven days to propose further suitable locations. At the March 2018 meeting, the locations selected for monitoring stations were those put forward by the project team which were all on Roads and Maritime Services land. Further, Mr Torkel insisted that 'no council had even been approached about possible locations on council land ... This meant that some very good locations were rejected in favour of some quite unsatisfactory locations'.

Mr Torkel was of the view that the 'project team treated the process as a box-ticking exercise and lacked the commitment to find good locations'. For example, both Kingsgrove and St Peters will not receive monitoring stations in the areas that are deemed high impact and worst affected. Further, Mr Torkel advised that the 'new M5 approval conditions call for monitoring stations at ground level'. This posed a problem as the 'Arncliffe ventilation outlet is going to be 35 metres high while within 500 metres, there are high rise buildings up to 16 storeys which suggest a height of well over 40 metres ... Depending on where the wind is coming from, polluted air would probably be blown directly at the high-rise buildings'.

Reforms to air quality in motorway tunnels

- 4.40** In February 2018, the NSW Government announced it would strengthen its approach to air quality issues in motorway tunnels. For the WestConnex project, the Environment Protection Authority (EPA) will regulate ventilation facilities at tunnels through Environment Protection

²⁸⁹ Evidence, Mr Stephen Lancken, Independent Chair, M4 East Air Quality Community Consultative Committee, 7 November 2018, p 11.

²⁹⁰ See submission 198, Mr Rasmus Torkel.

Licences (EPLs).²⁹¹ EPLs set out the conditions relating to 'pollution prevention and monitoring ... and the implementation of best practice'.²⁹²

- 4.41 Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet explained, that the reforms would apply to all tunnel operators for both current and future motorway tunnels:

[The reforms] require that ventilation outlets of all current and future operating motorway tunnels in New South Wales ... be regulated by the Environment Protection Authority. The EPA will require tunnel operators to meet air quality limits and undertake air quality monitoring where practicable.²⁹³

- 4.42 Ms Walkom also advised that these reforms also require 'additional health reports and analysis before motorway tunnels are approved and ongoing air quality monitoring emissions from motorway tunnel ventilation outlets'.²⁹⁴

- 4.43 In addition, Ms Walkom stated that for any 'new motorway tunnels that have not progressed to the environmental impact statement stage, additional checks will be required prior to planning determination'.²⁹⁵ She outlined the process by which these additional checks would be implemented:

[T]he Advisory Committee on Tunnel Air Quality ... will coordinate a scientific review of a project's air emissions from the ventilation outlets; the NSW Chief Health Officer will release a statement on the potential health impacts of emissions from tunnel ventilation outlets and the Minister for Planning will not approve a motorway tunnel project until the Advisory Committee on Tunnel Air Quality scientific review is considered.²⁹⁶

Committee comment

- 4.44 The committee notes the opposition expressed by inquiry participants to government claims that non-filtered ventilation stacks are safe and follow world's best practice. The committee also recognises the concerns of stakeholders that non-filtered ventilation stacks will not remove carcinogenic pollutants from tunnel emissions but will rather disperse such pollutants further and wider than the tunnel ventilation facility itself. This could adversely affect the health of many communities along the WestConnex corridor.

²⁹¹ Submission 124, NSW Government, p 23.

²⁹² NSW Environment Protection Authority, *Environment protection licences*, <https://www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences>.

²⁹³ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet, 9 October 2018, p 29.

²⁹⁴ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet, 9 October 2018, p 20.

²⁹⁵ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet, 9 October 2018, p 29.

²⁹⁶ Evidence, Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet, 9 October 2018, p 29.

- 4.45 The proposed regulation of all current and future motorway tunnel ventilation facilities by the Environment Protection Authority does not provide a sufficient level of certainty or reassurance that tunnel operators will meet air quality limits and undertake air quality monitoring.
- 4.46 While the committee is encouraged by the acknowledgment of both Roads and Maritime Services and the Department of Planning and Environment that the WestConnex tunnels can be retrofitted with filtration if required, the committee is of the view that filtration should be included during the construction phase. Therefore the committee recommends that the NSW Government install, on all current and future motorway tunnels, filtration systems in order to reduce the level of pollutants emitted from ventilation stacks.

Recommendation 13

That the NSW Government install, on all current and future motorway tunnels, filtration systems in order to reduce the level of pollutants emitted from ventilation stacks.

- 4.47 Further, the committee notes the creation of the Air Quality Community Consultative Committees and the processes employed to identify the most appropriate locations for air quality monitoring for the New M5. The committee recommends that the NSW Government undertake a review and audit of the Air Quality Community Consultative Committees and the locations for air quality monitoring for the New M5.

Recommendation 14

That the NSW Government undertake a review and audit of the Air Quality Community Consultative Committees and the locations for air quality monitoring for the New M5.

Other health impacts

- 4.48 A number of inquiry participants spoke of various health impacts as a consequence of the construction of the WestConnex. This includes noise and pollution from construction; mental health issues; loss of green space; disruption to daily lives; and risks of safety breaches.

Noise from construction

- 4.49 According to Cr Pauline Lockie, Councillor, Inner West Council, residents have been 'enduring unacceptable noise impacts' ever since WestConnex construction began in St Peters, Haberfield and Ashfield. She was of the view that this was 'causing great distress and disturbance' which was intensified by night works.²⁹⁷
- 4.50 St Peters Public School Parents and Citizens Association also spoke of the 'ongoing noise pollution associated with demolition of homes, construction drilling, digging, removal of rubble

²⁹⁷ Submission 429, Pauline Lockie, p 28.

and excavation'. The association argued that students, teachers, parents and community were suffering from the 'cumulative negative impact' that 24 hour works generated.²⁹⁸

- 4.51 Haberfield Public School P&C Association stated daytime noise from construction rendered backyards unusable and made working from home difficult.²⁹⁹

Night works

- 4.52 Ms Cynthia Moore, Member, Haberfield Association, discussed how at the start of construction the community were informed that work hours would be 'Monday to Friday from 7 am to 6 pm, and Saturday from 8 am to 1 pm'. However, she stated that 'since the project began we have had a regular weekly notification of out-of-hours work. This is called an exception to the conditions of approval, but it is a fallacy, because we are getting this every week'.³⁰⁰
- 4.53 Ms Moore added that this after hours noise consisted of 'saw cutters, rock breakers and jackhammers' which may continue after midnight meaning residents are subject to high levels of noise all night.³⁰¹
- 4.54 Cr Lockie observed that 'in Haberfield and Ashfield, residents now receive blanket notifications alerting them to months of WestConnex day and night works in a broad area. More specific notifications of night works are sometimes received, but only if residents have subscribed to the WestConnex email list'.³⁰²
- 4.55 Ms Rhea Liebmann, Spokesperson, WestConnex Action Group, stated that the 'perpetual noisy night and weekend works have terrible health impacts on residents'. She argued that the Department of Planning and Environment's noise management plans and noise modelling have been ineffective in protecting residents from construction noise.³⁰³
- 4.56 Ms Liebmann stated that recently in St Peters there were 'five consecutive nights of work at two sites less than 750 metres apart'. In these instances, Ms Liebmann advised that 'very few residents are offered alternative accommodation. A few more are provided with noise cancelling headphones, but not every member of the family ... Most are only given foam ear plugs'.³⁰⁴
- 4.57 Haberfield Public School P&C Association noted that much of the noise from night works 'has arisen from utilities work, which in the M4 East stage has not had to abide by the same requirements as those applied to the work by the contractors (another significant process flaw)'.³⁰⁵

²⁹⁸ Submission 371, St Peters Public School Parents and Citizens Association, p 5.

²⁹⁹ Submission 373, Haberfield Public School P&C Association, p 2.

³⁰⁰ Evidence, Ms Cynthia Moore, Member, Haberfield Association, 11 October 2018, p 64.

³⁰¹ Evidence, Ms Cynthia Moore, Member, Haberfield Association, 11 October 2018, p 64.

³⁰² Submission 429, Cr Pauline Lockie, p 29.

³⁰³ Evidence, Ms Rhea Liebmann, Spokesperson, WAG, 15 October 2018, p 75.

³⁰⁴ Evidence, Ms Rhea Liebmann, Spokesperson, WAG, 15 October 2018, p 75.

³⁰⁵ Submission 373, Haberfield Public School P&C Association, p 2.

- 4.58** Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services explained, utility companies have considered the construction works for WestConnex as an opportunity to conduct utility relocations. These relocation works are 'over and above DPE planning conditions and the works that were originally prescribed', which makes it challenging to regulate and coordinate.³⁰⁶ Improvements in the coordination of construction work and utility works will be addressed in Stage 3 of WestConnex (this is discussed in further detail later in the chapter).
- 4.59** Both Dr Jacinta Green and Ms Tamara Regan spoke of the relentless noise from construction and its impact.³⁰⁷

Case study: Affected resident, Dr Jacinta Green³⁰⁸

On numerous occasions, Dr Jacinta Green, a resident of St Peters has called WestConnex Construction Complaints to complain about un-notified night works only to be informed that there are no workmen on site: '[M]y bedroom overlooks the work site. I have sent through photos and videos of night works and still had multiple staff members state that there was no work happening!'

As a result of the prolonged night works and ongoing lack of sleep, Dr Green has experienced a decline in work performance, increased anxiety and mental health issues.

Dr Green has since received professional help through a workplace program. However, she stated: 'I still find myself constantly on edge and often over react to situations and regularly feel out of control'.

Case study: Affected resident, Ms Tamara Regan³⁰⁹

Ms Tamara Regan and her family, residents of St Peters, have been subjected to extensive night works as a result of the construction of WestConnex.

Ms Regan is currently studying a Masters of Special Education while her daughter is to begin her Preliminary Higher School Certificate. Ms Regan claimed that due to the unrelenting night works her academic standing has been affected, falling from a High Distinction average to Pass. She fears that she will fail her study and will have to pay back her \$20,000 scholarship. Similarly, her daughter who in the past won academic awards in all of her subjects is no longer on the honour roll. Ms Regan claimed that four years of exposure to WestConnex has left her family 'exhausted and tired', 'unable to function' and suffering mental and emotional distress.

Ms Regan has complained constantly to WestConnex about the 'concrete cutting saws, the jackhammering, the reverse beepers on trucks and the loud talking of the workers as they yell instructions to be heard above all of the other noises'. It was not until several complaints later that a

³⁰⁶ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services 9 October 2018, p 14.

³⁰⁷ Submission 272, Dr Jacinta Green, p 3; Submission 346, Ms Tamara Regan, p 3.

³⁰⁸ See Submission 272, Dr Jacinta Green.

³⁰⁹ See Submission 346, Ms Tamara Regan.

WestConnex community liaison officer delivered 'a family set of foam earplugs at my home ... to wear at night'. Ms Regan's children then suffered from ear infections. After writing an email 'to all key stakeholders explaining that myself and my family had been kept awake all night ...'. The community liaison team then attended my home with one set of noise cancelling headphones' for a family of five. Ms Regan made a further complaint the day after and was provided with another set of noise cancelling headphones. However, Ms Regan stated that as a result of the 'extremely loud concrete cutting at night' she has relocated her family as a means of seeking respite.

Pollution from construction

- 4.60** St Peters Public School Parents and Citizens Association voiced anxiety about the high levels of particulate matter recorded in 2017 and 2018 by the school's air quality monitoring station. According to the association this has caused 'extreme concerns in the community about the safety of the school grounds for students'. The P&C noted that as a consequence the school has been subject to damaging comments from potential parents who have stated online that they will not send their children to the school due to WestConnex pollution.³¹⁰
- 4.61** In addition, Cr Lockie found it 'particularly disturbing that many residents who live or work near WestConnex construction sites are reporting health impacts such as first-time diagnoses of asthma among children, worsening asthma or other respiratory symptoms, conjunctivitis and skin irritations since construction began'. She put forward the view that these diagnoses were 'all consistent with exposure to airborne pollutants'.³¹¹
- 4.62** Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C, noted that there was anecdotal evidence of 'children having more frequent asthma attacks, of children who did not previously have asthma starting to have asthma ... [and] children being diagnosed with dust allergies' which was associated with the WestConnex construction.³¹²
- 4.63** The City of Sydney is concerned that based on the results from the air quality monitoring stations installed at St Peters Public School, air quality around the school has been found to be significantly negatively impacted by WestConnex construction. The City is also concerned that the reports from the air quality monitoring station were not passed on to the school or parents, despite frequent requests. In its submission the City wrote that it had been advised that concerns about air quality raised by residents with Ministers and government agencies are forwarded to the SMC. With the adoption of an updated Ambient Air Quality National Environment Pollution Measure standards for particulates in 2015, emissions at various sites along the M5 are likely to exceed the new standards, putting thousands of young children and the elderly at risk.³¹³

³¹⁰ Submission 371, St Peters Public School Parents and Citizens Association, pp 1-2.

³¹¹ Submission 429, Cr Pauline Lockie, p 16.

³¹² Evidence, Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C, 15 October 2018, p 90.

³¹³ Submission 311, City of Sydney, p 12.

Case study: Increased and worsening cases of asthma³¹⁴

Ms Rachel Brittliff, Member, Haberfield Public School Parents and Citizens Association has been a resident of Haberfield for 10 years. For eight of those years, Rachel's asthma, like her husband's has been 'very well controlled'. However, ever since construction began on WestConnex in 2016, Rachel and her husband have 'experienced a significant increase in attacks' with their asthma worsening over time and preventative medication no longer working. Further, Ms Brittliff alleged that there was a direct correlation between construction and her son becoming asthmatic.

Ms Brittliff expressed the view that the information 'being given about the impact to our health from the unfiltered stacks is not true ... [and that] even if we have the air quality monitoring data coming from our site on the school saying that we are being poisoned, nothing will happen'.

Mental health impacts

- 4.64** Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C, stated that while the provision of mental health support services had been promised by WestConnex to assist with the emotional impact caused by the demolition of houses in 2017, these services had not eventuated.³¹⁵
- 4.65** Ms Shelly Jensen, former resident of St Peters stated the experience of losing her home of 20 years as part of the WestConnex compulsory acquisition has left her 'devastated' and 'depressed'. During this compulsory acquisition period, she was 'extremely distressed' and suffered from 'constant headaches ... [and her] hair was falling out'. Even now, after moving to the Central Coast, Ms Jensen remains ill due to stress and is unable to work.³¹⁶
- 4.66** Likewise, Mr Richard Capuano another former resident of St Peters described how he suffered 'severe physical, mental, emotional, everything breakdown' as a result of the compulsory acquisition of his house. Four years on, Mr Capuano said he was 'still angry ... still sick' as a result of his experience with WestConnex.³¹⁷

Loss of green space and vegetation

- 4.67** Inquiry participants voiced concerns that WestConnex had and would continue to remove green and open spaces from communities, with many fearing WestConnex would return unusable land, if any land at all.

³¹⁴ Evidence, Ms Rachel Brittliff, Member, Haberfield Public School Parents and Citizens Association, 11 October 2018, p 67.

³¹⁵ Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C, 15 October 2018, p 90.

³¹⁶ Evidence, Ms Shelly Jensen, former resident, St Peters, 15 October 2018, p 95.

³¹⁷ Evidence, Mr Richard Capuano, 15 October 2018, p 97.

- 4.68** Cr Clover Moore, Lord Mayor, City of Sydney argued that major motorway projects like WestConnex consumed 'parklands and much-needed recreational sporting space'.³¹⁸ According to Cr Moore, 'approximately 19,294 square metres of Sydney Park' have been lost to WestConnex including the loss of 238 trees, of which 159 were the 'beautiful avenue of paperbarks down Euston Road'.³¹⁹ It was also concerned that open space at the St Peters Interchange would not be usable due to potential health impacts as a result of vehicle emissions and recommended that the Sydney Motorway Corporation provide indoor sporting facilities.³²⁰
- 4.69** Cr Darcy Byrne, Mayor, Inner West Council stressed the importance of 'protect[ing] and enhance[ing] ... existing parks and open spaces for families in the inner west who do not have backyards'.³²¹
- 4.70** Cr Byrne questioned, in terms of green space, what would actually be returned by the government upon the completion of WestConnex. He was of the view that land would either be kept by the government for development or be returned as 'a barren concrete slab, which would then have a very large price tag for us to convert into a useable park'.³²² For example, Cr Byrne referred to 'ongoing disputes with the Government about whether we will get back all of the green space and facilities [in St Peters] that were promised to us, at the conclusion of the project'.³²³
- 4.71** In addition, Cr Byrne informed that the Inner West Council had not received 'any trustworthy commitments in writing ... from the Government as yet about what condition we will get that land back in'.³²⁴ He expressed frustration at the government's interactions with the council about acquiring green space for the project:
- My experience so far is that they identify a green space before we know about it that they are planning to target for acquisition, it leaks into the public domain, they deny that any decision has been made and then several months later they announce it as a fait accompli.³²⁵
- 4.72** Mr John English, Chairperson, Beverly Hills North Progress Association spoke of the permanent loss of Beverly Grove Park as a result of the New M5 portal at Kingsgrove. He advised that an initial request by the community for 'WestConnex [to] acquire an industrial site east of the park' to be converted into recreational space in return for Beverly Grove Park, was deemed a 'valid option' pending assessments, yet two years on the proposal had 'evaporated'.³²⁶

³¹⁸ Evidence, Lord Mayor Clover Moore, City of Sydney, 15 October 2018, p 29.

³¹⁹ Evidence, Lord Mayor Clover Moore, City of Sydney, 15 October 2018, p 32.

³²⁰ Submission 311, City of Sydney, p 14.

³²¹ Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 54.

³²² Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 54.

³²³ Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 54.

³²⁴ Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 54.

³²⁵ Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 54.

³²⁶ Evidence, Mr John English, Chairperson, Beverly Hills North Progress Association, 11 October 2018, p 21.

4.73 As a result, Mr English argued that residents of Kingsgrove North were 'entitled to compensation in the form of return of some of their recreational space'. At present, the community 'have been given nothing'.³²⁷

Government response to community concerns over green space

4.74 During the inquiry, government and WestConnex representatives insisted that green and open spaces would be returned to communities upon completion of WestConnex. It was claimed that WestConnex would actually increase the amount of green and open spaces for communities.

4.75 According to WestConnex Chief Executive Officer, Mr Andrew Head, WestConnex was committed to delivering 'more green space ... than any other urban road project in Australia's history'.³²⁸ He advised that WestConnex will:

- remediate the contaminated Alexandria Landfill site at St Peters allowing public use for the first time in decades
- increase the net number of trees across the New M5 corridor, including significant areas of mass plantings within the St Peters Interchange
- deliver both an increase in open and public spaces and enhanced accessibility to these spaces for both local communities and wider Sydney through the M4 East Legacy Project.³²⁹

4.76 This was supported by the government, who advised that WestConnex will provide community benefits of open space through the delivery of Haberfield Gardens which will provide 5,000 square meters of green space as a result of the New M4, in addition to 8.5 hectares of new open green space at the former Alexandria Landfill site as a result of the New M5.³³⁰

4.77 The government added that the M4-M5 Link will also return up to 10 hectares of open green space within and surrounding the former Rozelle Rail Yards.³³¹

4.78 When questioned as to whether the Sydney Motorway Corporation, in their planning process for the WestConnex project, had considered the return of green space to the community, Mr Dennis Cliche, Former Chief Executive Officer, Sydney Motorway Corporation replied 'absolutely. That was one of the key functions or factors that we put into it'.³³²

4.79 This was emphasised by Mr Peter Jones, Former Project Director, Stage 3, Sydney Motorway Corporation who stated the return of green space to communities was 'always a key function

³²⁷ Evidence, Mr John English, Chairperson, Beverly Hills North Progress Association, 11 October 2018, p 21.

³²⁸ Answers to questions on notice, Mr Andrew Head, Chief Executive Officer, WestConnex, 14 November 2018, p 14.

³²⁹ Answers to questions on notice, Mr Andrew Head, Chief Executive Officer, WestConnex, 14 November 2018, p 14.

³³⁰ Submission 124, NSW Government, p 24.

³³¹ Submission 124, NSW Government, p 24.

³³² Evidence, Mr Dennis Cliche, Former Chief Executive Officer, Sydney Motorway Corporation, 15 October 2018, p 13.

and object for the project'.³³³ Mr Jones advised that as a result of WestConnex there will be 23 kilometres of new cycle road and around 23 hectares of green space.³³⁴

4.80 Mr Cliche explained that the rehabilitation of construction sites so that they could be returned as green space to communities had been factored into the construction costs of WestConnex:

We have tens of millions of dollars, for example, on green space returning park areas that we have rehabilitated. We have taken Rozelle and St Peters, which were pretty ugly sites if you went there at the outset before our project came in, and they are going to be returned to the community to a large extent as park space.³³⁵

4.81 Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, explained that the delivery of 'cycleways, pedestrian connections and open space ... by RMS and the contractors' was a condition of consent that the department was overseeing.³³⁶

4.82 Further, Mr Head explained that under the Conditions of Approval for each stage of WestConnex, a Residual Land Management Plan 'must be prepared to address the potential future use of land not required for the operation of the motorway'. This included open space and community uses.³³⁷ According to Mr Head, the Residual Land Management Plans would 'result in a net increase in open space being made available to the communities of Strathfield, City of Canada Bay and Inner West councils'.³³⁸

Disruption to daily lives

4.83 Inquiry participants told of the disruptions to their daily lives as a result of increased heavy vehicle traffic and reduced access to local streets and parking during the various phases of construction for WestConnex.

4.84 Annandale North Public School P&C Association were concerned that increased heavy vehicle traffic would 'impact directly and negatively on the school and its children' as well as produce 'increased congestion, and a higher risk of traffic accidents involving the many students and families who cross Johnston St. during school drop off and pick up'.³³⁹

³³³ Evidence, Mr Peter Jones, Former Project Director, Stage 3, Sydney Motorway Corporation, 15 October 2018, p 13.

³³⁴ Evidence, Mr Dennis Cliche, Former Chief Executive Officer, Sydney Motorway Corporation, 15 October 2018, pp 13-14.

³³⁵ Evidence, Mr Dennis Cliche, Former Chief Executive Officer, Sydney Motorway Corporation, 15 October 2018, p 14.

³³⁶ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 11 October 2018, p 11.

³³⁷ Answers to questions on notice, Mr Andrew Head, Chief Executive Officer, WestConnex, 14 November 2018, pp 14-15.

³³⁸ Answers to questions on notice, Mr Andrew Head, Chief Executive Officer, WestConnex, 14 November 2018, p 14.

³³⁹ Submission 511, Annandale North Public School P&C Association, p 4.

- 4.85 Increased heavy vehicle traffic was already being experienced by St Peters Public School with the school's parents and citizens association informing that '[d]espite an original agreement with SPPS [St Peters Public School] that no heavy vehicles would be moving between the sites (and thus crossing footpaths and the only roads to school) during drop-off/pick-up hours, heavy vehicles move between the sites on a daily occurrence'.³⁴⁰ St Peters Public School Parents and Citizens Association explained this was a 'daily hazard to our school and preschool aged children who walk, cycle or scoot to school'.³⁴¹
- 4.86 St Peters Public School Parents and Citizens Association added that on a weekly basis parents and carers trying to access the school experienced '[r]oad closures, redirection of streets, closure of turning options requiring long detours with poor signage'. This was caused by six WestConnex sites separated by local streets on the main route to St Peters Public School.³⁴²
- 4.87 Similar concerns were voiced by Ms Sherrill Nixon, Member, Haberfield Public School Parents and Citizens Association who stated that parents were 'worried about allowing their children to walk to school alone after near misses between pedestrians and trucks at construction site driveways, and poor management of footpath and road closures'. She indicated that this will likely be exacerbated with further construction and increased traffic. Ms Nixon also feared that 'rat-running ... will worsen when the M4 East stage is opened in just a few months, endangering our children further'.³⁴³
- 4.88 Ms Kate Cotis, resident of St Peters gave evidence that 'get[ting] in, out and around' the suburb was 'so much longer' as a result of the roads being regularly closed for construction purposes. She added that 'at this very basic level WestConnex is difficult to live with'.³⁴⁴

Increased surface traffic

- 4.89 Cr Darcy Byrne, Mayor, Inner West Council opposed the government's claims that WestConnex would return local roads to local communities. He advised that the council had undertaken an independent assessment of the impacts of WestConnex and concluded that 'there is going to be a range of very serious traffic impacts on local streets at the opening of each stage of the project'.³⁴⁵
- 4.90 Cr Byrne was of the view that as a consequence of WestConnex stage 1 opening, the inner west would experience 'the mother of all rat runs ... [as] people are coming out at Haberfield and trying to find their way to the CBD or to Port Botany or the airport without there being any mechanism for them to do so'. He added that this would 'greatly increase the amount of commuter traffic on local streets, which will have amenity impacts but also pose serious safety problems'.³⁴⁶

³⁴⁰ Submission 371, St Peters Public School Parents and Citizens Association, p 3.

³⁴¹ Submission 371, St Peters Public School Parents and Citizens Association, p 3.

³⁴² Submission 371, St Peters Public School Parents and Citizens Association, p 3.

³⁴³ Evidence, Ms Sherrill Nixon, Member, Haberfield Public School Parents and Citizens Association, 11 October 2018, p 63.

³⁴⁴ Submission 548, Ms Kate Cotis, p 6.

³⁴⁵ Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 56.

³⁴⁶ Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 56.

Safety breaches

4.91 The issue of safety breaches on WestConnex construction sites and the consequences for WestConnex employees and communities was raised during the inquiry.

Impact of safety breaches on WestConnex employees

4.92 The CFMMEU stated that union officials 'have received a constant stream of complaints about the safety on the project' since it began, adding that attempts to 'investigate such complaints have been thwarted'.³⁴⁷

4.93 The CFMMEU expressed concerns about the safety of WestConnex construction sites, in particular, the level of dust emanating from work sites and an apparent lack of steps to ameliorate this risk:

The CFMMEU along with community groups have made representations to the principal contractors and SafeWork NSW about the amount of silica dust being produced on the project, the effect this dust has on workers and the surrounding community, and the lack of attention given to minimizing the risk..³⁴⁸

4.94 Further, the CFMMEU were of the view that WestConnex and principal contractors have 'allocated insufficient funds to appropriately manage the safety of the workers and the surrounding community', as a result of ongoing safety complaints.³⁴⁹

4.95 The Transport Workers Union claimed safety breaches had been reported on the WestConnex project. From interviews with truck drivers at excavation sites, the Transport Workers Union found that truck drivers:

- were often instructed to 'get in line' early (a practice whereby the first truck will receive the first load and subsequently get more loads in a day), sometimes starting work hours before the time recorded in their log books
- were often loaded without consultation on maximum weight
- often did not have access to scales on site before leaving
- had issued complaints about the condition of their vehicles to their employers and had been told to simply continue operating.³⁵⁰

4.96 In addition, Mr Richard Olsen, State Secretary, Transport Workers Union noted that unqualified and inappropriately trained truck drivers were being contracted to carry out work for WestConnex which was 'very dangerous for all concerned on the road'.³⁵¹

4.97 Further, the Transport Workers Union described instances where, due to gross safety breaches, it has had to 'step in to have WestConnex work sites shut down'.³⁵²

³⁴⁷ Submission 555, CFMMEU, p 1.

³⁴⁸ Submission 555, CFMMEU, p 1.

³⁴⁹ Submission 555, CFMMEU, p 1.

³⁵⁰ Submission 378, Transport Workers Union, p 4.

³⁵¹ Evidence, Mr Richard Olsen, State Secretary, Transport Workers Union, 11 October 2018, p 51.

³⁵² Evidence, Mr Richard Olsen, State Secretary, Transport Workers Union, 11 October 2018, p 43.

- 4.98 The Transport Workers Union recommended that the Sydney Motorway Corporation 'should immediately, in conjunction with the Transport Workers Union, audit all contractors providing transport work on the WestConnex project for safety and industrial instrument compliance'.³⁵³

Impact of safety breaches on communities

- 4.99 Ms Tamara Regan, resident of St Peters, described how houses in her street which allegedly contained asbestos 'were demolished without Safe Work practices ... result[ing] in plumes of contaminated dust enveloping ... homes'.³⁵⁴ She noted that there appeared to be 'no procedures in place to wet down and remove the asbestos in a safe manner' with residents not aware that asbestos removal was taking place.³⁵⁵
- 4.100 St Peters Public School Parents and Citizens Association also shared concerns about safety breaches relating to the demolition of homes with asbestos. It noted that during demolition of a house next to the school, 'asbestos waste was not secured or disposed of properly, and it was left literally blowing in the wind and across the site until residents photographed the waste and complained to SMC [Sydney Motorway Corporation]'.³⁵⁶ As a result of this negligence, students were allegedly exposed to asbestos dust as they walked past the site to and from school.³⁵⁷
- 4.101 Inquiry participants also spoke of two occasions where construction and safety protocols had not been followed, resulting in residents of St Peters being subjected to a rotten egg odour in 2017, while a major dust storm was experienced in Haberfield in 2018.

Case study: Rotten egg odour³⁵⁸

From March to August 2017, residents of St Peters were subject to a rotten egg odour as a result of a build-up of hydrogen sulphide at a WestConnex construction landfill site. For many days the school and local area were exposed to the odour, with the school keeping students inside for the entire school day while some parents refused to send their children to school.

One resident, as a result of the odour spoke of her and her family experiencing extreme nausea, high blood pressure, chest infections and conjunctivitis. In order to escape the odour, this resident relocated her family for a week at her own expense. While WestConnex was informed of this case, no reimbursement was offered.

³⁵³ Submission 378, Transport Workers' Union, p 7.

³⁵⁴ Evidence, Ms Tamara Regan, Resident of St Peters, 15 October 2018, pp 84-85.

³⁵⁵ Evidence, Ms Tamara Regan, Resident of St Peters, 15 October 2018, pp 84-85.

³⁵⁶ Submission 371, St Peters Public School Parents and Citizens Association, pp 1-2.

³⁵⁷ Submission 371, St Peters Public School Parents and Citizens Association, pp 1-2.

³⁵⁸ See, for example, Submission 346, Ms Tamara Regan, p 1; Submission 371, St Peters Public School Parents and Citizens Association, pp 1-2;

Case study: Dust storm³⁵⁹

On 9 April 2018, during school pick-up, the Haberfield Public School community were confronted by 'strong winds carr[ying] copious amounts of dust' with parents reporting that the dust 'was so extreme they needed goggles and face masks to deal with the pollution. Many locals attest to seeing the dust blowing off the construction sites'.

At the peak of the dust storm the air quality monitoring station at the school recorded particulate matter (airborne particles) eight times higher than the recommended air quality target.

Following the dust storm '[s]everal parents and residents complained to WestConnex about ... the failure to take mitigation measures such as wetting down the dirt piles'. WestConnex responded to those complaints with claims that:

'Third parties, completely unrelated to the project, were witnessed by members of the project team undertaking dust generating activities with leaf blowers in the vicinity of the site between 2.45 – 3.00pm, seemingly around the time of the complaint'.

On 11 April 2018, a small group of parents met with the M4 East Project Director and other WestConnex and RMS representatives. At this meeting, parents were advised that the M4 East Project Director had been told that 'contractors were meeting the requirement to wet down dirt on the construction sites and taking other mitigation measures'. However, according to parents who walk past those sites daily, they had not witnessed watering for weeks.

Government response to community concerns about safety breaches

- 4.102** The government stated that the 'safety of workers, the community, and road users is the number one priority'. The government referred to the Lost Time Injury Frequency Rate across all WestConnex projects, which as of 'the end of May 2018 ... was below 1.0, which is well below project targets and well below the industry average for both the heavy and civil engineering construction industries'.³⁶⁰
- 4.103** The Department of Planning and Environment informed that it has 'issued 3 separate penalty notices to subcontractors for use of local roads contrary to the approval'. In addition, 33 official cautions have been given for 'non-compliances broadly relat[ing] to failure to maintain residents' access, insufficient community notification of works, trucks utilising local roads, and removal of on-street parking'.³⁶¹
- 4.104** The department advised that official cautions were issued instead of penalty notices as a result of the involved parties 'actively working with the Department to implement measures ensuring the breaches are not repeated and where no significant environmental impact occurred as a result of the non-compliance'.³⁶²

³⁵⁹ See Submission 373, Haberfield Public School Parents and Citizens Association, p 4; Evidence, Ms Rachel Brittliff, Member, Haberfield Public School Parents and Citizens Association, 11 October 2018, p 67.

³⁶⁰ Submission 124, NSW Government, p 23.

³⁶¹ Answers to questions on notice, Department of Planning and Environment, 7 November 2018, p 4.

³⁶² Answers to questions on notice, Department of Planning and Environment, 7 November 2018, p 4.

- 4.105** In response to the 2017 odour issue in St Peters, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority explained that in order to identify the source of the odour, the Environment Protection Authority 'undertook many inspections of the premises on-site, around the perimeter and in the area'. This was in addition to speaking to residents to 'understand exactly what they were experiencing, [and] when they were experiencing those odour impacts'.³⁶³

Committee comment

- 4.106** The committee acknowledges the severe and multiple health impacts felt by some residents living in or near the WestConnex construction zone. For example, constant noise and pollution from construction and endless night works have led to mental health issues for residents as well as disrupting daily life which has had profound consequences.
- 4.107** The committee is alarmed that inquiry participants have reported increased instances of respiratory, skin and eye conditions since the commencement of the WestConnex project.
- 4.108** The committee understands the difficulties faced by residents, in or near the construction zone, who frequently receive a lack of appropriate notification about scheduled night works. These difficulties include experiencing sleepless nights; anxiety and stress; reduction in work/study performance; and mental health issues. The committee notes that for many residents, these difficulties, which have been experienced for months and years already, will continue for some years to come.
- 4.109** For many inquiry participants, the effects of WestConnex construction and compulsory acquisition of properties may have significant and lifelong consequences. The committee heard that WestConnex had promised to provide mental health services for those requiring support during what has been described as a distressing, emotional, and stressful period. This should happen without delay and it is recommended that the NSW Government establish a WestConnex mental health support and wellbeing service.

Recommendation 15

That the NSW Government establish a WestConnex mental health support and wellbeing service.

- 4.110** Further, the committee acknowledges the experiences of inquiry participants who are disrupted on a daily basis by increased heavy vehicle traffic, and reduced access to local streets and parking as a result of WestConnex. Considering that heavy vehicles are moving around schools during busy school pickup and drop off times, the safety of children is paramount.
- 4.111** While the committee notes that the Department of Planning and Environment has issued several penalty notices and official cautions to WestConnex sub contractors due to safety breaches, the committee is of the view that more needs to be done to ensure the safety and security of both WestConnex employees and community members.

³⁶³ Evidence, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, 7 November 2018, p 9.

- 4.112** The committee recommends that the NSW Government:
- conduct an immediate review of safety measures and conditions relating to the construction of WestConnex to ensure that these measures and conditions are being complied with
 - publicly disclose any instances of non-compliance found during the review including a response as to how these issues will be remedied.
-

Recommendation 16

That the NSW Government:

- conduct an immediate review of safety measures and conditions relating to the construction of WestConnex to ensure that these measures and conditions are being complied with
 - publicly disclose any instances of non-compliance found during the review including a response as to how these issues will be remedied.
-

- 4.113** The committee notes residents' concerns about the loss of green space as a result of WestConnex. Residents fear that the green spaces which will be returned upon completion of WestConnex will not be comparable to what was available to communities pre-construction. Further, some communities, such as Kingsgrove, are anxious that no green space will be returned.
- 4.114** Accessibility and availability of green and open spaces is important for the general health and wellbeing of all members of the public. The committee recognises that for many families and individuals living in high density areas of Sydney, these open spaces are crucial for sports and recreation.
- 4.115** The committee accepts the commitments made by WestConnex and government representatives to return and provide green space to communities along the WestConnex corridor, and that the establishment or rehabilitation of green and open spaces has been factored into the costs of WestConnex project. The committee welcomes the additional 'green space' that the WestConnex project will provide to the residents of the Inner West of Sydney. But it cannot be stressed enough that these commitments must be kept.
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Finding 13

The committee welcomes the additional green space that the WestConnex project will provide to the residents of the Inner West of Sydney.

- 4.116** The committee recommends that the NSW Government ensure that the commitments made by itself and WestConnex regarding the establishment or rehabilitation of green and open spaces be fully delivered as promised.
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Recommendation 17

That the NSW Government ensure that the commitments made by itself and WestConnex regarding the establishment or rehabilitation of green and open spaces be fully delivered as promised.

Adequacy of government mitigation measures

- 4.117** During the inquiry, government representatives asserted government mitigation measures for construction noise and safety breaches were adequate. They also spoke of lessons learnt that would inform and improve mitigation measures for Stage 3 WestConnex.
- 4.118** Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment noted that the department were aware that the various construction phases would 'have a high level of impact on acoustic and visual amenity and traffic, particularly during construction, and that this would be particular to some local areas'.³⁶⁴
- 4.119** When questioned as to what noise minimisation measures have been put in place for affected residents, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services replied there was 'a range of things that we do'. These measures included:
- hardship relocations during night work in prolonged constructions
 - adjusting construction shifts to minimise disruption to residents
 - installation of temporary noise barriers.³⁶⁵
- 4.120** Further, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services advised that as part of planning approval, Roads and Maritime Services undertook assessments of the likely impact of noise, followed by meetings with residents to determine what mitigation measures are appropriate for them.³⁶⁶ However, Ms Drover noted that not all residents wanted 'those assessments and some residents have actually rejected attenuation measures, but in the main they take them up'.³⁶⁷ During these assessments, mitigation measures such as 'sealing windows, insulation and respite periods and also relocations' were discussed.³⁶⁸
- 4.121** Ms Drover emphasised that Roads and Maritime took 'a very bespoke approach' working with 'the residents and the businesses to work out what is going to best suit them'.³⁶⁹

³⁶⁴ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 11 October 2018, p 2.

³⁶⁵ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 9 October 2018, p 13.

³⁶⁶ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 9 October 2018, p 13.

³⁶⁷ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 9 October 2018, p 13.

³⁶⁸ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 9 October 2018, pp 13-14.

³⁶⁹ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 9 October 2018, p 13.

- 4.122** Ms Drover also reiterated that the WestConnex hotline was available 24/7 for affected residents to lodge complaints, particularly during night works. She explained that when a call was received by the call centre it was triaged and the complaint would then be lodged directly to either the design and construct contractor, Sydney Motorway Corporation, or Roads and Maritime Services.³⁷⁰

Stage 3 WestConnex

- 4.123** Ms Drover described the noise mitigation measures to be actioned before construction of Stage 3 WestConnex commenced. She explained that it was a three-stage process that would involve mitigating tunnelling noise; mitigating transmittal of noise to residents; and noise mitigation measures for business and homes:

... all our tunnelling works are undertaken in acoustic sheds. We also want to stop the transmittal of noise to receivers or residents; so there are things like noise walls and baffles et cetera, and then the last line of defence, if you like, is at the receivers' homes or businesses, and that is the architectural noise treatments at houses et cetera.³⁷¹

- 4.124** In relation to Stage 3, Ms Drover advised that affected communities would be warned three months before construction began of the 'activities that are likely to be noisy' as a means, potentially, for residents to 'perhaps plan their activities around those noisy works'.³⁷²

- 4.125** Furthermore, Ms Drover discussed how as a result of the experiences and issues that have arisen during Stages 1 and 2 of WestConnex, Stage 3 will establish five new positions to 'provide easy access for the community associated with the specific nature of works that are at that particular site'. These new positions include:

- a community complaints commissioner
- public liaison officers
- an independent acoustic advisor to manage noise complaints
- an independent property panel of experts that will assess community issues with disturbance to properties
- a utilities coordinator to manage the coordination of construction works with utility works.³⁷³

- 4.126** Roads and Maritime Services stated they were committed to mitigating impacts of construction noise and vibration upon the community which was demonstrated by the new planning

³⁷⁰ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 7 November 2018, p 34.

³⁷¹ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 9 October 2018, p 13.

³⁷² Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 9 October 2018, pp 13-14.

³⁷³ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 7 November 2018, pp 40-41.

conditions for Stage 3, whereby a construction noise insulation program would be implemented.³⁷⁴

- 4.127 As Ms Drover told the committee, Roads and Maritime Services were 'trying to do things that mitigate the problem rather than just responding to the problem after the fact'.³⁷⁵

Committee comment

- 4.128 The committee notes that both the Department of Planning and Environment, and Roads and Maritime Services have acknowledged that the various construction phases of WestConnex have had significant acoustic and visual impacts. Both agencies also recognised the negative traffic impacts attributable to construction.
- 4.129 The committee considers that the mitigation measures employed by the various government departments and agencies to date have not been adequate so as to mitigate the pervasive noise emanating from the construction sites.
- 4.130 It is disturbing to hear that residents affected by intense night works have only been provided with foam ear plugs and/or noise cancelling headphones with limited offers of alternative accommodation. The committee finds that the various mitigation measures offered by Roads and Maritime Services, are wholly inadequate to substantially reduce heavy construction noise. The committee is of the view that more needs to be done to reduce the noise impacts of construction on residents who are unable to relocate, seek alternative accommodation or change their daily routines.

Finding 14

That the various noise mitigation measures offered by Roads and Maritime Services are wholly inadequate to substantially reduce heavy construction noise.

- 4.131 It is recommended that the NSW Government monitors and publicly reports on its new noise minimisation measures for the WestConnex project to ensure that the improvements being sought are achieved.

Recommendation 18

That the NSW Government monitors and publicly reports on its new noise minimisation measures for the WestConnex project to ensure that the improvements being sought are achieved.

³⁷⁴ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 11 October 2018, p 3; Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 7 November 2018, p 41.

³⁷⁵ Evidence, Ms Camilla Drover, Executive Director, Motorways Divisions, Roads and Maritime Services, 7 November 2018, p 41.

- 4.132** The committee is, however, encouraged by the efforts of Roads and Maritime Services to improve mitigation measures as result of lessons learnt from the first two stages of WestConnex. The introduction of five new community positions as well as the new planning conditions for Stage 3 offer some reassurance that complaints are being taken on board and will be used to improve processes. Although, the committee accepts that the outcomes of these improvements will not be known for some time.

Chapter 5 Compulsory acquisition and other property impacts

This chapter examines compulsory property acquisition and other property impacts in relation to the WestConnex project. It begins with a general overview of the compulsory acquisition process. Next, the chapter discusses a number of serious concerns raised by inquiry participants who have experienced the compulsory property acquisition process for the WestConnex project. The chapter concludes by looking at concerns raised about property damage as a potential result of construction works.

Overview of the compulsory acquisition process

- 5.1** Under the *Land Acquisition (Just Terms Compensation) Act 1991*, the NSW Government can acquire privately owned land for public purposes.³⁷⁶
- 5.2** Most acquired land is completed through negotiation and agreement with the land owner.³⁷⁷ The acquiring authority sets a price based on a current market valuation assessed by accredited valuers.³⁷⁸
- 5.3** The negotiation period for acquisition by agreement is a minimum of six months, during which time land owners can seek expert advice.³⁷⁹
- 5.4** The acquiring authority is required to assign a personal manager who is the main contact throughout the acquisition.³⁸⁰ Executive Director, Motorways Division, Roads and Maritime Services, Ms Camilla Drover explained that a personal manager's role is not to be involved in the commercial negotiations of the property but rather to support the land owner through the acquisition and relocation process:

That personal manager is there to support that property owner. I know it is a very difficult process, but we do try to endeavour to make the process as smooth as we can. That person is there to support them with relocation, finding new properties, to understand what the process is, to understand what their rights are, what they are entitled to in terms of recompense for getting their own independent valuation, getting compensation for their legal fees et cetera.³⁸¹

³⁷⁶ Valuer General, Land acquisition, http://www.valuergeneral.nsw.gov.au/compulsory_acquisitions/land_acquisition.

³⁷⁷ Valuer General, Land acquisition, http://www.valuergeneral.nsw.gov.au/compulsory_acquisitions/land_acquisition.

³⁷⁸ Submission 124, NSW Government, p 13.

³⁷⁹ Submission 124, NSW Government, p 13.

³⁸⁰ Submission 124, NSW Government, p 13; Property Acquisition, Acquisition by agreement, <https://www.propertyacquisition.nsw.gov.au/acquisition-agreement>.

³⁸¹ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 43.

- 5.5** The acquiring authority will also cover all 'reasonable costs' in the negotiation period.³⁸² This may include 'legal costs and valuation fees, relocation expenses, eligible stamp duty costs, mortgage re-establishment costs, and any incidental costs they incur'.³⁸³ In addition, a maximum of \$78,381 is paid for disadvantage resulting from relocation. This sum is adjusted each year for inflation.³⁸⁴
- 5.6** In the event an acquiring authority and land owner cannot reach an agreement, the acquiring authority can compulsorily acquire the land. The compulsory acquisition process is instigated by the acquiring authority issuing a Proposed Acquisition Notice (PAN).³⁸⁵
- 5.7** The Valuer General is called upon at this stage to determine the compensation paid by the acquiring authority to the land owner. Valuation Services, a unit within Property NSW, 'will contact the land owner to explain the Valuer General's role, provide information and introduce their coordinator who is their contact point throughout the process'.³⁸⁶ The Valuer General does not act for the land owner nor the acquiring authority. It is their role to ensure 'land owners are fairly compensated when their land is compulsorily acquired' and to provide 'an independent, fair and transparent process for determining the amount of compensation'.³⁸⁷
- 5.8** There is a 90-day period from the issue of the PAN during which the original offer of the acquiring authority still stands, and negotiations can continue.³⁸⁸ If the acquiring authority and the land owner reach an agreement, the Valuer General withdraws from the matter.³⁸⁹
- 5.9** If there is still no agreement after the 90-day period between the acquiring authority and the land owner, the land is compulsorily acquired. The NSW Government publishes an acquisition notice in the NSW Government Gazette, at which point the offer from the acquiring authority is withdrawn and the Valuer General is required to provide a determination of compensation within 45 days.³⁹⁰
- 5.10** The land owner has an opportunity to complete a Section 39 Claim for Compensation within 60 days of the PAN which records the land owner's concerns. The Valuer General can take any matter raised in this form into consideration when making a determination for compensation.³⁹¹

³⁸² Valuer General, Land acquisition,
http://www.valuergeneral.nsw.gov.au/compulsory_acquisitions/land_acquisition.

³⁸³ Submission 124, NSW Government, p 13.

³⁸⁴ Submission 124, NSW Government, p 13.

³⁸⁵ Property Acquisition, Compulsory acquisition,
<https://www.propertyacquisition.nsw.gov.au/compulsory-acquisition#compulsory-property-acquisition>.

³⁸⁶ Submission 372, Valuer General, p 3.

³⁸⁷ Submission 372, Valuer General, p 1.

³⁸⁸ Property Acquisition, Compulsory acquisition,
<https://www.propertyacquisition.nsw.gov.au/compulsory-acquisition#compulsory-property-acquisition>.

³⁸⁹ Submission 372, Valuer General, p 3.

³⁹⁰ Submission 372, Valuer General, p 3.

³⁹¹ Property Acquisition, Compulsory acquisition,
<https://www.propertyacquisition.nsw.gov.au/compulsory-acquisition#compulsory-property-acquisition>.

- 5.11** The Valuer General delegates the determination of the compensation process to Valuation Services. Contract valuers are generally employed to undertake valuations for the determination of compensation. These valuations are then reviewed by senior valuers at Valuation Services.³⁹²
- 5.12** Compensation must be determined in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*, by considering the following matters:
- the market value of the land
 - any special value to the land owner
 - any loss attributable to severance
 - any loss attributable to disturbance
 - the disadvantage resulting from relocation
 - any increase or decrease in the value of any other land owned by the land owner 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.³⁹³
- 5.13** The valuer prepares a preliminary report to send to the acquiring authority and land owner. Both parties are given 15 days to review and provide any further feedback for consideration by the valuer.³⁹⁴ This report seeks to:
- show what has been considered by the valuer which may include other professional reports or advice
 - address the concerns recorded by the land owner on the section 39 claim for compensation form
 - address any other valuation issues raised by either the land owner or acquiring authority during the valuation process
 - resolve any reasonable doubt in relation to the determination of compensation in favour of the land owner
 - explain how the amount of compensation was determined.³⁹⁵
- 5.14** After feedback or concerns about the preliminary report are finalised, the Valuer General sends a final valuation report and determination of compensation to the land owner and the acquiring authority.³⁹⁶
- 5.15** If the land owner does not accept the determination, they have the right to lodge an appeal to the Land and Environment Court.³⁹⁷ The acquiring authority is generally responsible for legal

³⁹² Submission 372, Valuer General, pp 2-3.

³⁹³ Submission 372, Valuer General, p 2

³⁹⁴ Property Acquisition, Compulsory acquisition, <https://www.propertyacquisition.nsw.gov.au/compulsory-acquisition#compulsory-property-acquisition>. See also, Submission 372, Valuer General, pp 3-4.

³⁹⁵ Submission 372, Valuer General, pp 3-4.

³⁹⁶ Submission 372, Valuer General, pp 3-4.

³⁹⁷ Evidence, Mr Paul Goldsmith, Principal Valuer – Compensation, Valuation Services, Property NSW, 15 October 2018, p 50.

fees incurred.³⁹⁸ The acquiring authority is also required to pay 90 per cent of the Valuer General's determination before a judgement is made.³⁹⁹

5.16 In the event that an acquiring authority acquires property before it is needed, the landowner can rent the property from the acquiring authority at market rent.⁴⁰⁰ RMS advised that rent is assessed by a RMS valuer and discussed between RMS, the owner and their lawyers and valuers:

The rental is assessed by the Roads and Maritime valuer and is based on the market rental for such properties. If a former owners wishes to rent back the property after settlement with Roads and Maritime then the rental is discussed and agreed between Roads and Maritime, the owner and their team of lawyers and valuers prior to entering into a lease or licence agreement.⁴⁰¹

Previous reviews into property acquisition in New South Wales

5.17 Following reviews by Mr David Russell SC in 2014 and former NSW Customer Service Commissioner, Mr Michael Pratt in 2016, the NSW Government made changes to the *Land Acquisition (Just Terms Compensation) Act 1991* with the objective of making 'the property acquisition process fairer, more transparent and customer focussed'.⁴⁰² These changes were made in 2016 and included:

- the establishment of the Centre for Property Acquisition to provide ongoing support to acquiring authorities across the government
- the payment of land owners' costs in the acquisition process
- a minimum six month negotiation period between the acquiring authority and the land owner
- the assignment of a personal manager to each property acquisition case
- the oversight of acquisitions by the Minister for Finance, Services and Property.⁴⁰³

5.18 Desane is a property development business whose Rozelle property was identified for acquisition by RMS.⁴⁰⁴ Their property did not proceed to compulsory acquisition as they challenged the PAN in the Supreme Court (Desane's experience is outlined in further detail later in the chapter). Desane argued that despite the reviews, the property acquisition process still

³⁹⁸ Evidence, Mr Paul Goldsmith, Principal Valuer – Compensation, Valuation Services, Property NSW, 15 October 2018, p 55.

³⁹⁹ Evidence, Mr Ken Kanofski, Chief Executive, Roads and Maritime Services, 7 November 2018, p 40.

⁴⁰⁰ Evidence, Mr Kanofski, 7 November 2018, p 39.

⁴⁰¹ Answers to questions on notice, Roads and Maritime Services, 28 November 2018, p 7.

⁴⁰² Submission 124, NSW Government, p 13.

⁴⁰³ See, Submission 124, NSW Government p 13; Submission 383, Desane Properties, p 5; NSW Government, NSW Government response: Review of the NSW Land Acquisition (Just Terms) Compensation Act 1991 by David Russell SC and Housing Acquisition Review by Michael Pratt AM Customer Service Commissioner, <https://www.propertyacquisition.nsw.gov.au/nsw-government-response-russell-review-and-pratt-review>.

⁴⁰⁴ Submission 383, Desane Properties, p 7.

works in favour of the government. Desane also characterised its dealings with RMS as uncommercial and unprofessional:

[T]he system is still manifestly slanted heavily in favour of Government agencies.

The processes, approach, culture and attitudes Desane encountered in its dealings with the RMS can be best described as uncommercial and unprofessional...

In short, Desane believes the NSW Government has not been genuine in achieving meaningful and effective reform with the compulsory acquisition process following the recommendations made by various reviews into the system.⁴⁰⁵

5.19 Leichhardt Against WestConnex also observed that the government did not release the Russell Review for two years until 'forced to do so due to public pressure'.⁴⁰⁶

5.20 WestCONNex Action Group pointed to a media article which revealed that the then Finance Minister Dominic Perrottet wrote to the then Premier Mike Baird advising him not to act on the recommendations of the Russell Review as it 'would likely have adverse impacts including increased disputation, valuation complexity, additional costs and delay to the completion of infrastructure projects'.⁴⁰⁷

5.21 While Inner West Council Mayor Darcy Byrne acknowledged that some people have received fair compensation, he also criticised the government for failing to release the Russell Review. He noted that this has not provided stakeholders with a lot of confidence regarding the government's intentions:

I acknowledge that some people have got just and fair compensation, but the fact that the Government's own investigation into the compulsory system was kept secret and hidden for the first two years in which compulsory acquisitions were undertaken has not given us a lot of confidence that they were intent on treating people in a fair manner.⁴⁰⁸

5.22 Through the WestConnex project, a number of residents and business owners identified concerns regarding the government's property acquisition process. The next section considers these concerns.

Property acquisition for the WestConnex project

5.23 The NSW Government advised that 83 per cent of properties acquired for the WestConnex project were done so by mutual agreement.⁴⁰⁹

⁴⁰⁵ Submission 383, Desane Properties, p 13.

⁴⁰⁶ Submission 388b, Leichhardt Against WestConnex, p2.

⁴⁰⁷ Sean Nicholls, 'Baird government rejected WestConnex fairness advice due to project delay fears', 23 August 2018, cited in Submission 436, WAG, p 31.

⁴⁰⁸ Evidence, Cr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 56.

⁴⁰⁹ Submission 124, NSW Government, p 13.

- 5.24** Ms Drover noted that RMS has 'tried to develop a [road] solution which is largely underground', mitigating the number of properties necessary for acquisition.⁴¹⁰
- 5.25** The Valuer General has been involved in the WestConnex project since September 2014.⁴¹¹ According to Mr Paul Goldsmith, Principal Valuer – Compensation, Valuation Services, Property NSW, approximately 25 per cent of acquisitions for the WestConnex projects led to disputes.⁴¹²
- 5.26** Valuation Services commenced work on 597 matters following the issue of a PAN. Of those matters, 149 were issued with determinations of compensation, while the remainder no longer required a determination of compensation due to the land owner and RMS reaching an agreement.⁴¹³
- 5.27** Mr Ken Kanofski, Chief Executive of Roads and Maritime Services, acknowledged that compulsory acquisition is 'probably one of the most stressful things that can happen to a home owner' and that RMS seeks to manage the process 'as well, and as professionally, as it can be managed'.⁴¹⁴
- 5.28** However, many inquiry participants were critical of RMS' handling of acquisition for the WestConnex project. For example, WestCONnex Action Group claimed that the acquisition process was 'characterised by secrecy, lack of transparency, [and] inequitable and unjust treatment of individuals affected'.⁴¹⁵
- 5.29** Similarly, Independent Councillor for the Inner West, Pauline Lockie, argued that the acquisition process for the project has been in many cases 'brutal and deeply unfair'.⁴¹⁶
- 5.30** Leichhardt Against WestConnex asserted that despite the recent reforms, 'the compulsory acquisition process remains deeply flawed and that the Government proceeded with hundreds of acquisitions for WestConnex without properly reforming the process'.⁴¹⁷

Premature issuing of acquisition notices

- 5.31** RMS issued acquisition notices to a number of residents and business owners in St Peters and Rozelle before approvals for the WestConnex project were granted, causing stress and uncertainty to those affected.
- 5.32** In November 2014, RMS representatives delivered acquisition packs to 80 residents and business owners in St Peters advising them that their property may be acquired for the New M5. According to the WestCONnex Action Group, 'RMS was fully aware that not all the properties

⁴¹⁰ Evidence, Ms Drover, 7 November 2018, p 43.

⁴¹¹ Submission 372, Valuer General, p 4.

⁴¹² Evidence, Mr Goldsmith, 15 October 2018, p 49.

⁴¹³ Submission 372, Valuer General, p 5. See also, Submission 372, Valuer General, Tab C, p 2.

⁴¹⁴ Evidence, Mr Kanofski, 7 November 2018, p 38.

⁴¹⁵ Submission 436, WAG, p 26.

⁴¹⁶ Submission 429, Cr Pauline Lockie, p 43.

⁴¹⁷ Submission 388b, Leichhardt Against WestConnex, p 2.

notified would need to be acquired for the project'.⁴¹⁸ The WestCONnex Action Group noted that in January 2015, 41 out of the 80 properties initially identified for acquisition were issued with PANs.⁴¹⁹

5.33 As one of these 80 residents and business owners, Cr Lockie shared her experience:

In our case, our compulsory acquisition process began in November 2014. Yet it was not until 21 April 2016 that the relevant stage of WestConnex, the new M5, received planning approval. This meant that instead of negotiations starting when the project was approved, our home was instead gazetted by the government the very next day – 22 April 2016 – meaning we lost legal ownership of our home almost immediately.⁴²⁰

5.34 Cr Lockie was also critical of the representatives who had advised her of the possible acquisition as they appeared to know little about the process:

It should go without saying that a government body should have a high enough level of professionalism and responsibility to ensure that only experienced, caring and knowledgeable staff are chosen to deliver news about compulsory acquisitions to residents, given the devastating and potentially far-reaching emotional, social and financial impacts such news has on its recipients. That the NSW government chose to use young, inexperienced, and unknowledgeable people to deliver it instead was the first of many instances where it failed to uphold its duty of care to residents.⁴²¹

5.35 A number of properties on Victoria Road in Rozelle were also earmarked for acquisition in July 2016 for the Iron Cove Link, with approval for the project granted two years later, in April 2018.⁴²²

5.36 A bottle shop on the same street was also acquired, and has since remained vacant. NW Rozelle Residents questioned why the business could not continue to occupy the premise when construction was planned for 2019.⁴²³

5.37 NW Rozelle Residents claimed that 'no effort' by government was made to contact residents about the possibility of their homes being acquired. Instead these residents found out about the possible acquisition through media reports.⁴²⁴

Inadequate communication

5.38 Many residents expressed frustration with the lack of and inconsistent communication from relevant authorities, particularly in relation to the process of compulsory acquisition and their rights during the process.

⁴¹⁸ Submission 436, WAG, p 27.

⁴¹⁹ Submission 436, WAG, p 27.

⁴²⁰ Submission 429, Cr Pauline Lockie, p 50.

⁴²¹ Submission 429, Cr Pauline Lockie, p 45.

⁴²² Submission 388b, Leichhardt Against WestConnex, p 6.

⁴²³ Submission 376, NW Rozelle Residents, p 4.

⁴²⁴ Submission 376, NW Rozelle Residents, p 4.

- 5.39** Haberfield resident, Mr Graeme McKay and his partner Tracy, organised a resident meeting in February 2014 with a solicitor who specialises in property acquisition. Mr McKay noted some issues he learned about from the meeting. These included:
- residents asked to sign acquisition letters on the spot
 - residents told that they did not need legal representation as it would lengthen the process
 - residents from non-English speaking backgrounds who struggled to understand the process
 - residents unaware that the government had to pay for reasonable legal expenses
 - a resident who had received three letters; the first advising that RMS may acquire her property, the second advising that RMS would not acquire her property, and the third advising that RMS would be acquiring her property
 - a resident whose property had been compulsorily acquired and had not been told that she was entitled to relocation expenses.⁴²⁵
- 5.40** WestCONNex Action Group advised that a St Peters resident from a non-English speaking background, was arrested when they resisted eviction from their home after it had been compulsorily acquired. WestCONNex Action Group explained that this resident did not understand the process, and that RMS had not provided them with translation or counselling services.⁴²⁶
- 5.41** Dr Jacinta Green is another St Peters resident who was advised in 2014 that her property would be acquired. After four years of uncertainty, she was informed in writing that her property would no longer be required. Her story in the case study below highlights the conflicting information she received about her property from RMS and WestConnex.

Case study: Dr Jacinta Green and Mr Gregory Davis⁴²⁷

Jacinta and Gregory purchased their St Peters home in 2000. At the time they were aware of the road reservation but were assured that their house would not be within an acquisition zone. Nine years later, Jacinta and Gregory sought to renovate their house. They took a cautious approach and spoke to the Roads Traffic Authority (now known as RMS) first about the possibility of the road reservation being activated. Upon their advice, Jacinta and Gregory began renovations.

In 2014, Jacinta and Gregory received a letter from WestConnex advising that their house would be compulsorily acquired for the WestConnex project. They were also given a copy of the road reservation map which was different to what they had been supplied with by the Roads Traffic Authority in the past. They say they would not have purchased the home if they were given this copy of the road reservation map.

⁴²⁵ Submission 176, Mr Graeme McKay, pp 1-2.

⁴²⁶ Submission 436, WAG, p 30.

⁴²⁷ Submission 272, Dr Jacinta Green, pp 1-7.

Jacinta and Gregory were advised by WestConnex staff that they should stop renovations as the house was to be demolished anyway. They were later told that they never received this advice.

They were subsequently told that if they did not finish their renovations and obtained an occupation certificate, they would only be eligible for land value and any money spent on renovation would not be compensated if their home were to be acquired.

In 2015, Jacinta and Gregory learned that their house would not be required for acquisition. However, for three years, while WestConnex and RMS were happy to confirm that information verbally, they refused to provide that information in writing.

It was not until February 2018 that Jacinta and Gregory finally received written confirmation that their house would not be required for the project. For reasons unknown to them, the letter they received was backdated to February 2017.

While they were reassured that once the project was over the road reservation would be lifted, Jacinta and Gregory have since received notice that their house will be rezoned into an infrastructure zone, which will devalue their home by hundreds of thousands of dollars.

- 5.42** Ms Tamara Regan, a St Peters homeowner, advised that she received an acquisition notice for her property for the WestConnex project on Melbourne Cup day 2014. She noted that her family lived in uncertainty not knowing when the acquisition would occur. In response to questioning she advised that after two years the acquirers then said: "We no longer want it. You will be pretty much next to it."⁴²⁸
- 5.43** From a business perspective, Desane also raised concerns with RMS' communication in regards to the acquisition of their property. Desane expressed the view that the personal manager assigned to their acquisition matter sought to protect the interests of the government rather than advocate 'on behalf of the dispossessed land owner subject to a compulsory acquisition process'.⁴²⁹
- 5.44** According to Desane, their personal manager was a 'contracted, extremely well remunerated, external communications consultant' who had no experience in compulsory acquisitions, and 'stuck to pre-drafted "scripts" and added nothing to the process of genuine negotiations'.⁴³⁰
- 5.45** Desane also learnt that 'RMS utilised a risk assessment system as part of its acquisition management'.⁴³¹ Desane was categorised as a high-risk stakeholder due to their access to media and political representatives, which they claim meant that they were 'to be provided with limited

⁴²⁸ Evidence, Ms Tamara Regan, 15 October 2018, p 91.

⁴²⁹ Submission 383, Desane Properties, p 4.

⁴³⁰ Submission 383, Desane Properties, p 4.

⁴³¹ Submission 383, Desane Properties, p 5.

information, by a specified and limited group of people, who followed carefully scripted statements in meetings, in order to minimise any media or political fall-out'.⁴³²

Undervaluing properties and claims of bullying

- 5.46** A number of inquiry participants claimed that RMS offered prices significantly lower than market value, and bullied residents into accepting these prices. In addition, inquiry participants noted that residents have had to fight for their entitlements.
- 5.47** WestCONnex Action Group argued that purchase prices offered to residents were significantly below market value and insufficient to repurchase in the same suburb.⁴³³ Rozelle Against WestConnex echoed this view stating that there are residents who have been paid 'as little as 60% of the market value of their homes', and have subsequently had to relocate to a different area as they could not afford to repurchase in their suburb.⁴³⁴
- 5.48** WestCONnex Action Group argued that this was happening as a result of 'political pressure to progress the project as quickly as possible and to save costs in property acquisitions for the project, and a systemic bullying culture within RMS'.⁴³⁵
- 5.49** Former St Peters resident, Ms Shelley Jensen was unable to repurchase a house in St Peters after her home was compulsorily acquired. Ms Jensen felt intimidated and pressured by RMS as well as her lawyers. The following case study details her experience.

Case study: Ms Shelley Jensen⁴³⁶

Shelley is a former St Peters resident whose property was acquired in 2016 by RMS for the WestConnex project. She described the acquisition process as brutal, costly and extremely adversarial.

She was initially offered \$825,000, based on a valuation from the previous year, when the median house price was \$1.25 million. After negotiations, Shelley was eventually offered \$960,000.

In September 2016, Shelley attended a meeting with RMS. Thirteen people were present at the meeting, and she was not introduced to any of them. The meeting caused further stress to Shelley when she was told that she had 60 days to find another home.

When she was due to move, Shelley received a call from an individual associated with WestConnex who threatened that she would be charged a cleaning fee if the house wasn't clean when she moved, despite the fact that her house would be demolished. Shelley felt frightened and distressed, and described the phone call as menacing and nasty.

⁴³² Submission 383, Desane Properties, p 5.

⁴³³ Submission 436, WAG, p 28.

⁴³⁴ Submission 387, Rozelle Against WestConnex, p 2.

⁴³⁵ Submission 436, WAG, p 28.

⁴³⁶ Submission 22, Ms Michelle Jensen, pp 1-3.

In negotiations with RMS, when Shelley was offered \$960,000, her lawyer from Slater and Gordon pressured her to take the offer even though she was extremely distressed. Shelley felt that it was unclear whose interests Slater and Gordon were protecting.

Shelley has since moved to the Central Coast as she cannot afford to purchase a home in St Peters. The compulsory acquisition process has had a severe emotional, social and financial impact on Shelley.

- 5.50** WestCONnex Action Group suggested that the bullying tactics employed by RMS staff meant that 'only those who were sufficiently educated or able, and had the financial means to take RMS to Court ... actually received close to market value'.⁴³⁷
- 5.51** Mr Goldsmith from Valuation Services, Property NSW advised that 43 of their 149 determinations of compensation went to the Land and Environment Court. Most matters were settled through conferences or negotiation with only five matters heard before a judge. All five received more compensation than originally determined by the Valuer General with two receiving a 20 per cent increase.⁴³⁸
- 5.52** Former St Peters resident, Mr Richard Capuano took his matter to the Land and Environment Court. Mr Capuano echoed the views of Ms Jensen, as outlined in the below case study.

Case study: Mr Richard Capuano⁴³⁹

Richard owned a four bedroom, two-storey terrace on Campbell St in St Peters. He purchased the property in 1998. At the time, the Road Traffic Authority told him there were no plans in the next 10-15 years to acquire the property and that he would be paid market value if it was.

In November 2014, Richard received notification that his property would be acquired. He subsequently attended a meeting with representatives from WestConnex and RMS where he and his neighbours were assured that they would be 'more than adequately compensated'. Richard felt confident that he could repurchase a home in St Peters.

Richard had begun renovating his home when he was advised by an RMS valuer in March 2015 to cancel the renovation as it would have no impact on the valuation. In April 2015, the valuer told Richard that she was under pressure from RMS to submit her valuation. Richard invited her to inspect the property but she instead conducted a 'kerbside' valuation. She was shocked to learn that the house was a four bedroom two-storey terrace with new ceilings and rosettes, polished floorboards and heritage features. She had thought it was a two bedroom single-storey semi. The RMS valuer assured Richard that she would adjust the valuation to take this into consideration. Richard claims this did not happen.

Richard received an initial offer from RMS for \$850,000. He was shocked that his property was compared to inferior properties and that it did not reflect market value. Richard and his neighbours

⁴³⁷ Submission 436, WAG, p 29.

⁴³⁸ Evidence, Mr Goldsmith, 15 October 2018, p 51.

⁴³⁹ Submission 430, Mr Richard Capuano, pp 11-16; Supplementary submission 430b, Mr Richard Capuano, p 1.

found that a three bedroom property on the same street had been acquired for \$2.4 million, which they felt better reflected market value. RMS did not negotiate with Richard who then appealed to the Valuer General.

In June 2016, the Valuer General offered \$900,000 to Richard. He claimed that the Valuer General was biased towards the RMS.

Richard felt that he had no choice but to appeal the Valuer General's determination in the Land and Environment Court. Richard's home was gazetted on 22 April 2016 after which he paid \$655 per week in rent until he moved out. In August 2016, he and his neighbours were assigned customer service representatives. Richard felt bullied by these representatives as they put considerable pressure on residents to vacate according to RMS' schedule. There was also an underlying threat of police intervention if they did not comply. During this time, Richard's health deteriorated. He was diagnosed with anxiety, depression, insomnia as well as an autoimmune disease.

In February 2017, Richard attended a Land and Environment Court Conciliation Conference where he learned that RMS would only offer \$825,000. The offer was eventually increased to \$900,000, in line with the Valuer General's determination. He then proceeded to a full court hearing. RMS refused a hearing in June/July on the basis of staff availability. The hearing was then scheduled for September, nearly three years since the acquisition process began. Richard felt that this was unfair.

Richard waited another six months for the court's judgement. When he was offered \$1 million, Richard was devastated and angry, and 'desperately wanted to appeal the judgement'. However, he was advised that he would be tied up in court.

Richard is currently renting and will be unable to repurchase in St Peters. As of November 2018, Richard is waiting to be reimbursed legal and associated costs. He also noted that one of his neighbours has been waiting for over a year and a half.

- 5.53** Cr Lockie accused the government of using 'aggressive tactics to push people' to accept offers below what they are 'legally entitled to receive'. She described such tactics as a 'systemic strategy to make people fight for their legal entitlements'.⁴⁴⁰ She also argued that in many cases, the financial and emotional costs of taking legal action are too high, causing many people to relinquish their rights.⁴⁴¹
- 5.54** For Cr Lockie and her family, it took close to two and a half years of negotiations and legal action to achieve their final settlement. She was initially offered approximately \$1.5 million by RMS, while the Land and Environment Court awarded her \$1.85 million.⁴⁴² The process had an emotional and physical toll on Cr Lockie and her partner.⁴⁴³

⁴⁴⁰ Submission 429, Cr Pauline Lockie, p 46.

⁴⁴¹ Submission 429, Cr Pauline Lockie, p 47.

⁴⁴² Submission 429, Cr Pauline Lockie, p 48.

⁴⁴³ Submission 429, Cr Pauline Lockie, p 50.

- 5.55** Cr Lockie recommended that compulsory acquisitions completed for the WestConnex project be investigated:

The NSW public ... deserve to have all the compulsory acquisitions that took place for WestConnex fully investigated, so it can be determined if they took place legally, and if residents received the just compensation to which they were legally entitled. If the project has failed on either or both of these counts, those residents deserve to be compensated accordingly, regardless of any releases they may have signed to date.⁴⁴⁴

- 5.56** In response to questioning that RMS had not paid a property owner within the correct timeframe, RMS advised that they had made payment on time for all property acquisitions acquired compulsorily or by mutual agreement:

Roads and Maritime made payment on time for all compulsory acquisitions (on receipt of necessary settlement documents endorsed by all relevant parties, including mortgagees, for example, and details of the bank account into which to pay).

Where acquisitions are settled by agreement and legal binding contracts have been exchanged, then Roads and Maritime and the owners are both required to settle the contract on the terms and conditions therein.⁴⁴⁵

- 5.57** In response to claims that RMS is deliberately providing offers below market value, Mr Kanofski advised that all property valuations are completed independently by licensed real estate valuers.⁴⁴⁶ Ms Drover confirmed that the property's value is based on the specific property itself rather than a general guideline based on the suburb or street.⁴⁴⁷

- 5.58** In his capacity as an academic and valuer, Professor John Sheehan Chairman, Desane Group Holdings Limited,⁴⁴⁸ advocated for the property acquisition system in Tasmania, where the acquiring authority does not provide an initial valuation. Instead, the Valuer General steps in from the outset and provides an 'assessment of compensation upfront'. According to Professor Sheehan, this 'removes one chance of someone not being fully appraised'.⁴⁴⁹

- 5.59** When the Valuer General is involved in an acquisition, Mr Goldsmith explained that Valuation Services, as stipulated by the *Land Acquisition (Just Terms Compensation) Act 1991*, must only determine market value on evidence that is not directly impacted by the project instigating the acquisition:

We can only ever determine market value and I accept there is a broad opinion about what constitutes market value. Our valuers go through a process. They look at comparable market evidence and then they determine market value from that ... we set

⁴⁴⁴ Submission 429, Cr Pauline Lockie, p 51.

⁴⁴⁵ Answers to questions on notice, Roads and Maritime Services, 28 November 2018, p 9.

⁴⁴⁶ Evidence, Mr Kanofski, 7 November 2018, p 44.

⁴⁴⁷ Evidence, Ms Drover, 7 November 2018, p 44.

⁴⁴⁸ Professor Sheehan appeared before the committee as Chairman of Desane. However, he stipulated that these comments were made in his capacity as an academic and valuer and may not be the views of the company. See, Evidence, Professor John Sheehan, Chairman, Desane Group Holdings Limited, 15 October 2018, p 45.

⁴⁴⁹ Evidence, Professor John Sheehan, Chairman, Desane Group Holdings Limited, 15 October 2018, p 45.

aside any consequences of the acquisitions. We would look at market evidence that is not actually impacted directly by an acquisition project so we can achieve proper market value.⁴⁵⁰

- 5.60** In the event that an area has been impacted by a property acquisition project, Mr Goldsmith indicated that valuers look to comparable evidence within the same suburb to determine market value and ensure there is not a decrease:

We would look at evidence as far removed as reasonable from that particular acquisition. If you think about Haberfield, there was a block of many homes and apartments that were acquired. We would still try to look at evidence within that suburb. We would not want to be too far removed because they have to be comparable.⁴⁵¹

- 5.61** Mr Goldsmith also explained that valuers can only determine the market value of a specific property. The consequence of this could mean that owners of properties on the lower end of the market, such as those on a busy road, might struggle to relocate within the same area.⁴⁵²

- 5.62** In response to questioning about the presence of security guards while informing residents that their home will be compulsorily acquired, RMS advised that RMS and Sydney Motorway Corporation staff were accompanied by security in June 2016 during doorknocking. RMS explained that in this instance, they did not have the time to perform the usual safety assessments as there had been a media leak that prompted them to visit residents as soon as possible:

Roads and Maritime and Sydney Motorway Corporation (SMC) staff were accompanied by security guards during doorknocking in June 2016. Due to a reported media leak, Roads and Maritime and SMC staff carried out the doorknock as soon as practicable to inform property owners their homes were required for the M4-M5 Link project. This did not leave time for Roads and Maritime and SMC staff to carry out the safety assessments and Safe Work Method Statement processes usually implemented before this type of activity.⁴⁵³

- 5.63** RMS further explained that past experiences of doorknocks had resulted in protestor activity and threatening behaviour from some property owners. Security guards were employed in the event of 'media being present and potentially worsening an already highly distressing event for home owners', and 'potential protestor activity'.⁴⁵⁴

- 5.64** RMS also advised that the security kept 'an appropriate distance' and 'did not speak to any affected homeowners'.⁴⁵⁵

- 5.65** In response to complaints about RMS staff during the acquisition process, Mr Kanofski noted that complaints against 'any RMS employee at any time is taken incredibly seriously'. He further explained that depending on the nature of the complaint, RMS would investigate the complaint:

⁴⁵⁰ Evidence, Mr Goldsmith, 15 October 2018, p 54.

⁴⁵¹ Evidence, Mr Goldsmith, 15 October 2018, p 54.

⁴⁵² Evidence, Mr Goldsmith, 15 October 2018, p 54.

⁴⁵³ Answers to questions on notice, Roads and Maritime Services, 28 November 2018, p 6.

⁴⁵⁴ Answers to questions on notice, Roads and Maritime Services, 28 November 2018, p 6.

⁴⁵⁵ Answers to questions on notice, Roads and Maritime Services, 28 November 2018, p 6.

'If we think it is either (a) serious enough or (b) it has not been resolved, we may well independently investigate it'.⁴⁵⁶

Conflicts of interest and lack of independence

- 5.66** Inquiry participants raised concerns about perceived conflicts of interest. Stakeholders also suggested that valuers operating on behalf of the Valuer General lacked independence from RMS.
- 5.67** Cr Lockie questioned the independence of the Valuer General when their valuation in April 2016 came at \$118,000 less than the amount awarded at the Land and Environment Court, and \$5,000 less than RMS' offer at the time. Cr Lockie argued that the Valuer General's process is 'biased so heavily in favour of government agencies over ordinary residents'.⁴⁵⁷ She further suggested that this was 'directly related' to the Valuer General delegating property valuation to private operators rather than keeping the process in the public service.⁴⁵⁸
- 5.68** Mr Capuano raised similar concerns, arguing that the valuer contracted by the Valuer General to assess his home 'was/is also employed by RMS valuers'.⁴⁵⁹
- 5.69** However, according to Mr Goldsmith, all contracted valuers are independent. He explained that the 15 valuation firms that make up the members of the valuation services panel were required to sign a conflict of interest form:

[T]hey have to sign a contract and one of the requirements of that contract is to sign a code of conduct and a conflict of interest form. On top of that, whenever we ask for a request for quote [RFQ], part of that RFQ process is to declare a conflict of interest ... They are not to advocate for anyone and are to act independently at all times. It is a witness guideline in accordance with the Land and Environment Court. They are our processes that we undertake to ensure independence.⁴⁶⁰

- 5.70** In addition, Mr Goldsmith highlighted that all determinations of compensation are signed off by a member of the Valuation Services compensation team, and that if they had any doubt about a contractor, Valuation Services would not engage them in the first place.⁴⁶¹
- 5.71** When questioned about the potential conflict of interest raised by Mr Capuano, Mr Goldsmith advised that Valuation Services reviewed the concern raised and found that there was no conflict of interest. Mr Goldsmith explained that: the valuer in question was employed by RMS' valuer at one point, but was not working for RMS' valuer while contracted for the Valuer General:

We reviewed that. We look very carefully at conflict of interest. We did review that circumstance and we decided it was not a conflict of interest ... He was employed at Lunney Watt at one point in his career. Then he left Lunney Watt and started his own

⁴⁵⁶ Evidence, Mr Kanofski, 7 November 2018, p 38.

⁴⁵⁷ Submission 429, Cr Pauline Lockie, p 48.

⁴⁵⁸ Submission 429, Cr Pauline Lockie, p 48.

⁴⁵⁹ Submission 430, Mr Richard Capuano, p 4.

⁴⁶⁰ Evidence, Mr Goldsmith, 15 October 2018, p 52.

⁴⁶¹ Evidence, Mr Goldsmith, 15 October 2018, p 52.

company. That company was then part of our panel and they went through the process of adhering to conflict of interest and code of conduct.⁴⁶²

- 5.72** A number of inquiry participants from St Peters who engaged Slater and Gordon to assist them in the compulsory acquisition process argued that the lawyers did not act in their clients' best interests, but rather in the interests of RMS.⁴⁶³ For example, one inquiry participant said that Slater and Gordon 'were always making justifications for the decisions of the valuers and the RMS, and didn't seem to be working in my best interest'.⁴⁶⁴ Similarly, Mr Capuano stated that he and his neighbour 'became resentful of the RMS and very suspicious of' Slater and Gordon's lawyer working on their matters.⁴⁶⁵

Poor planning and management

- 5.73** The committee heard evidence that the property acquisition experience for the WestConnex project reflected poorly on RMS' planning and management of the acquisition process. In particular, inquiry participants raised concerns about the Darley Road site in Leichhardt and the Desane Properties head office in Rozelle.

7 Darley Road, Leichhardt

- 5.74** RMS' proposed acquisition of 7 Darley Road, Leichhardt, owned by the government and leased to Tdrahciel Pty Ltd, has been the subject of controversy.⁴⁶⁶
- 5.75** Leichhardt Against WestConnex argued that the acquisition of the Darley Road site, which had been derelict for years, was mishandled by RMS and Sydney Motorway Corporation:

[T]he behaviour of both the RMS and SMC towards the community and the Council with respect to the Darley Road Site was negligent, at times deceptive, and that their handling of this proposed acquisition has all the hallmarks of financial maladministration. The result of this mishandling by the Government is wasted taxpayer funds, lost time and resources, stress on local businesses and residents ... and represents the very worst example of community consultation.⁴⁶⁷

- 5.76** In August 2016, RMS advised Tdrahciel that the land would be acquired for the WestConnex project. GIPA information requested by Leichhardt Against WestConnex revealed that prior to this notification, Transport for NSW extended the lease on the land for 20 years, and Tdrahciel sub-leased the site to Dan Murphy's. Between September and October 2016, renovations were underway for the bottle shop's opening in December 2016. In November 2016, RMS issued

⁴⁶² Evidence, Mr Goldsmith, 15 October 2018, p 52.

⁴⁶³ See, Submission 427, Name suppressed, p 1; Submission 430, Mr Richard Capuano, pp 3-4; Submission 431, Name suppressed, p 3.

⁴⁶⁴ Submission 431, Name suppressed, p3.

⁴⁶⁵ Submission 430, Mr Richard Capuano, p 3.

⁴⁶⁶ See, Submission 388, Leichhardt Against WestConnex, pp 2-4; Submission 388a, Leichhardt Against WestConnex, p 3; Submission 436, WAG, pp 32-33.

⁴⁶⁷ Submission 388, Leichhardt Against WestConnex, p 4.

PANs for the acquisition of the site. In June 2018, Sydney Motorway Corporation advised that the Darley Road site would no longer be required for the project.⁴⁶⁸

5.77 The compensation to be paid for the site was reported to be up to \$50 million, significantly more than compensation for a derelict site.⁴⁶⁹

5.78 Leichhardt Against WestConnex questioned why RMS considered acquiring the site, and whether this was in the best interests of taxpayers:

The amount of compensation for a lease of a derelict Government-owned site without a business would have been minimal. The behaviour of the Government drastically increased the taxpayer's exposure to include business extinguishment and/or business relocation costs as well as loss of profits.⁴⁷⁰

5.79 In addition to the financial impact on taxpayers, Leichhardt Against WestConnex raised a number of concerns in relation to the site, including:

- misinformation for two years from Sydney Motorway Corporation and RMS that the M4-M5 Link could not be built without the Darley Road site, when in fact in 2018 they decided that it was no longer needed
- RMS repeatedly ignoring community and Council objections about traffic and safety in relation to the suitability of the Darley Road site as a dive site
- RMS and Sydney Motorway Corporation 'deceiving' the community by holding community consultations when decisions had already been made about the site, including the issuing of the PANs
- claims of conflicts of interest between RMS and a paid lobbyist for Tdrahhiel Pty Ltd.⁴⁷¹

5.80 Mr Peter Jones, Former Project Director at Sydney Motorway Corporation advised that the reason the Darley Road site was no longer needed was that the successful tenderer found an alternative solution that did not involve the site:

[A]t the end of a competitive design and construction journey we had an internationally recognised global contractor who was able to come in and say, "Actually we think there is another way of delivering this. We have listened to the community concerns. We have an alternate approach." That manifested in the Darley Road site not forming ultimately part of the project.⁴⁷²

⁴⁶⁸ Submission 388, Leichhardt Against WestConnex, pp 3-4; Submission 436, WAG, p 33.

⁴⁶⁹ Submission 388, Leichhardt Against WestConnex, p 7; Submission 388b, Leichhardt Against WestConnex, p 4.

⁴⁷⁰ Submission 388, Leichhardt Against WestConnex, p 7; Submission 388b, Leichhardt Against WestConnex, p 4.

⁴⁷¹ Submission 388, Leichhardt Against WestConnex, p 10.

⁴⁷² Evidence, Mr Peter Jones, Former Project Director, Stage 3, Sydney Motorway Corporation, 15 October 2018, p

Desane Properties, Rozelle

- 5.81** Desane also raised concerns in relation to the conduct of RMS in the proposed acquisition of their property in Rozelle. Desane was in the middle of a planning proposal with the Department of Planning and Environment when their property was earmarked for acquisition by RMS. According to Desane two issues emerged:
- RMS undervalued Desane's property
 - RMS was unclear as to why they needed the property.⁴⁷³
- 5.82** According to media reports RMS initially offered \$18.4 million to Desane.⁴⁷⁴ Professor Sheehan, argued that this was an undervaluation of their property when compared to 'independent valuations done by two senior valuers in the profession who valued the property well in excess of that'.⁴⁷⁵ Professor Sheehan argued that the valuer for RMS valued the property based on industrial use rather than a mixed-use development as per their proposal to the Department of Planning and Environment in June 2015.⁴⁷⁶
- 5.83** Desane contended that 'RMS intended to directly circumvent the Rozelle Planning Proposals in order to minimise the risk of large compensation payments to the owners'.⁴⁷⁷
- 5.84** In May 2017, RMS issued a PAN to Desane.⁴⁷⁸ In June 2017, Desane met with RMS and Sydney Motorway Corporation to discuss an alternative arrangement to the acquisition of the property. Desane did not understand why RMS needed their property when the surface was not going to be affected by underground tunnelling. Instead, they proposed that they lease their property to Sydney Motorway Corporation for use as a construction depot or head office.⁴⁷⁹ According to Desane, RMS provided the company with 'varying and inconsistent' information about the way in which they would need the site.⁴⁸⁰
- 5.85** Desane subsequently took legal action against RMS in the Supreme Court to challenge the legality of their PAN. They argued that the PAN was invalid because:
- it failed to comply with the requirements of the *Land Acquisition (Just Terms Compensation) Act 1991*

⁴⁷³ Submission 383, Desane Properties, pp 7-8; Evidence, Professor John Sheehan, Chairman, Desane Group Holdings Limited, 15 October 2018, p 39.

⁴⁷⁴ See for example, Inner West Courier Inner City, 'Businesses at Rozelle take on 'mean and tricky' bureaucrats over land grabs as part of the yet to be approved Stage 3 of WestConnex', *The Daily Telegraph*, 16 August 2017, <https://www.dailytelegraph.com.au/newslocal/inner-west/businesses-at-rozelle-take-on-mean-and-tricky-bureaucrats-over-land-grabs-as-part-of-the-yet-to-be-approved-stage-3-of-westconnex/news-story/2d208087e141834d539fd0198a892542>.

⁴⁷⁵ Evidence, Professor John Sheehan, 15 October 2018, p 39.

⁴⁷⁶ Evidence, Professor John Sheehan, 15 October 2018, p 39.

⁴⁷⁷ Submission 383, Desane Properties, p 8.

⁴⁷⁸ Submission 383, Desane Properties, p 31.

⁴⁷⁹ Submission 383, Desane Properties, p 8; Evidence, Professor John Sheehan, Chairman, Desane Group Holdings Limited, 15 October 2018, p 39 and 46.

⁴⁸⁰ Submission 383, Desane Properties, p 36.

- RMS failed to provide a sufficiently formed proposal for acquisition in accordance with the *Roads Act 1993*
 - if there was a sufficiently formed proposal, RMS had an improper purpose in issuing the PAN for open space which is not a purpose under the *Roads Act 1993*.⁴⁸¹
- 5.86** The Supreme Court found that the PAN was invalid as it was issued for an improper purpose.⁴⁸²
- 5.87** Desane advised that RMS appealed to the Court of Appeal and succeeded. Desane explained that RMS argued that:
- it is not a necessary pre-condition under the *Land Acquisition (Just Terms Compensation) Act 1991* to issue a PAN
 - the PAN issued to Desane was not motivated by an improper purpose as the site 'might be needed' as a construction site for WestConnex
 - an organisation such as RMS has the power to 'land bank'
 - a PAN informs landowners of the acquiring authority's intention to acquire their land, and that it should not be required to state the public purpose or identify the relevant legislation under which the acquisition is to occur.⁴⁸³
- 5.88** Professor Sheehan explained that for state significant infrastructure projects such as WestConnex, it becomes 'very easy for organisations to acquire more land legitimately and legally'.⁴⁸⁴
- 5.89** After the Court of Appeal ruling, Desane chose to sell their property to RMS in a private sale as they did not want further legal actions.⁴⁸⁵ The sale was finalised in November 2018 for \$78 million.⁴⁸⁶
- 5.90** Desane recommended that 'acquisition procedures should not be commenced by an acquiring authority until such time as a project has been given planning approval by the relevant planning authority'.⁴⁸⁷
- 5.91** Desane argued that in their case, had the planning approval been granted before the commencement of the compulsory acquisition process, they would have had a better understanding of why the RMS needed the property for the project.⁴⁸⁸

⁴⁸¹ Submission 383, Desane Properties, p 31.

⁴⁸² Submission 383, Desane Properties, p 8.

⁴⁸³ Submission 383, Desane Properties, pp 8-9.

⁴⁸⁴ Evidence, Professor John Sheehan, 15 October 2018, pp 41-42.

⁴⁸⁵ Evidence, Professor John Sheehan, 15 October 2018, pp 41-42.

⁴⁸⁶ Su-Lin Tan, 'Desane's compulsory acquisition battle ends but questions loom on future deals', *Australian Financial Review*, 5 November 2018, <https://www.afr.com/real-estate/desanes-compulsory-acquisition-battle-ends-but-questions-loom-on-future-deals-20181105-h17iv4>.

⁴⁸⁷ Submission 383, Desane Properties, p 11.

⁴⁸⁸ Submission 383, Desane Properties, p 11.

Committee comment

- 5.92** The committee acknowledges that compulsory acquisition is a sensitive and stressful circumstance for any property owner. It goes without saying that any compulsory acquisition must be dealt with in a careful, considered and sensitive manner by the government. The committee is therefore concerned to receive evidence that suggests that RMS has not always handled the acquisition process for the WestConnex project with an appropriate level of care.
- 5.93** While it is encouraging that the recommendations from the Russell and Pratt reviews were implemented, the committee is disappointed that the government did not release these reviews in spite of wide public calls. Despite the reforms that were finally implemented, it is clear that many property owners have been left highly distressed as a result of the compulsory acquisition process for the WestConnex project.
- 5.94** The evidence suggested that the issuing of proposed acquisition notices before planning approvals were granted for the project caused a lot of uncertainty and stress for many property owners. Therefore, the committee recommends that the NSW Government ensure that acquiring authorities only issue Proposed Acquisition Notices when they can clearly demonstrate a need to acquire the property.

Recommendation 19

That the NSW Government ensure that acquiring authorities only issue Proposed Acquisition Notices when they can clearly demonstrate a need to acquire the property.

- 5.95** Not only is property acquisition a stressful experience for property owners, it is also a rare and complex process. It is understandable that a normal property owner would have little need to know about the complexities of the process. It is the committee's view that acquiring authorities such as RMS should take extra care in conveying information to property owners, not only about the acquisition process but also about property owners' rights during this process. Staff relaying such information to residents should be sufficiently trained and experienced to do so.
- 5.96** The committee can understand the frustration of residents who have been verbally informed that their homes will no longer be acquired but have had to wait, in some instances for years, to have this information confirmed in writing. Where critical information is offered verbally, this should be followed up in writing. Furthermore, translation and counselling services should be provided to residents when needed. The committee recommends that the NSW Government ensure that for any significant project the acquiring authority *must* provide clear and consistent information about the compulsory acquisition process by:
- ensuring relevant staff are sufficiently trained and experienced
 - confirming key information in writing in a timely manner
 - providing counselling and translation services where necessary.

Recommendation 20

That the NSW Government ensure that for any significant project the acquiring authority *must* provide clear and consistent information about the compulsory acquisition process by:

- ensuring relevant staff are sufficiently trained and experienced
 - confirming key information in writing in a timely manner
 - providing counselling and translation services where necessary.
-

5.97 The committee received evidence from a number of stakeholders who claimed that RMS deliberately provided offers below market value. While RMS confirmed that all valuations are completed by independent licensed valuers, the committee sees merit in the Tasmanian system where the acquiring authority does not administer offers of compensation at any point in the process but rather it is the Valuer General's responsibility.

5.98 The committee recommends that the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.

Recommendation 21

That the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.

5.99 The committee notes that its recommendations on compulsory acquisition thus far are forward looking. They are not retrospective and therefore will not directly address the grievances expressed by property owners who have already had their homes acquired by RMS for the WestConnex project. However, the committee believes that those property owners who have had their property compulsorily acquired, and remain unsatisfied about the process and their treatment, should have their grievances addressed by government. It is recommended that the NSW Government:

- devise a process, through which property owners can apply to have the process by which their property was compulsorily required, reviewed
 - examine whether Proposed Acquisition Notices are being speedily resolved in the interests of owners.
-

Recommendation 22

That the NSW Government:

- devise a mechanism, through which property owners can apply to have the process by which their property was compulsorily required, reviewed
 - examine whether Proposed Acquisition Notices are being speedily resolved in the interests of owners.
-

Property damage as a result of construction

5.100 A number of inquiry participants expressed the view that the relevant authorities have failed to effectively prevent and mitigate property damage. Some of the concerns raised included a lack of communication, a lack of independence and transparency, and claims of bullying.

5.101 The Department of Planning and Environment noted that the infrastructure approvals for the WestConnex project include requirements in relation to settlement and subsidence. These requirements are:

- preparation of geotechnical models to assess potential settlement
- settlement criteria
- monitoring requirements
- pre and post-construction dilapidation surveys
- requirements for rectifying damage to property and infrastructure arising from settlement.⁴⁸⁹

5.102 Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment advised that the department 'improved the criteria' regarding settlement for the New M5.⁴⁹⁰

5.103 Ms Drover explained that pre and post-construction dilapidation surveys are available to property owners within 50 metres of the outer edge of a proposed tunnel or construction site:

The process is we do a dilapidation study before any work starts on site and you are eligible for a dilapidation study if you are within 50 metres of the extent of the tunnel or a construction site. Then we come back post-construction to assess where there has been any impact and damage to the house.⁴⁹¹

5.104 Ms Marilyn Fairskye, Co-Convenor of Newtown Residents Against WestConnex observed that dilapidation surveys are not compulsory but rather an 'opt-in' process.⁴⁹²

5.105 Ms Drover noted that property owners can contact RMS to raise any concerns about property damage. Ms Drover also advised that if it is found that the project caused the damage then WestConnex will bear the costs:

Along the way, property owners can contact us and raise any concerns about the property damage. If the project has caused that damage the WestConnex project will reimburse the property owner.⁴⁹³

⁴⁸⁹ Answers to questions on notice, Department of Planning and Environment, 7 November 2018, p 5.

⁴⁹⁰ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 7 November 2018, pp 2-3.

⁴⁹¹ Evidence, Ms Camilla Drover, 7 November 2018, p 59.

⁴⁹² Evidence, Ms Marilyn Fairskye, Co-Convenor, Newtown Residents Against WestConnex, 11 October 2018, p 79.

⁴⁹³ Evidence, Ms Camilla Drover, 7 November 2018, p 59.

- 5.106** For property owners who did not have a pre-construction dilapidation survey completed, Ms Drover said that they can still raise their concerns. She also highlighted that for Stage 3 of the project, complaints can be escalated to a panel of geotechnical and architectural experts if they are not resolved by the contractor:

They can still apply and raise their concerns and, obviously, they will be assessed. Again, under a new condition of approval for the stage 3 project, there is the assessment panel, which is the panel of geotechnical and architectural experts, which will provide some independence to that process. If a member of the community has a concern or a complaint that is not resolved by the [design and construct] contractor, it can be escalated to that panel.⁴⁹⁴

- 5.107** The Department of Planning and Environment informed that they have carried out ground movement investigations for the M4 East, New M5 and M4-M5 Link which found potential for settlement:

In assessing the potential impacts of tunnelling, the Department took into consideration the potential for settlement arising from groundwater drawdown and tunnel boring. Preliminary ground movement investigations carried out for the M4 East, New M5 and M4-M5 Link indicated that there is the potential for settlement along parts of the motorway tunnels where the tunnels would be closer to the surface or intersect paleochannels, including at the St Peters Interchange, near Dobroyd Canal at Haberfield, the Concord Road Interchange and areas to the north and north-west of the Rozelle Rail Yards.⁴⁹⁵

- 5.108** The Department of Planning and Environment advised that geotechnical models and pre-dilapidation surveys have been undertaken for the M4 East and New M5. The department also noted that they have 'not been advised of any buildings, structures or lands being affected by subsidence'.⁴⁹⁶

- 5.109** Similarly, Ms Drover highlighted that there is no evidence of subsidence with any tunnels previously constructed in Sydney:

I think the other thing to say is there have been motorway tunnels in Sydney for 30 years now including the Eastern Distributor, which was one of the early ones, and we have got no evidence that there have been subsidence issues on any of those tunnels across Sydney; they are all in Sydney sandstone and we have no historic evidence of any settlement issues.⁴⁹⁷

- 5.110** Some residents expressed concern about the impact of construction on their properties and the way in which WestConnex has responded to these concerns. For example, St Peters resident, Ms Julie Williams shared her experience of property damage and her interactions with WestConnex.

⁴⁹⁴ Evidence, Ms Camilla Drover, 7 November 2018, p 59.

⁴⁹⁵ Answers to questions on notice, Department of Planning and Environment, 7 November 2018, p 5.

⁴⁹⁶ Answers to questions on notice, Department of Planning and Environment, 7 November 2018, p 5.

⁴⁹⁷ Evidence, Ms Camilla Drover, 7 November 2018, p 44.

Case study: Ms Julie Williams⁴⁹⁸

Julie is a St Peters resident whose property has been affected by underground tunnelling. As her home is 50 metres within the outer edge of the tunnel, she was offered a property condition survey before and after construction. WestConnex and the independent assessor advised Julie that any damage caused by the project's construction would be repaired at no cost to her.

During construction, Julie noticed cracks on the walls and ornate plaster ceilings. She also found that subsidence at the front door and front gate resulted in metal security doors not closing properly. Julie described the blasting from the construction as an 'earthquake under our house' which causes the house to shake.

In June 2018, Julie submitted a claim with WestConnex who advised that they would conduct a thorough investigation of the property. She received a letter advising that WestConnex does not consider that it is responsible for the property's damage. Julie says that no investigation was conducted, and that she received a generic response that vibration limits have not been exceeded.

When she rang WestConnex to complain, she was advised that WestConnex will visit her home during the time of blasting and review the damage, but she is yet to hear from them.

5.111 The Inner West Council commented that their local residents have 'cited a lack of independence, a perception of conflict-of-interest and a lack of trust in the proponent' in relation to the WestConnex dilapidation reporting process. In response to these concerns, the Inner West Council has established its own program for 'independent dilapidation reports to be prepared at no cost to property owners'.⁴⁹⁹ The cost of preparing these reports has been borne by the council.⁵⁰⁰

5.112 The Inner West Council also advised that some of their residents, whose property has been damaged, have disputed WestConnex' opinion on the cause of this damage. These residents have been offered mediation but have expressed doubt about the authenticity of the process:

Where cracking of buildings has occurred, some residents have disputed the proponent's opinion on the cause. In cases like this where there are disputes, residents are offered 'mediation', but doubt the authenticity of this process as it is provided by the proponent.⁵⁰¹

5.113 Ms Kathryn Calman, Member of the Beverly Hills Progress Association asserted that Beverly Hills residents have been impacted by the construction at the King Georges Road M5 Interchange. Ms Calman argued that WestConnex, Sydney Motorway Corporation and RMS have done little to address these impacts. Her concerns included a failure:

- to provide critical documents, such as geotechnical reports, which residents have a right to access

⁴⁹⁸ Submission 437, Ms Julie Williams, p 1.

⁴⁹⁹ Submission 379, Inner West Council, pp 36-37.

⁵⁰⁰ Submission 379, Inner West Council, p 11.

⁵⁰¹ Submission 379, Inner West Council, p 37.

- to identify and mitigate the risk of damage from groundwater changes due to drainage
- to mitigate damage due to vibrations
- of the Department of Planning and Environment to enforce compliance with the conditions of approval for the WestConnex project regarding property damage.⁵⁰²

5.114 Ms Calman also described the conduct of RMS, Sydney Motorway Corporation and WestConnex staff towards these residents as 'unconscionable', reiterating concerns that residents have expressed in relation to their experience with compulsory acquisition:

As like those with homes compulsorily acquired, we have experienced WestConnex bullying, intimidation, and the denial of all responsibility. WestConnex/RMS have employed sneaky tactics to mislead, deceive and silence homeowners with Dilapidation Reports that are incomplete.⁵⁰³

5.115 Ms Calman, and her partner Mr John English, noticed damage on their property after construction of the King Georges Road M5 Interchange. After WestConnex informed them that the damage was not caused by the nearby construction, they engaged a private engineer to investigate further. The case study below discusses their experience.

Case study: Ms Kathryn Calman and Mr John English⁵⁰⁴

Kathryn and John own a home on Elouera Street in Beverly Hills. Kathryn asserted that new drainage resulting from construction of the King Georges Road M5 Interchange has changed the soil conditions beneath homes on Elouera Street. She claimed that these new soil conditions resulted in property damage.

Kathryn observed that analysis on groundwater drawdown and subsoil settlement was never conducted as part of the King Georges Road M5 Interchange Environmental Impact Statement. This meant that the Department of Planning and Environment did not stipulate any conditions on the contractor, Fulton-Hogan, to consider this or adopt mitigation strategies. Kathryn described this as 'a failure by the WestConnex engineers, AECOM, to incorporate a known engineering risk within the design and to develop protection strategies for adjacent buildings'. However, Kathryn noticed that this risk, and potential subsequent property damage, was later considered in the Environmental Impact Statement of the New M5.

In December 2016, after construction of the King Georges Road M5 Interchange, Kathryn and John received a dilapidation report concluding that property damage could not be directly attributed to the construction. However, their insurance claims were denied in February 2017, as the insurer found that the property damage was a result of the construction work causing vibration and cracks to appear.

⁵⁰² Evidence, Ms Kathryn Calman, Member, Beverly Hills North Progress Association, 11 October 2018, p 21. See also, Submission 268, Ms Kathryn Calman, Attachment 1, p 10.

⁵⁰³ Submission 268, Ms Kathryn Calman, p 8.

⁵⁰⁴ Submission 268, Ms Kathryn Calman, pp 9-10; Submission 268, Ms Kathryn Calman, Attachment 1, pp 4, 6, 8-10; Supplementary submission 268b, Ms Kathryn Calman, p 2.

Subsequently Kathryn and John, as well as another resident on Elouera Street 'commenced the formal claims process for property damage from WestConnex Delivery Authority and the sub-contractors Fulton-Hogan'.

Through their local member, a meeting was arranged between John and the Minister for WestConnex the Hon Stuart Ayres MP, as well as representatives from WestConnex and Fulton-Hogan. Following the meeting, Fulton-Hogan arranged another inspection of the two properties after which they proposed further inspection by structural engineers.

The residents felt that this inspection should be conducted by a large independent company, however, Fulton-Hogan appointed Inglis Engineering, a sole operator which, according to Kathryn, seeks contracts with Fulton-Hogan for ongoing work. Kathryn characterised this appointment as 'not at arms-length and therefore biased'.

Kathryn explained that in July 2017, Inglis Engineering concluded that the cracking in the Elouera Street homes was due to seasonable moisture variations and abnormal soil conditions, and that the damage could be attributed to continuous settlement and movement of the building. Inglis Engineering based their finding on four factors: large advanced trees that have been there for over 50 years; overflow and leaks from water tanks that were installed by a professional plumber and inspected by Sydney Water over 15 years ago; removal of a frangipani tree 15 years ago; and possible subsurface saturation from a dripping garden tap, which Kathryn and John's neighbour says does not exist.

Kathryn and John engaged an engineer at a cost of \$8,000. The private engineer advised Kathryn and John that Inglis Engineering had omitted key information from their assessment by ignoring a part of the Australian Standard for Residential Slabs and Footings regarding unusual moisture conditions caused by drains, channels, ponds, dams or tanks which are to be maintained or removed from the site. Kathryn also pointed out that three of the four possible causes of damage identified by Inglis Engineering add moisture to the soil when it is actually the drying of soil which is the key issue for their damaged homes. She also noted that the nearby excavation for the WestConnex project as well as the results from the original geotechnical reports were missing from the Inglis Engineering assessment.

Kathryn added that the private engineer could not finish his report as he did not have access to the geotechnical reports that included analysis of the soil moisture content.

In August 2017, Kathryn received the following correspondence from the Minister for WestConnex: 'I am advised the assessment found the cracks were not caused by the interchange works but are due to the abnormal moisture conditions of the site'. While Kathryn agreed that abnormal moisture conditions of the site contribute to damage of the homes, she also argued that the reasons for the abnormal moisture conditions remain 'speculative and inconclusive'.

Kathryn accused WestConnex of failing to identify and mitigate a known engineering risk and of subsequently hiding this oversight. She also accused WestConnex of purposely withholding information from residents in relation to original geotechnical reports as a strategy to prevent residents from seeking compensation for property damage. However, in an email in November 2018, RMS

advised Kathryn that they could not provide the geotechnical data and design documents due to 'security concerns'.

- 5.116** Ms Calman and the Beverly Hills North Progress Association made a number of recommendations. These included:
- that property dilapidation assessments are conducted at 'a genuine arms-length' from WestConnex and their sub-contractors
 - that where deterioration is noted, or residents claim damage to their property, these assessments be subjected to further independent reviews by an experienced independent engineer for completeness and accuracy
 - that original geotechnical and design documents are readily available for residents and their own engineers
 - that appropriate procedures be established regarding damage claims to ensure that residents are treated honestly and fairly and that complaints are dealt with promptly.⁵⁰⁵
- 5.117** WestCONnex Action Group argued that the relevant authorities had failed to take responsibility for damage to property. The group asserted that some property claims have been denied and that the process for responding to damaged property has not been 'equitable or open/accountable'.⁵⁰⁶
- 5.118** The group recommended that 'an independent body be established to undertake assessments of claims of damage in relation to WestConnex construction. They also recommended that 'the NSW Government set up a fund to pay the independently assessed damages'.⁵⁰⁷
- 5.119** Newtown Residents Against WestConnex expressed concern about the way in which construction of the M4-M5 link could affect property including heritage structures in Newtown and Camperdown. The group commented that they have 'repeatedly asked and failed to receive adequate answers from Sydney Motorway Corporation' regarding the following issues:
- whether dilapidation reports will be conducted by independent assessors
 - clarification about the compensation process for properties damaged during construction but also after subsidence
 - the availability of independent real vibration monitors that would be accessible to the community
 - Sydney Motorway Corporation 'refusing' to provide the group with a copy of the geotechnical report for the local neighbourhood.⁵⁰⁸
- 5.120** Newtown Residents Against WestConnex Co-convener, Ms Merylyn Fairskye expressed concern about the North Kingston Estate which is within 50 metres of the indicative tunnel

⁵⁰⁵ Submission 268, Ms Kathryn Calman, p 10; Submission 369, Beverly Hills North Progress Association, p 11.

⁵⁰⁶ Submission 436, WAG, p 25.

⁵⁰⁷ Submission 436, WAG, p 26.

⁵⁰⁸ Submission 115, Newtown Residents Against WestConnex, pp 2-3.

routes. While the Environmental Impact Statement indicates that it is 'unlikely to be impacted', Ms Fairskye outlined that in the view of tunnel expert Dr Noel Child 'the older fragile heritage structures are extremely vulnerable to damage from vibrations and blasting in both the short and longer terms'.⁵⁰⁹

- 5.121** Ms Fairskye asserted that the 50 metre zone of influence is 'far too small', and should be extended to 100 metres.⁵¹⁰ However, she further insisted that an extension to 100 metres should be accompanied by a revision of the current practices around dilapidation reports. She suggested that it should be an opt-out process, rather than an opt-in process as is the practice now.⁵¹¹
- 5.122** Ms Fairskye also questioned who would be responsible in the event of damage arising from subsidence, which can take over three years to develop. She suggested that the timeframe for registering compensation claims should be extended to five years.⁵¹²

Committee comment

- 5.123** The committee acknowledges that property damage from construction is a genuine concern that should be taken seriously by relevant WestConnex authorities. The committee appreciates the level of uncertainty residents have felt about potential property damage and the process for compensation.
- 5.124** There is an obvious need for clarity regarding the process for compensation in the event that property is damaged as a direct result of WestConnex construction. There is also a need for clarity about which entity would be held responsible in such instances. Therefore, the committee recommends that the government provide clear and consistent information to affected residents about the process through which residents can claim compensation for property damage, as well as, which entity would be responsible to pay for such damage.

Recommendation 23

That the NSW Government provide clear and consistent information to affected residents about:

- the process through which residents can claim compensation for property damage as a direct result of WestConnex construction
- which entity would be responsible to pay for such damage.

-
- 5.125** While it is encouraging that as part of the Stage 3 conditions of approval, there is an assessment panel consisting of independent geotechnical and architectural experts to which complaints can be escalated, this should have been implemented from the very beginning.
- 5.126** The committee understands that many residents do not trust the relevant authorities in relation to dilapidation reporting and the resolution of complaints due to perceived lack of independence

⁵⁰⁹ Evidence, Ms Marilyn Fairskye, Newtown Residents Against WestConnex 11 October 2018, p 72.

⁵¹⁰ Evidence, Ms Marilyn Fairskye, 11 October 2018, p 73.

⁵¹¹ Evidence, Ms Marilyn Fairskye, 11 October 2018, p 79.

⁵¹² Evidence, Ms Marilyn Fairskye, 11 October 2018, p 72.

and conflicts of interest. That a local council is shouldering the financial responsibility to provide independent dilapidation surveys for its residents is a reflection of how little trust residents have in the WestConnex project. The committee finds that local government should not have to step in to alleviate concerns held by residents in relation to State Significant Infrastructure projects, such as the WestConnex, when it is the responsibility of the NSW Government.

Finding 15

Local government should not have to step in to alleviate concerns held by residents in relation to State Significant Infrastructure projects, such as the WestConnex, when it is the responsibility of the NSW Government.

- 5.127** The committee received some evidence that the opt-in process for dilapidation surveys is insufficient and that the 50 metre zone of influence between the proposed tunnels and construction sites to affected areas is too small. The committee therefore recommends that the NSW Government consider extending the zone of influence to 100 metres and change the dilapidation survey process to an opt-out or compulsory process.
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Recommendation 24

That the NSW Government consider extending the zone of influence from 50 metres to 100 metres, and change the dilapidation survey process to an opt-out or compulsory process.

Chapter 6 Community engagement and complaints handling

This chapter examines the concerns raised by stakeholders about the community engagement practices and complaints handling processes associated with the WestConnex project. It first outlines the actions undertaken by NSW Government agencies and other responsible bodies to consult with stakeholders, and considers the issues identified by inquiry participants about these activities. The chapter then sets out the complaints handling processes established by government agencies and details inquiry participants' concerns about these mechanisms.

Community consultation practices

- 6.1** The NSW Government advised that there had been 'extensive' community consultation with respect to the WestConnex project.⁵¹³ Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services (RMS), provided a breakdown of the community engagement activities:

To date we have held 2,075 face-to-face meetings with residents, businesses and stakeholders. We have held more than 180 community information sessions, forums and street meetings with residents and businesses and stakeholders. We have carried out 3,496 doorknock events with residences and businesses. We have received and responded to 17,472 phone calls and 33,565 emails and letters.⁵¹⁴

- 6.2** RMS advised that it also keeps stakeholders informed about the project by distributing documentation and regularly updating the WestConnex website:

We have published and distributed work notifications, fact sheets, community updates and flyers to residents and businesses across the entire corridors ... The project website is also regularly updated to keep the community and stakeholders informed. It currently hosts 2,277 documents documenting all aspects of the project.⁵¹⁵

- 6.3** Moreover, there is a 24-hour 1800 information line and email service available for the community to receive information and provide feedback on the project.⁵¹⁶ The complaints hotline is considered later in this chapter.

- 6.4** The NSW Government also noted that there has been significant community consultation as part of the environmental impact statement [EIS] processes for the project. Mr Kanofski said

⁵¹³ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 9 October 2018, p 3. Also see, Submission 124, NSW Government, pp 23-24.

⁵¹⁴ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 9 October 2018, p 3. Also see, Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 7 November 2018, p 2.

⁵¹⁵ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 9 October 2018, p 3.

⁵¹⁶ Submission 124, NSW Government, pp 23-24.

that the Department of Planning and Environment had received and responded to approximately 28,000 submissions in response to the EIS processes for WestConnex.⁵¹⁷

- 6.5** Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment stated that the department had undertaken 'comprehensive' community consultation during the EIS processes for the project. He advised that the exhibition periods exceeded the statutory requirements and that the environmental impact statements were publically available through a number of sources:

The department ... undertakes comprehensive community consultation through the exhibition of the environmental impact statement, including participation in direct consultation activities and meetings with community members and groups. The public exhibition periods for each project exceeded the statutory requirements and reflect the complexity of the projects. The environmental impact statements are publically notified in State and local newspapers and can be viewed on line at local libraries and council offices.⁵¹⁸

- 6.6** In accordance with the requirements for State Significant Infrastructure projects, community consultative committees have been established for the project as a forum for engagement between the proponent and stakeholders.⁵¹⁹ The NSW Government also engages with stakeholders via these committees.⁵²⁰
- 6.7** The Sydney Motorway Corporation (SMC) has established three air quality community consultative committees, including the New M5 Air Quality Community Consultative Committee (AQCCC) set up in September 2018.⁵²¹
- 6.8** Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, explained that the AQCCS 'are an opportunity for SMC to meet with the design and construct contractor and the community'.⁵²² Ms Drover noted that community members can nominate to participate in these committees through an expression of interest process.⁵²³

⁵¹⁷ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 9 October 2018, p 3.

⁵¹⁸ Evidence, Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment, 11 October 2018, p 2. Also see, Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 44.

⁵¹⁹ Department of Planning and Environment, *Community Consultative Committees*, <https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Community-Consultative-Committees>.

⁵²⁰ See, Evidence, Mr Glenn Snow, Director, Transport Assessments, Department of Planning and Environment, 7 November 2018, p 14.

⁵²¹ WestConnex, *New M5 Air Quality Community Consultative Committee*, <https://www.westconnex.com.au/NewM5AQCCC>. Also so, Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 44 and p 45.

⁵²² Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 44.

⁵²³ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 45.

6.9 Separately, RMS has established WestConnex Community Reference Groups (WCRGs) as 'a forum for discussion and feedback between the Roads and Maritime WestConnex team and representatives of the community, stakeholder groups and local councils on matters relating to WestConnex'.⁵²⁴ In 2018, three WCRGs were set up to reflect the impact of the project on certain geographic areas, specifically:

- WCRG Western (covers Parramatta, Homebush, Strathfield, Concord, Ashfield and Haberfield)
- WCRG Southern (covers Kingsgrove, Bexley North, Bardwell Park, Arncliffe, Tempe, Mascot, St Peters, Alexandria and Newtown)
- WCRG Central (covers Leichhardt, Lilyfield, Rozelle, Balmain, Glebe, Annandale and Camperdown).⁵²⁵

6.10 As a condition of approval for Stage 3 of the project, community liaison officers are employed at each construction site.⁵²⁶ Ms Drover explained these roles:

They [community liaison officers] are over and above the normal community consultation and stakeholder teams that we have. They have teams both from the D and C contractors but also at SMC and RMS. As part of the conditions of approval again we need to do a communications strategy that identifies who in the community needs to be engaged with, when, how, through which channels, frequency, et cetera. There are already those avenues but these are over and above that standard process. So there is a point of contact associated with each individual major construction site.⁵²⁷

6.11 RMS also provides translation services, at its own costs, to engage with members of the community who speak languages other than English.⁵²⁸

Issues raised by stakeholders

6.12 The NSW Government stated that it has 'always been upfront' with the community.⁵²⁹ The government also asserted that it endeavours 'to be as open and transparent as [it] can and work[s] with the community and individuals'.⁵³⁰ Many inquiry participants questioned this sentiment and

⁵²⁴ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 44; WestConnex, *WestConnex Community Reference Groups*, <https://www.westconnex.com.au/westconnex-community-reference-groups>.

⁵²⁵ WestConnex, *WestConnex Community Reference Groups*, <https://www.westconnex.com.au/westconnex-community-reference-groups>.

⁵²⁶ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 35.

⁵²⁷ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 41.

⁵²⁸ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 46.

⁵²⁹ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 9 October 2018, p 3.

⁵³⁰ Evidence, Mr Glenn Snow, Director, Transport Assessments, Department of Planning and Environment, 7 November 2018, p 14.

expressed concern about the community engagement undertaken by the government, SMC, and others. These concerns are explored in the following sections.

Community engagement criticisms

- 6.13** A number of inquiry participants argued that genuine community consultation is critical to ensure that the impacts of the WestConnex project are minimised. For example, Leichhardt Against WestConnex explained:

Consultation is significant for this Project because of the Project's potentially devastating impacts over many years across a wide number of communities. Consultation with key stakeholders is critical to ensure that, wherever possible, the impacts of this \$16.8+ billion project are minimised to the extent reasonably possible. Consultation matters because it is an important part of managing the impacts of the Project as it is only by listening to community concerns and learning about the issues that impacts can be properly assessed and, where possible, minimised.⁵³¹

- 6.14** The WestConnex Action Group asserted that 'the obligation to inform and consult with the residents impacted by construction has been contracted out to SMC, and by SMC, to the main construction joint venturers'.⁵³²

- 6.15** Leichhardt Against WestConnex argued that as SMC is responsible for delivering the project for the lowest price, it is not in its interest to consult with the community:

It is important to note that SMC, as a private entity charged with delivering the project on-time and at the cheapest cost, has limited interest in or incentive to consult with the community. And any statutory or contractual requirements to consult are minimal in nature.⁵³³

- 6.16** Leichhardt Against WestConnex also commented that the consultation undertaken by SMC was 'a mere tick a box exercise to satisfy SMC's contractual obligations and for RMS to satisfy its (minimal) statutory obligations'.⁵³⁴

- 6.17** Leichhardt Against WestConnex suggested that the SMC inaccurately equates the provision of information with genuine consultation:

The SMC seem to equate 'information' (glossy flyers and facebook posts) with 'consultation'. SMC have an endless budget and money for highly-paid consultants to spruik the benefit of the Project. But genuine consultation involves an exchange of information and consideration of community and stakeholder views.⁵³⁵

- 6.18** Leichhardt Against WestConnex remarked that consultation has been hampered by the inability of SMC and RMS to provide clear, consistent and appropriate information:

⁵³¹ Submission 388a, Leichhardt Against WestConnex, p 2.

⁵³² Submission 436, WAG, p 22.

⁵³³ Submission 388a, Leichhardt Against WestConnex, p 1.

⁵³⁴ Submission 388a, Leichhardt Against WestConnex, p 2.

⁵³⁵ Submission 388a, Leichhardt Against WestConnex, p 7.

... the community has not been provided with an opportunity to meaningfully comment on the Project. This is because of the paucity of Project information, the lack of adequate response to direct questions and indeed, actual misinformation that has been provided by representatives of both SMC and RMS. Nor has the public been provided Project information in a user-friendly and appropriate manner.⁵³⁶

6.19 Leichhardt Against WestConnex concluded that the government had been 'negligent' in transferring responsibility of the project to SMC:

'[T]he Government's decision to abdicate responsibility for this Project to SMC was negligent - it has led to concerns being routinely ignored, rendering the entire process of consultation a farce and therefore a waste of time and money'.⁵³⁷

6.20 The group also argued that local communities were informed about decisions relating to local construction well after the decisions had been made by the government, at which point the community has little opportunity to seek changes by the time they are consulted:

'[T]his Project, and its impacts on the community, have been shrouded in secrecy, with many communities left in the dark until well after decisions about the location of construction sites and tunnel routes have already been made by the Government. Typically, by the time any 'consultation' occurs, there is generally limited opportunity for the community to seek changes that may go some way toward minimising impacts'.⁵³⁸

6.21 Similar comments were made by other inquiry participants. For example:

- Mr John English, Chairperson of the Beverly Hills North Progress Association said that '[t]he facade of consultation has been paper thin, with lies and deceitful reporting on the community's concerns'.⁵³⁹
- WestConnex Liason Officer for the Haberfield Association, Mr Malachy Ward argued that '[t]here has not been adequate consultation with residents. What they call consultation is, essentially, you go along to an information session and they tell you what they are going to do. You might raise objections; they ignore them'.⁵⁴⁰
- WestCONnex Action Group considered that '... the NSW Government has reduced the basic tenets of planning law, such as public consultation on the Environmental Impact Statements, into a 'box-ticking exercise'.⁵⁴¹

6.22 Local councils, specifically Inner West Council and the City of Sydney, expressed similar concerns.

⁵³⁶ Submission 388a, Leichhardt Against WestConnex, p 4. Also see, Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, p 36.

⁵³⁷ Submission 388a, Leichhardt Against WestConnex, p 2.

⁵³⁸ Submission 388a, Leichhardt Against WestConnex, p 3.

⁵³⁹ Evidence, Mr John English, Chairperson, Beverly Hills North Progress Association, 11 October 2018, p 21.

⁵⁴⁰ Evidence, Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association, 11 October 2018, p 64.

⁵⁴¹ Submission 436, WAG, p 23.

- 6.23** Inner West Mayor Darcy Byrne described the government's community consultation as 'tokenistic'.⁵⁴² He also argued that 'there has been a tone of disregard and disrespect towards the Inner West community' as well as 'a complete failure of communication with ... local government'.⁵⁴³
- 6.24** The City of Sydney similarly argued that there has been a 'lack of transparency and consultation with affected communities'.⁵⁴⁴
- 6.25** Stakeholders challenged Mr Kanofski's assertion that the NSW Government has conducted extensive consultation.
- 6.26** For example, Mr Peter Hehir, Convenor, Rozelle Against WestConnex questioned what has resulted from the government's 2,075 face-to-face meetings, stating that 'it would be interesting to have them [the government] elaborate on the result of those meetings'.⁵⁴⁵
- 6.27** Mr Gorman likewise queried what has been achieved with respect to the number of people who were consulted during the 3,496 door knocking events: 'They could have knocked on a lot of doors when no-one was home. I would like to see how many people they actually spoke to'.⁵⁴⁶
- 6.28** Inquiry participants provided numerous instances they suggested demonstrated inadequate community consultation. Ms Marilyn Fairskye, Co-convenor, Newtown Residents Against WestConnex, detailed examples of the consultation process for the M4-M5 Link which she described as 'cosmetic'.⁵⁴⁷

A few households received advisory letters back at the end of 2016 about the proposed new tunnel route, but many, including my household, did not. We have repeatedly sent questions to SMC that have not been answered, or have been answered incompletely. Newtown residents' questions at the two SMC hosted information sessions during 2017, promoted as one on one meetings between residents and SMC, were met with either ignorance, lack of clarity, or outright hostility. There has been a refusal to meet with the Newtown community on its own terms. SMC cancelled its appearance at the eleventh hour at a community meeting we organised that had more than 200 attendees. There has been a lack of transparency in documentation that denies the community access to information they have a right to know. In addition, the widespread use of terms such as "indicative", "unlikely" or "commercial-in-confidence" is anticipated to generate confusion and mistrust within the community.⁵⁴⁸

- 6.29** There was particular concern about community information sessions. Mr Hehir for example suggested that the consultation had been a 'joke' as they have taken an individualistic approach to community information sessions:

⁵⁴² Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 50.

⁵⁴³ Evidence, Councillor Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 54.

⁵⁴⁴ Submission 311, City of Sydney, p 3.

⁵⁴⁵ Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, p 39.

⁵⁴⁶ Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, p 39.

⁵⁴⁷ Evidence, Ms Marilyn Fairskye, Co-convenor, Newtown Residents Against WestConnex, 11 October 2018, p 72.

⁵⁴⁸ Evidence, Ms Marilyn Fairskye, Co-convenor, Newtown Residents Against WestConnex, 11 October 2018, p 72.

These community information sessions are staffed by people who are skilled in PR. Very few of the people who are actually in attendance have any knowledge of the project at all. In fact, what they are designed to do is divide and conquer. They take an individual off to one side, essentially, and tell them essentially what they want to hear. The reason for this approach is because genuine community sessions where public meetings are convened with a view to having the public generally hear pros and cons in relation to what is proposed in the project simply have not been followed.⁵⁴⁹

- 6.30** Mr Hehir believed that this approach had been taken due to the 'outrage' expressed at a community information session in Newtown at the start of the project, where he argues representatives could not answer questions posed by the community:

The reason that happened is because of the reception that they received at the Enmore Theatre in Newtown at the start of this project where they were essentially howled out of the theatre. The vitriol that was expressed by the members of the public who were attending, they were just so outraged at what they were hearing, that the Government decided they were not going to go down that road anymore and they were going to conduct what they deemed to be community information sessions which, in effect, were just a joke, basically. The people who attended these sessions could not answer questions. The two responses were, "I cannot answer that question because it is above my pay grade", or, "I cannot answer that question because the project has not been designed yet."⁵⁵⁰

- 6.31** Leichhardt Against WestConnex identified similar concerns with a community information session its representatives attended on 14 August 2016 at Leichhardt Town Hall, including:

- no location-specific information was provided
- the artist's renditions of the project were 'inaccurate, lacked detail and were sloppy'
- the staff on duty were not from the relevant project team and had little knowledge of the technical details of the project
- there was 'no information whatsoever' as to the number or location of proposed construction sites.⁵⁵¹

- 6.32** The WestConnex Action Group referred to the project's community consultation as 'farcical'⁵⁵² and provided examples of ineffective information sessions:

When the Traffic Manager was asked what would happen in Euston Road when 7 lanes of traffic got directed into 2 lanes of traffic at Maddox Street, the community member was told 'that's a very good question'. It's an indicator, at the very least, of just how much has not been thought through about this project. Written questions were encouraged but were left unanswered.

At a consultation at the Tom Foster Centre in Darley Street, all WestConnex staff were briskly removed into a room behind locked doors when someone decided WAG

⁵⁴⁹ Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, p 38-39.

⁵⁵⁰ Evidence, Mr Peter Hehir, Convenor, Rozelle Against WestConnex, 9 October 2018, p 39.

⁵⁵¹ Submission 388a, Leichhardt Against WestConnex, pp 5-6.

⁵⁵² Submission 436, WAG, pp 26-26.

members present were about to make a collective statement. This ended the 'community consultation' prematurely - and was totally unnecessarily.⁵⁵³

6.33 Stakeholders identified other specific instances of poor community consultation, including:

- the two site options under consideration in Leichhardt (Derbyshire Road next to Sydney Secondary College - Leichhardt campus and Darley Road) were only publicly confirmed in February 2017 when SMC door-knocked and dropped a letter to residents in the area⁵⁵⁴
- the WestConnex webpage for the M4-M5 Link was unchanged for over a year, with no information about the project other than a high-level map of the proposed route⁵⁵⁵
- the community was not consulted about any of the construction sites for the M4-M5 Link prior to mid-2017 when the Concept Design was released⁵⁵⁶
- certain Rozelle residents first heard that their properties were being acquired by the NSW Government via a television news story⁵⁵⁷
- there has been no opportunity for North West Rozelle Residents to discuss its concerns regarding plans to place smoke stacks proximate to Rozelle primary school with RMS⁵⁵⁸
- there has been 'extremely vague' communication about plans to main line tunnels directly under Sydney Secondary College⁵⁵⁹
- RMS has provided 'glib' responses on how it intends to ensure the tunnels under Sydney Secondary College Leichhardt will impact the school⁵⁶⁰
- residents found out about impending major works from the media.⁵⁶¹

6.34 Leichhardt Against WestConnex claimed that the Hon Stuart Ayres MP, Minister for WestConnex, and Mr John Sidoti MP, the then Parliamentary Secretary for Transport, Roads, Industry, Resources and Energy, have not adequately responded to concerns about the project.⁵⁶²

6.35 Leichhardt Against WestConnex said that 'despite numerous requests by letter and repeated phone calls, Minister Ayres has 'refused' to meet with the group.'⁵⁶³

⁵⁵³ Submission 436, WAG, pp 26-26.

⁵⁵⁴ Submission 388a, Leichhardt Against WestConnex, p 6.

⁵⁵⁵ Submission 388a, Leichhardt Against WestConnex, p 6.

⁵⁵⁶ Submission 388a, Leichhardt Against WestConnex, p 6.

⁵⁵⁷ Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, p 35.

⁵⁵⁸ Evidence, Mr Brian Gorman, Representative, North West Rozelle Residents, 9 October 2018, p 36.

⁵⁵⁹ Evidence, Ms Ann-Therese King, Vice President, Sydney Secondary College Leichhardt P&C, WestConnex Liaison Officer, 9 October 2018, p 60.

⁵⁶⁰ Evidence, Ms Jane Crawford, President, Sydney Secondary College Leichhardt P&C, 9 October 2018, p 63.

⁵⁶¹ See, Evidence, Ms Merylyn Fairskye, Co-convenor, Newtown Residents Against WestConnex, 11 October 2018, p 72.

⁵⁶² Submission 388a, Leichhardt Against WestConnex, p 9.

⁵⁶³ Submission 388a, Leichhardt Against WestConnex, p 9.

- 6.36** Leichhardt Against WestConnex also said that Mr Sidoti referred a letter they wrote to him to a private consultant engaged by SMC. The group believe that it is unacceptable for the government to refer correspondence to a private consultant:

When LAW wrote to John Sidoti ... he did not respond to LAW. Instead, he provided LAW's letter to Kylie Cochrane (a private consultant engaged by SMC) who wrote back on behalf of the Government! It is completely unacceptable that elected public officials who are responsible for this Project should refer community correspondence to a private consultant in this manner. We are aware this was not an isolated incident as other community groups who wrote to other members of the State Government received the same response.⁵⁶⁴

- 6.37** Ms Kate Cotis and Ms Siobhan Bryson are St Peters residents whose home has been affected by WestConnex construction. The below case study details their description of the consultation undertaken by WestConnex regarding noise mitigation measures to be installed in their home.

Case study: Ms Kate Cotis and Ms Siobhan Bryson⁵⁶⁵

Kate and Siobhan bought their St Peters home in 2005. Their home is about 30 metres away from Campbell Street where construction is taking place for the WestConnex project. Between construction work and the demolition of nearby houses, Kate and Siobhan say that their home has become a construction site as they deal with dust and noise. Kate and Siobhan are tired, stressed and distraught with the lack of consultation from WestConnex regarding proposed noise mitigation measures, as well as the lack of responses from the relevant authorities regarding their concerns.

On 2 March 2018, Kate and Siobhan were offered, via email, acoustic treatment on their home to reduce operational road traffic noise from the New M5 project. The acoustic treatment involves the installation of five mechanical air ventilators inside their home. The offer included a deed of release, drawings of the ventilators and where they would be installed, and a sales brochure. Other than an inspection on 30 August 2017, Kate and Siobhan have not been consulted on the offer. Kate and Siobhan highlighted that they were expected to make a major decision that could impact their quality of life and the value of their house with little information beyond a sale brochure.

Kate and Siobhan have attempted to express their concerns to WestConnex about the ventilators with little success. For example, they were told to visit the New M5 Community Information Centre in Alexandria to see a display of the noise treatment system. Kate and Siobhan took an afternoon off work to visit the centre where they met with the Community Relations Manager. According to Kate and Siobhan, the manager knew nothing about the ventilators or how they work.

Kate and Siobhan were also informed via email that the offer was based on a report, *New M5 Operation Noise & Vibration Report*, which was not yet finalised or publicly available.

In June 2018, Kate and Siobhan received a letter informing them that a review had been completed regarding the offer. However, they were not consulted and had no input in the review. The review

⁵⁶⁴ Submission 388a, Leichhardt Against WestConnex, p 9.

⁵⁶⁵ Submission 548, Ms Kate Cotis and Ms Siobhan Bryson, pp 1-15.

letter restated the offer and advised that the offer is not mandatory. Kate and Siobhan took that to mean 'the offer is made on a take it or leave it basis'.

Further to their concerns about the proposed ventilation system, Kate and Siobhan have faced other serious disturbances. This includes construction noise that starts at 11 pm, unbearable noise during the day and a lack of car spaces because of WestConnex vehicles. Kate and Siobhan noted that when they sought information about why they were subjected to noise so late at night, they were threatened with the police by WestConnex employees.

Kate and Siobhan feel that they have been ignored by the Premier and the Minister for WestConnex. They have written numerous letters to the Premier and the Minister with delayed or no responses. They have also written to the Chief Executive Officer of Sydney Motorway Corporation. The letter was forwarded to the Chief Executive of RMS, who is yet to respond.

Consultation during the EIS process

- 6.38** Stakeholders raised specific concerns with the community consultation during the EIS process. For example, Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association, called the process a 'sham', saying it was hard to believe that the Department of Planning and Environment considered all 10,000 submissions submitted during the EIS for Stage 3 of the project.⁵⁶⁶
- 6.39** Leichhardt Against WestConnex raised similar concerns about the community consultation for Stage 3 of the project, noting that the 60 days for submissions was 'unrealistic and unfair',⁵⁶⁷ and that the more than 7,000 page-EIS included highly-technical information which was not presented in a user-friendly manner.⁵⁶⁸ Additionally, the group noted that the Executive Summary for the EIS incorrectly stated that community consultation commenced in January 2016, when it actually started in August 2016.⁵⁶⁹
- 6.40** Leichhardt Against WestConnex argued: 'The failure of SMC's community engagement, ... is most evident when the content of the EIS is critically examined. The key issues raised by LAW [Leichhardt Against WestConnex] repeatedly to both RMS and SMC are not resolved or even addressed in the EIS'.⁵⁷⁰
- 6.41** The City of Sydney also asserted that many of the issues raised in response to the EIS for Stage 3 were not adequately considered before the project was approved:

The design and construction presented in the Stage 3 M4-M5 Link EIS is based on a concept design only. Over 10,000 submissions were lodged in response to the EIS including formal advice from the NSW Environmental Protection Authority (EPA) that a more detailed environmental assessment of its impacts on the community was needed.

⁵⁶⁶ Evidence, Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association, 11 October 2018, p 64.

⁵⁶⁷ Submission 388a, Leichhardt Against WestConnex, p 4.

⁵⁶⁸ Submission 388a, Leichhardt Against WestConnex, p 4.

⁵⁶⁹ Submission 388a, Leichhardt Against WestConnex, p 5.

⁵⁷⁰ Submission 388a, Leichhardt Against WestConnex, p 8.

Despite all that NSW Planning approved Stage 3 of WestConnex with scant response to the concerns raised.

They say detailed design and construction planning is to be undertaken by the successful contractor. It is not clear whether local councils will have the opportunity for any detailed assessment of the design or input to the approvals process.⁵⁷¹

Committee comment

- 6.42** The committee acknowledges that the relevant authorities have conducted a significant information campaign about the WestConnex project. However, on balance of criticisms made, it is questionable whether these authorities have actually engaged in meaningful community consultation.
- 6.43** It is clear that many stakeholders feel that their concerns have not been adequately considered. Going forward, it is imperative that relevant authorities engage stakeholders in genuine, meaningful consultation.
- 6.44** The committee appreciates that with an infrastructure project of this size, disruption to local communities is inevitable. The committee further notes that from the very beginning of the project community opinion as to its merits was divided. Despite some sections of the community being opposed to the project this does not undermine the dissatisfaction of many regarding what they perceive to be inadequate consultation measures.
- 6.45** Therefore, the committee finds that while extensive consultation for the WestConnex project has been undertaken, it also appears that this consultation has been ineffective and has lacked an empathetic approach to community members.

Finding 16

That while extensive consultation for the WestConnex project has been undertaken, it appears that this consultation has been ineffective and has lacked an empathetic approach.

WestConnex complaints handling

- 6.46** There are various complaints handling processes to manage concerns about the WestConnex project. For example, RMS has established a WestConnex complaints hotline to assist stakeholders. Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, advised that the hotline operates 24 hours/7 days a week and triages callers to the most appropriate service provider:

People can contact the WestConnex hotline, which is available 24/7 and is manned 24/7. Particularly when there are night works underway, that call centre will contact the contractor directly, even if it is at one o'clock in the morning, and lodge those complaints with the contractor ... They come into the call centre, they are triaged; they

⁵⁷¹ Submission 311, City of Sydney, p 15.

either go directly to the design and construct [D and C] contractor or they may go to Sydney Motorway Corporation [SMC] or they may come to RMS...⁵⁷²

6.47 Ms Drover explained that most complaints go to the contractor as they are 'on the ground' while property matters are dealt with RMS:

Largely they [complaints] go to D and C because they are the ones on the ground that have to deal with the problems. If they are a property matter that is obviously to the RMS, so it comes to us. There is usually a call made to the relevant person to address it, so it is addressed quickly. There is usually an email sent as well so there is a follow-up in writing.⁵⁷³

6.48 Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, stated that the intention of the hotline is to provide a response to issues that require immediate attention.⁵⁷⁴

6.49 RMS described the hotline as a 'one-stop-shop' for complaints and noted it was the preferred method for managing concerns.⁵⁷⁵ The hotline's number is advertised on the WestConnex website and on WestConnex community marketing collaterals, such as facts sheets and information sheets.⁵⁷⁶

6.50 There are other options for making complaints to WestConnex, including

- in-person at the community information centres which are located at the St Peters Interchange and the M4 East (another is being established for the M4-M5 Link)⁵⁷⁷
- to the project community liaison officers who are stationed at all major construction and worksites for Stage 3 of the project⁵⁷⁸
- email (info@westconnex.com.au and project email addresses such as info@newm5.com.au)⁵⁷⁹
- by sending a direct message to the WestConnex Facebook account.⁵⁸⁰

⁵⁷² Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 34.

⁵⁷³ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 51.

⁵⁷⁴ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 7 November 2018, p 35.

⁵⁷⁵ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 35; Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 7 November 2018, p 35.

⁵⁷⁶ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 35.

⁵⁷⁷ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 34.

⁵⁷⁸ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 34 and p 35.

⁵⁷⁹ Answers to questions on notice, Roads and Maritime Services, 27 November 2018, p 2.

⁵⁸⁰ Answers to questions on notice, Roads and Maritime Services, 27 November 2018, p 2.

6.51 RMS advised that a complaints register is kept for the each of the project components. This information is not published. RMS further advised that as per the Conditions of Approval for each WestConnex project, the Department of Planning and Environment is provided with a weekly register of complaints:

Each of the WestConnex projects keeps a register of complaints received relating to their project. The details of these complaints are also recorded in the WestConnex stakeholder and community database, Consultation Manager. Roads and Maritime Services, Sydney Motorway Corporation (SMC), and each of the WestConnex construction contractors do not publish details of the complaints received. However, in accordance with Conditions of Approval for each of the WestConnex projects, each week the Department of Planning and Environment is provided with a register of complaints received by each project.⁵⁸¹

6.52 The NSW EPA, as the state's environmental regulator, also manages WestConnex complaints. In the first instance, complaints can be made to the 24-hour EPA Environment Line. These matters are recorded and passed on to operational staff for a response.⁵⁸² There have been 388 complaints made to the EPA via this system.⁵⁸³

6.53 The NSW EPA also receives complaints in relation to suspected breaches of environmental licence conditions such as working outside of set hours.⁵⁸⁴ The EPA advised that most complaints received with respect to environmental licenses concerned noise, dust and odour.⁵⁸⁵

6.54 Table 4 details the total number of complaints lodged in relation to the project as at 27 November 2018. The numbers are broken down by those received by the licensee and the EPA.

Table 4 WestConnex total complaint numbers as at 27 November 2018

WestConnex Stage	Recipient of complaint	Total no. of complaints
Stage 1A (M4 Widening)	Licensee	179
	EPA	18
	Licensee & EPA	197
Stage 1B (M4 East)	Licensee	518
	EPA	73
	Licensee & EPA	591
Stage 2 (New M5)	Licensee	821
	EPA	300
	Licensee & EPA	1121
All Stages	Licensee	1518
	EPA	391
	Licensee & EPA	1909

Answers to questions on notice, NSW Environmental Protection Agency, 27 November 2018 (Attachment A).

⁵⁸¹ Answers to questions on notice, Roads and Maritime Services, 27 November 2018, p 3.

⁵⁸² Evidence, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, 7 November 2018, p 4.

⁵⁸³ Evidence, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, 7 November 2018, p 5.

⁵⁸⁴ Evidence, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, 7 November 2018, p 6.

⁵⁸⁵ Evidence, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, 7 November 2018, p 6.

- 6.55** Of the 1,909 complaints received, they fall into the following categories:
- Noise and vibration outside of hours complaints – 779
 - Noise and vibration outside of hours during standard hours complaints – 396
 - Odour complaints – 376
 - Dust complaints – 234
 - Water complaints – 38
 - Waste complaints – 21
 - Other – 65.⁵⁸⁶
- 6.56** A more detailed breakdown of complaints data can be found at Appendix 1.
- 6.57** Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, advised: 'I would encourage any member of the public to contact the EPA if they are experiencing a lack of response from any of the contractors or companies undertaking the works as part of the overall projects'.⁵⁸⁷
- 6.58** Mr Kanofski explained that complaints made to the NSW EPA are brought to the attention of RMS:
- [if] the EPA receive a complaint then they will clearly come to us and ask us what action we have taken with regard to that issue. In terms of actioning items, very clearly if a complaint comes to the EPA the first thing the EPA will do is contact us and ask us do we know about it and what are we doing about it.⁵⁸⁸
- 6.59** An independent Community Complaints Mediator was been established for Stage 3 of the project.⁵⁸⁹ Mr David Gainsford, Executive Director, Priority Projects Assessment, Department of Planning and Environment, explained that the mediator's role is to address complaints that the public feel have not been dealt with satisfactorily by the proponent or contractor:
- The role of the community complaints mediator is in relation to complaints that have been raised by the public that they feel have not been satisfactorily dealt with by both the proponent and the contractor. It is an opportunity to refer those matters to a third party.⁵⁹⁰

⁵⁸⁶ Answers to questions on notice, NSW Environmental Protection Agency, 27 November 2018 (Attachment A).

⁵⁸⁷ Evidence, Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority, 7 November 2018, p 6.

⁵⁸⁸ Evidence, Mr Ken Kanofski, Chief Executive Officer, Roads and Maritime Services, 7 November 2018, p 51.

⁵⁸⁹ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 41.

⁵⁹⁰ Evidence, Mr David Gainsford,, Executive Director, Priority Projects Assessment, Department of Planning and Environment, 7 November 2018, p 31.

- 6.60** Mr Stephen Lancken has been appointed as the Community Complaints Mediator.⁵⁹¹ As at 7 November 2018, the mediator had not received any complaints.⁵⁹²

Issues raised by stakeholders

- 6.61** The committee heard numerous concerns about the complaints handling processes for the project, specifically the alleged inadequacy of responses to complaints, and the ineffectiveness of the complaints hotline. These issues are examined below.

Inadequate responses to complaints

- 6.62** A number of inquiry participants asserted that they have not received adequate responses to their complaints. For example, Dr Jacinta Green, a resident affected by the construction of the WestConnex, shared her experience of making repeated complaints about night-works, and her distress when the complaints have not been handled appropriately:

Lodging complaints (which is so necessary) and the efforts you have to go to, to ensure your complaint is lodged is incredibly distressing. The number of times I have rung up to complain about un-notified night works and been informed that there are no workmen on sight is ridiculous, my bedroom overlooks the work site. I have sent through photos and videos of night works and still had multiple staff members state that there was no work happening. The contractors cannot simply say that they aren't getting complaints when they make complaining so distressing, when they fail to lodge your complaint. Perhaps they should be asked to document how many calls they get from residents. I am tense and anxious all the time, I dread Friday afternoon, when the weekly email comes through, I dread hearing the reversing beeps at 5:30 in the morning as it signals works I haven't been notified about. There needs to be a third party that channels the complaints and doesn't dismiss, ignore or downplay phone calls from residents in distress"⁵⁹³

- 6.63** WestConnex Action Group raised similar concerns noting that residents have received insufficient responses to complaints with concerns being downplayed and managed ineffectively. The group also argued that the requirement to complain before mitigation is made available had contributed to disputes:

.... residents repeatedly found that their complaints were not taken seriously by WestConnex (SMC) and their contractors (CPB Contractors and others). Only very occasionally were complaints treated as problems that needed to be addressed. It does seem that for the most part many complaints from residents have been treated with contempt as residents who complained were seen as opponents of the project. The reliance on the requirement to complain before mitigation became available has contributed to an unworkable system and been a source of local tension and the cause

⁵⁹¹ Evidence, Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services, 7 November 2018, p 42.

⁵⁹² Evidence, Mr Stephen Lancken, Independent Chair, M4 East Air Quality Community Consultative Committee, 7 November 2018, p 31.

⁵⁹³ Submission 436, WAG, p 12.

of disputes, as contractors have failed to deal adequately with the complaints and the additional costs of ameliorating the problem conditions.⁵⁹⁴

6.64 Moreover, the group noted: 'All these complaints have led to poor relations between the contractors, their workforce, and WestConnex and the residents who feel they are treated by contractors and the state government as collateral damage'.⁵⁹⁵

6.65 Cr Darcy Byrne, Mayor of Inner West Council explained that the Inner West Council had been inundated with concerns from residents that the government was not responding to their complaints. As a response to these concerns, Cr Darcy stated that the council had set up a WestConnex Unit:

Essentially the reason that the administrator established the WestConnex unit was because the council was being inundated with complaints from residents about the fact that their complaints to the Government were not being responded to.⁵⁹⁶

6.66 The Inner West Council WestConnex Unit was established in 2016 with three full-time council staff of the unit who work closely with the Department of Planning and Environment and the NSW EPA.⁵⁹⁷

Difficulties in navigating the complaints process

6.67 A number of inquiry participants described the difficulty in ascertaining where to go to make complaints in relation to the WestConnex project. For example, Mr Arthur Perlidis noted that he was often asked to go to a different agency when attempting to lodge a complaint about the New M5:

I have a huge amount of emails sent to all authorities that have advised that they are the people who can deal with my concerns but then after some delay advise me to go elsewhere passing it on to other departments till I end up back to where I started. (playing pass the parcel) months later. NSW Planning, EPA, SMC, RMS, NSW Planning ministers office, Roads ministers office, Minister for the New M5 Project office and the NSW Premiers office are quite willing to advise you to speak/ bounce you around to all but themselves that when you advise you have done so they are adamant that you should go back and insist that department is the authority to deal with your New M5 complaint.⁵⁹⁸

6.68 Dr Peter Ross expressed a similar sentiment, noting that there is more than one regulatory authority to appeal to, and that each of these authorities directs complainants to the other:

As the WestConnex Delivery Authority morphed into the secretive Sydney Motorway Corporation, and as the Roads and Maritime Services appeared to take the leading role in implementation, but not taking any responsibility, it has become increasingly difficult to actually liaise with any organisation with regard to the community's concerns with

⁵⁹⁴ Submission 436, WAG, p 14.

⁵⁹⁵ Submission 436, WAG, p 11.

⁵⁹⁶ Clr Darcy Byrne, Mayor, Inner West Council, 9 October 2018, p 56.

⁵⁹⁷ Submission 379, Inner West Council, p 8 and p 11.

⁵⁹⁸ Submission 54, Mr Arthur Perlidis, p 1.

what has been happening. There is no regulatory authority that one can appeal to, but a host of them, and we are fobbed off from one to the next.⁵⁹⁹

- 6.69** Ms Sharon Laura explained that lodging a complaint requires communication with various agencies. Ms Laura suggested a single independent body to coordinate and review complaints:

Residents find the multi-layered complexity of the project a challenge to negotiate. To successfully lodge a complaint requires multiple communications with various agencies. It should not require a degree in organisational management in order to lodge a complaint. There needs to be one independent body to coordinate and review the problems.⁶⁰⁰

- 6.70** The Inner West Council noted that because enforcement is divided between the Department of Planning and Environment, and the Environment Protection Authority, complaints-handling is not as effective as it may be if complaints are dealt with by a single agency:

The effectiveness of enforcement has been hampered by the fact that contestable works are enforced by the DP&E (responsible for monitoring conditions of approval) whilst noncontestable works are enforced by EPA ... The splitting of these functions has meant that complaints handling has been complex and not as effective as it might have been if a single agency was responsible for enforcement. In most instances residents have not been able to distinguish between contestable and noncontestable works (nor should they be expected to) so have unwittingly not followed correct complaints procedures.⁶⁰¹

Ineffectiveness of the WestConnex Complaints Hotline

- 6.71** The committee heard concerns about the ineffectiveness of the WestConnex Complaints Hotline. Ms Kathryn Calman, Member, Beverly Hills North Progress Association, described an instance where she called on the hotline at 3.30 am to complain about noise from numerous trucks and received an insufficient response:

... [I called the hotline for the] first time at 3.30 in the morning. The incident was that there had been a car blasting, and then we were hit with a cacophony of these truck blastings—I do not know how many trucks there were. It is a bit hard to see; I did go out there. So I rang the hotline. I did not know what was going on, and a guy in Malaysia—who had no idea—he said he would find out. Then I was calling WestConnex. I had the community liaison person on my phone. No-one got back to us until the next morning.⁶⁰²

- 6.72** Ms Calman also noted that her complaint had been 'watered down' from a concern about many trucks making noise to a single truck:

The complaint had been watered down to a single car horn blasting for five minutes. Who would complain about that? This was a small convoy of trucks. The noise was

⁵⁹⁹ Submission 291, Dr Peter Ross, p 2.

⁶⁰⁰ Submission 547, Ms Sharon Laura, p 6.

⁶⁰¹ Submission 379, Inner West Council, p 16.

⁶⁰² Evidence, Ms Kathryn Calman, Member, Beverly Hills North Progress Association, 11 October 2018, pp 25-26.

huge, and it woke us up. There was no apology, and the complaint was falsified. I put in a formal complaint to the Department of Planning and Environment after that, and it was shortly after that, I recall, that the current Fulton Hogan community liaison person left her job. I do not know if it is related, but she did.⁶⁰³

6.73 Following on, Mr John English, Chairperson of the Beverly Hills North Progress Association, said that the WestConnex complaints hotline 'has been as useful as a chocolate teapot'.⁶⁰⁴

6.74 An inquiry participant, who has called the hotline on many occasions, expressed frustration at being referred to the D and C contractor to resolve his complaint:

Whilst there is a Westconnex-provided hotline, which I have called numerous times because of the double parking of trucks in residential streets, rubbish being left behind by contractors, excessive noise, dust, etc., not to mention the expense of having to repair four tyres as a result of construction detritus left on public roads and potholes created by heavy machinery and trucks, I am unsure where these complaints and concerns go. In all circumstances calls are transferred to the Westconnex CPB Samsung John Holland Joint Venture WestConnex M4 East teams; the people actually being complained about. Cynically this seems the most unlikely place to send complaints as they would be the most unlikely party to respond to these impartially.⁶⁰⁵

6.75 Miss Elizabeth Brown, who lives near a project site, expressed dismay at having to provide her address to the hotline when making a complaint:

When phoning the enquiry line (Sydney Motorway Corporation) I had to provide my address, they would not allow me to speak to anyone if they did not have my address, reluctantly I gave it to them. Imagine my disgust when two people from the worksite showed up on my doorstep. I saw it as an intimidation tactic, they were given my address from the complaint I made, to me, that was a breach of privacy. On another occasion work continued on a Saturday (I was assured this wouldn't happen) and continued for many hours past the designated finishing time. Complaints to the hotline made no difference, they were a law unto themselves.⁶⁰⁶

Committee comment

6.76 The committee notes that while there are numerous complaint handling mechanisms available to manage concerns about the WestConnex, these systems are not providing suitable outcomes. Inquiry participants feel that their complaints are not being adequately addressed or considered. All relevant authorities must work harder to ensure complaints are managed in a more effective manner.

6.77 The committee acknowledges that the Department of Planning and Environment has recognised the need for an independent third party to review complaints for Stage 3 of the project and, consequently, the Community Complaints Mediator role has been established.

⁶⁰³ Evidence, Ms Kathryn Calman, Member, Beverly Hills North Progress Association, 11 October 2018, pp 25-26.

⁶⁰⁴ Evidence, Mr John English, Chairperson, Beverly Hills North Progress Association, 11 October 2018, p 21.

⁶⁰⁵ Submission 44, Name suppressed, p 2.

⁶⁰⁶ Submission 240, Miss Elizabeth Brown, p 1.

- 6.78** The committee welcomes the establishment of the this role, however, it is important that this role is held by an independent third party with no conflicts of interest to any parties involved in the construction or delivery of the WestConnex project. In particular, the committee notes the concerns held by inquiry participants regarding the processes of the Air Quality Community Consultative Committees, of which the current Community Complaints Mediator is the Chair.
- 6.79** The committee recommends that the NSW Government ensure that the Community Complaints Mediator is independent from any parties involved in the construction or delivery of the WestConnex project.

Recommendation 25

That the NSW Government ensure that the Community Complaints Mediator is independent from any parties involved in the construction or delivery of the WestConnex project.

- 6.80** The committee recommends that the NSW Government monitors and publically reports on the new Community Complaints Mediator for the WestConnex project to ensure that the improvements being sought regarding community engagement and complaints handling are achieved.

Recommendation 26

That the NSW Government monitors and publically reports on the new Community Complaints Mediator for the WestConnex project to ensure that the improvements being sought regarding community engagement and complaints handling are achieved.

- 6.81** The committee recommends that all major infrastructure projects have a centralised complaints management system that is accessible 24/7, transparent and empowered to respond effectively in a short time frame.

Recommendation 27

That all major infrastructure projects have a centralised complaints management system that is accessible 24/7, transparent and empowered to respond effectively in a short time frame.

Appendix 1 Complaint numbers and categories

WestConnex Project – Complaint numbers and categories as at 27 November 2018

WestConnex Stage	Recipient of complaint	Total no. of complaints	No. of complainants	No. of dust complaints	No. of odour complaints	No. of noise & vibration complaints during standard hours	No. of noise & vibration complaints OOH	No. of water complaints (i.e. eroded, mud tracking, unlawful discharge)	No. of waste complaints	Other complaints
Stage 1A (M4 Widening)	Licensee	179	67	32	0	21	90	5	6	25
	EPA	18	11	3	1	0	7	6	1	0
	Licensee & EPA	197		35	1	21	97	11	7	25
Stage 1B (M4 East)	Licensee	518	268	59	0	114	329	3	3	10
	EPA	73	33	16	1	7	36	11	0	2
	Licensee & EPA	591		75	1	121	365	14	3	12
Stage 1 (New M5)	Licensee	821	419	107	140	244	291	7	7	25
	EPA	300	165	17	234	10	26	6	4	3
	Licensee & EPA	1121		124	374	254	317	13	11	28
All Stages	Licensee	158	754	198	140	379	710	15	16	60
	EPA	391	209	36	236	17	69	23	5	5
	Licensee & EPA	1909		234	376	396	779	38	21	65

Appendix 2 Submissions

No.	Author
1	Mr Kelvin Riordan
2	Name suppressed
3	Dr Glen Searle
4	Dr Margaret Brandl
5	Name suppressed
6	Name suppressed
7	Name suppressed
8	Name suppressed
9	Mr Richard Moras
10	Name suppressed
11	Ms Jozefa Sobski
12	Name suppressed
13	Ms Jan Spencer
14	Ms Jenny Crane
15	Mrs Maria Nugent
16	Name suppressed
16a	Name suppressed
17	Mr Afonso Duque-Portugal
18	Mr Peter Walker
19	Dr Fergus Fricke
20	Name suppressed
21	Mr William Parker
22	Ms Michelle Jensen
23	Mr Matt Mushalik
24	Ms Mora Main
25	Name suppressed
26	Mrs Jane Scott
27	Name suppressed
28	Mr Mark Gould
29	Mr Rosario Perri
30	Name suppressed

No.	Author
31	Ms Gia Jenkins
32	Mr Rodney McShanag
33	Confidential
34	Confidential
35	Strathfield Council
36	Professor Fiona Martin
37	Name suppressed
38	Name suppressed
39	Dr David Thorp
40	Dr Katrina Morris
41	Ms Fernanda Rodas
42	Ms Anne Connolly
43	Name suppressed
44	Name suppressed
45	Ms Caroline Alcorso
46	Name suppressed
47	Sachi Iwamoto
48	Mr Peter Murray
49	Name suppressed
50	Mr Michael Tatam
51	Mr James Manzie
52	Name suppressed
53	Dr Ann Daly
54	Mr Arthur Perlidis
55	Mrs Dorothy Lewis
56	Mrs Maggie Aitken
57	Name suppressed
58	Mr Ben Trinder
59	Ms Phoebe Loomes
60	Name suppressed
61	Name suppressed
62	Ms Lesley Strachan
63	Mr Richard Stanford
64	Mr Christopher Burns
65	Mr Peter Mitchell

No.	Author
66	James Kevin
67	Name suppressed
68	Name suppressed
69	Ms Alexandra Gawdan
70	Mrs Beverley Inshaw
71	Dr Marion Manton
72	Name suppressed
73	Name suppressed
74	The Strata Committee of Esplanades and Escarpments, of Balmain Cove
75	Mr Aaron Le Saux
76	Mr Michael Bianchino
77	Name suppressed
78	Name suppressed
79	Name suppressed
80	Name suppressed
81	Name suppressed
82	Ms linda barrs
83	Name suppressed
84	Name suppressed
85	Mr Andrew Soulos
86	Dr Mark Titmarsh
87	Ms Gaye Murrills
88	Mr Henry Johnston
89	Name suppressed
90	Name suppressed
91	Mrs Aurelia Roper-Tyle
92	Ms Dione McDonald
93	Mr Roger Juchau
94	Ms Glenys Waddell
95	Ms Janet Thompson
96	Mr Dave Bennett
97	Confidential
98	Name suppressed
99	Mr Hamid Dadgostar
100	Name suppressed

No.	Author
101	Ms Jennifer Fox
102	Ms Louise Fowler-Smith
103	Name suppressed
104	Name suppressed
105	Confidential
106	Mrs Philippa Hughes
107	Dr Susan Newberry
108	Mr Christopher Horvath
109	Name suppressed
110	Ms Pauline Tyrrell
111	Dr Catherine McCarthy
112	Mr Jean-Philippe Nemlich
113	Mr Enrico Simonetti
114	Name suppressed
115	Newtown Residents Against WestConnex
116	Mr John Askew
117	Dr Jeremy Fisher OAM
118	Mr Daniel Sturrock
119	Mrs Kim Smith
120	Name suppressed
121	Name suppressed
122	Ms anita stuhmcke
123	Mr Lloyd Downey
124	NSW Government
125	Name suppressed
126	Name suppressed
127	Name suppressed
128	Name suppressed
129	Name suppressed
130	Name suppressed
131	Name suppressed
132	Mr Michael Mobbs
133	Name suppressed
134	Name suppressed
135	Name suppressed

No.	Author
136	Name suppressed
137	Name suppressed
138	Name suppressed
139	Mrs Sue Wright
140	Name suppressed
141	Name suppressed
142	Elizabeth Greaves
143	Mr Deepak Khuller
144	Ms Maria Bradley
145	Mr Sam Weiss
146	Name suppressed
147	Mr Richard Stone
148	Mr Chris Rodd
149	Mr Sean Maguire
150	Name suppressed
151	Professor John Forge
152	Ms Gabby Greyem
153	Mr Graeme Bucholtz
154	Ms Roz Cheney
155	Mr Marcus Sandmann
156	Ms Carolyn Allen
157	Name suppressed
158	Name suppressed
159	Mr phil rodwell
160	Ms Tok Karen
161	Mr Graeme Tyhsen
162	Name suppressed
163	Name suppressed
164	Name suppressed
165	Name suppressed
166	Ms Emma Bacon
167	Ms Sallie Beaumont
168	Vicky Carter
169	Mr Preston Hawkes
170	Mr Andrew Lillicrap

No.	Author
171	Mr Craig Jewiss
172	Ms Laurel Acton
173	Mr Richard Stanford
174	Ms Paula Lancaster
174a	Ms Paula Lancaster
175	Mr Jonathan Koay
176	Mr Graeme McKay
177	Mr Jack Whiddon
178	Peter Boyle
179	Mr Greg Meckstroth
180	Mr Martin Brady
181	Dr Robert George
182	Ms Deborah Mills
183	Mr Jackie Ma
184	Ms Helen Randerson
185	Dr Anthony Knittel
186	Ms Susan Dixon
187	Mr Leigh Howlett
188	Mr Patrick McNamara
189	Ms Bronwyn White
190	Ms Gemma Foskett
191	Mrs Sally Hardy
192	Mr Ognian Pishev
193	Ms maire sheehan
194	Dr Geoffrey Cohn
195	Miss Alison Boulton
196	Mrs Kristina Major
197	Ms Mia Sturrock
198	Mr Rasmus Torkel
199	Mr Geoffrey Sturday
200	Ms Janet Eastman
201	Mr David Springett
202	Mr Conrad Kerin
203	Mr David Haertsch
204	Mr Paul De Gabriele

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207	Mrs Anne Wragby
208	Ms Jennifer Galbraith
209	Mr Konrad Hartmann
210	Dr Raymond Nassar
211	Dr Noel Child
212	Mr Craig Kirchner
213	Mr Les Johnston
214	Ms June Lunsmann
215	Mr William O'Neill
216	Ms Alesoun Marsden
217	NSW Greens
218	Mrs Sabrina Douglas
219	Mr Murray Robertson
220	Dr Greg Shapley
221	Mr John Fitzgerald
222	Mrs Anne Wale
223	Professor Devleena Ghosh
224	Mr Jeremy Austen
225	Sally Okeby
226	Mark Martin
227	Ms Lynda Riley
228	Mr Derek Waddell
229	Mr Richard Dudley-Smith
230	Mr David Miller
231	Miss Renee Marks
232	Ms Katie Stackhouse
233	Dr Christina Ho
234	Ms Natalie Shea
235	Professor Judy Cashmore
236	Mr Drew Mollineau
237	Mr Martin Brown
238	Ms Margot Oliver
239	Dr Catherine Welch

No.	Author
240	Miss Elizabeth Brown
241	Ms Jenny Seymour
242	Mr John Boyle
243	Ms Caroline Belmont
244	Dr Christy Newman
245	Dr Sunil Badami
246	Ms Amanda Armstrong
247	Ms Susan Hesse
248	Mr Sean English
249	Ms Rachel Davies
250	Dr Christopher Standen
251	Mr Mark Marusic
252	Dr Rosemary Webb
253	Mr Jim Donovan
254	Miss Margaret Sharkey
255	Ms Helen Gilbert
256	Ms India Bell
257	Ms Jo Haylen
258	Name suppressed
259	Name suppressed
260	Mr Douglas Bennett
261	Mr William Holliday
262	Mr Andre J Veerman
263	Mr Paul Jeffery
264	Ms Louise Gilbert
265	Ms Amanda Starr-Crawford
266	Ms Cathy Merchant
267	Ms Anna Keohan
268	Ms Kathryn Calman
268a	Confidential
268b	Ms Kathryn Calman
269	Mrs Gretchen Gamble
270	Ms Holly Gorman
271	Mrs Venera Cavallaro
272	Dr Jacinta Green

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273	Ms Deborah Sharp
274	Mr Aaron Eisler
275	Mr Martin O'Dea
276	Ms Adrienne Shilling
277	Mr John Laidler
278	Mrs Kylie McQueen
279	Mr Mark Read
280	Ms Sharon Cummings-Donnelly
281	Ms Cecilia Stenstrom
282	Ms Tamara Pallos
283	Ms Jessika Zen
284	Mr Prashant Jain
285	Dr Sarina Kilham
286	Dr Thalia Anthony
287	Mrs Lorraine McNamara
288	Mr John Zucco
289	Ms Siobhan O'Loughlin
290	Ms Alexa Wyatt
291	Dr Peter Ross
292	Mr Clayton Thomas
293	Ms Emily Upton
294	Mr Daniel Taylor
295	Ms Nadia Warne
296	Mr Ray Rauscher
297	Mr Mark Robertson
298	Ms Fernanda Rodas
299	Mr Victor Pinkerton
300	Ms Denise Rothwell
301	Mr Peter Schneider
302	Ms Joanna Robinski
303	Mr Patrick Li
304	Mr Jim Lowe
305	Ms Pauline Lee
306	Miss Heather Goodman
307	Ms Helen Dunne

No.	Author
308	Ms Janet Kossy
309	Ms Hilary Bell
310	Audit Office of New South Wales
311	City of Sydney
312	Mr Ian Lenehan
313	Ms Mirinda Boaz-Cole
314	Ms Elisabeth Drake
315	Mr Edison Heartly
316	Ms Melissa Hagarty
317	Mr Peter Foggitt
318	Ms Tessa Leong
319	Ms Nicolette Stasko
320	Ms Eleanor Nurse
321	Ms Elizabeth Wallace
322	Ms Jess Xavier
323	Ms Shiona Watson
324	Ms Eva Kaupp
325	Mr Alex Brooks
326	Mr Christopher Baker
327	Ms Kate Cutler
328	Ms Maria Dion
329	Ms Beverley Inshaw
330	Mr Nigel Cadogan
331	Ms Ifeanna Tooth
332	Mr Douglas Bennett
333	Ms Linda Coyle
334	Ms Lauren Moore De Laney
335	Ms Roberta Smith
336	Mr John Caley
337	Ms Marianne Brossard
338	Ms Louise Warren
339	Ms Samantha Philp
340	Ms Viola Nazario
341	Ms Alice McNamara
342	Mr Mark Oldfield

No.	Author
343	Ms Clare Burgess
344	Ms Melissa Cooper-Findlay
345	Ms Maggie Aitken
346	Ms Tamara Regan
347	Ms Anne Picot
348	Ms Janet Kossy
349	Name suppressed
350	Mr Murray Robertson
351	Ms Merrilyn Kennedy
352	Name suppressed
353	Ms Diana Dunlop
354	Ms Sharon and Mr Martin Jacobson
355	Ms Monette Smith
356	Dr David Watson
357	Mr John Todhunter
358	Ms Kyran Lynch
359	Mr Colin Charlton
360	Ms Rose Gates
361	Name suppressed
362	Ms Ngaire Worboys
363	Residents of Glebe and Forest Lodge
364	Parents and Citizens Association of Sydney Secondary College, Balmain Campus
365	WestCONnex Direct Action
366	NoWestConnex (NoW Annandale)
367	Alexandria Residents' Action Group
368	GreenWay Program
369	Beverly Hills North Progress Association
370	EcoTransit Sydney
371	St Peters Public School Parents and Citizens Association
372	Valuer General
373	Haberfield Public School P&C Association
374	Inner West LEAN
375	Action for Public Transport (NSW) Inc
376	NW Rozelle Residents
377	Sydney Secondary College Leichhardt P&C

No.	Author
378	Transport Workers' Union (NSW Branch)
379	Inner West Council
380	Saving Sydneys Trees
381	Public Health Association of Australia (PHAA)
382	Financial Architects Asia
383	Desane Properties
384	Haberfield Association
385	Camperdown Residents Against WestConnex
386	No WestConnex Public Transport Inc. - NoW PT
387	Rozelle Against WestConnex
388	Leichhardt Against WestCONnex LAW
388a	Leichhardt Against WestCONnex LAW
388b	Leichhardt Against WestCONnex LAW
389	Mr Hugh Jones
390	Mr Patrick Li
391	Mr Michael Bianchino
392	Mr Michael Wright
393	Cr Maryanne Duggan
394	Name suppressed
395	Cammeray Public School P and C
396	Mr Ben Aveling
397	Ms Jenny Taubman
398	Ms Marta Balassa
399	Mr Philip Laird
400	Mrs Jennifer Matkevich
401	Pymont Action
402	Ms Josephine Wadlow-Evans
403	Ms Joanne Woodcroft
404	Ms Alice Kershaw
405	Ms Jocelyn Morris
406	Name suppressed
407	Mrs Margaret Hogg
408	Name suppressed
409	Name suppressed
410	Name suppressed

No.	Author
411	Ms Margaret Vickers
412	Ms Florence McCarthy
413	Mr Zio Ledoux
414	Mr John Gillies
415	Name suppressed
416	Ms Joy McIntyre
417	Name suppressed
418	Ms Clare Grant
419	Ms Marghanita da Cruz
419a	Ms Marghanita da Cruz
420	Mr Scott Goddard
421	Name suppressed
422	Ms Jennifer Killen
423	Name suppressed
424	Ms Catherine Thompson
425	Mr Bill Bennett
426	Mr Mat Hounsell
427	Name suppressed
428	Mrs Sandra Greig
429	Pauline Lockie
430	Mr Richard Capuano
430a	Mr Richard Capuano
430b	Mr Richard Capuano
431	Name suppressed
432	Mr Owen Coleman
433	Sydney Transport Partners
434	Ms Janette Willett
435	Ms Rochelle Porteous
436	WestCONnex Action Group
437	Ms Julie Williams
438	Name suppressed
439	Name suppressed
440	Name suppressed
441	Name suppressed
442	Name suppressed

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443	Name suppressed
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463	Name suppressed
464	Name suppressed
465	Name suppressed
466	Name suppressed
467	Name suppressed
468	Name suppressed
469	Ms Wendy Bacon
470	Bodycorp SP44334
471	Name suppressed
472	Name suppressed
473	Name suppressed
474	Name suppressed
475	Name suppressed
476	Name suppressed
477	Name suppressed

No.	Author
478	Name suppressed
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483	Name suppressed
484	Name suppressed
485	Ms Janet Dandy-Ward
486	Name suppressed
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488	Name suppressed
489	Name suppressed
490	Name suppressed
491	Mr Keith Dunkin
492	Name suppressed
493	Name suppressed
494	Name suppressed
495	BIKESydney
496	Name suppressed
497	Dr Michelle Zeibots
498	Name suppressed
499	Name suppressed
500	Name suppressed
501	Name suppressed
502	Name suppressed
503	Name suppressed
504	Name suppressed
505	Name suppressed
506	Ms Alison Taylor
507	Name suppressed
508	Name suppressed
509	Name suppressed
510	Name suppressed
511	Annandale North Public School P&C Association
512	Name suppressed

No.	Author
513	Name suppressed
514	Confidential
515	Name suppressed
516	Name suppressed
517	Name suppressed
518	Name suppressed
519	Name suppressed
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522	Name suppressed
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524	Name suppressed
525	Western Harbour Tunnel Action Group
526	Name suppressed
527	Name suppressed
528	Name suppressed
529	Name suppressed
530	South Paddington Residents Association
531	Name suppressed
532	Name suppressed
533	Ms Sandra Langtree
534	Name suppressed
535	Name suppressed
536	Name suppressed
537	Name suppressed
538	Name suppressed
539	Name suppressed
540	Name suppressed
541	Name suppressed
542	Name suppressed
543	Name suppressed
544	Name suppressed
545	Name suppressed
546	Jamie Parker MP on behalf of 985 constituents
547	Ms Sharon Laura

No.	Author
548	Ms Kate Cotis and Ms Siobhan Bryson
548a	Ms Kate Cotis and Ms Siobhan Bryson
548b	Ms Kate Cotis and Ms Siobhan Bryson
549	Mr Anthony Sexton
550	Confidential
551	Confidential
552	Name suppressed
553	Mr John Bartholomew
554	Mr Brian Gorman
555	CFMMEU
556	Mr Peter Georgiades
557	Confidential

Appendix 3 Witnesses at hearings

Date	Name	Position and Organisation
Tuesday 9 October 2018, Macquarie Room,	Mr Ken Kanofski	Chief Executive, Roads and Maritime Services
Parliament House	Ms Camilla Drover	Executive Director, Motorways Division, Roads and Maritime Services
	Mr Phil Gardner	Deputy Secretary, Commercial, NSW Treasury
	Mr Jim Dawson	Executive Director, Commercial Assets, NSW Treasury
	Ms Kim Curtain	Executive Director, Infrastructure and Structured Finance, NSW Treasury
	Ms Sally Walkom	Executive Director, Commercial Branch, Department of Premier and Cabinet
	Mr Peter Hehir	Convenor, Rozelle Against WestConnex (RAW)
	Mr Matt Doherty	
	Mr Brian Gorman	Representative, North West Rozelle Residents
	Ms Denise Corrigan	Representative, North West Rozelle Residents
	Dr Patrick Harris	Senior Research Fellow, Menzies Centre for Health Policy, University of Sydney School of Medicine, representing the Public Health Association of Australia
	Councillor Darcy Byrne	Mayor, Inner West Council
	Mr John Warburton	Deputy General Manager, Community and Engagement, Inner West Council
	Mr Kendall Banfield	Manager, WestConnex Unit, Inner West Council
	Mr Sam Shaw	Environmental Projects Officer, Strathfield Council
	Mr Kelvin Riordan	Convenor, NoW Annandale
	Mr Richard Dudley-Smith	Co-convenor, NoW Annandale

Date	Name	Position and Organisation
	Ms Ann-Therese King	Vice president and WestConnex Liaison Officer, Sydney Secondary College Leichhardt P&C
	Ms Jane Crawford	President, Sydney Secondary College Leichhardt P&C
	Dr Glen Searle	Adjunct Associate Professor, Faculty of Architecture, Design and Planning, University of Sydney
	Ms Mary Court	Secretary, Penrith Valley Community Unions, Spokesperson, No M4 Tolls
Thursday 11 October 2018, Macquarie Room,	Mr Marcus Ray	Deputy Secretary, Planning Services, Department of Planning and Environment
Parliament House	Mr Glenn Snow	Acting Executive Director, Priority Projects, Department of Planning and Environment
	Dr Raymond Nassar	Specialist anaesthetist
	Mr John English	Chairperson, Beverly Hills North Progress Association
	Ms Kathryn Calman	Member, Beverly Hills North Progress Association
	Mr Jim Betts	Chief Executive Officer, Infrastructure NSW
	Ms Marina Grobbelaar	Acting Deputy Chief Executive Officer and Head of Investor Assurance, Infrastructure NSW
	Mr Richard Olsen	State Secretary, Transport Workers Union
	Mr Robert Rasmussen	Official, Transport Workers Union
	Ms Margaret Crawford	Auditor-General of New South Wales, Audit Office of NSW
	Mr Scott Stanton	Assistant Auditor-General, Financial Audit, Audit Office of NSW
	Ms Claudia Migotto	Assistant Auditor-General, Performance Audit, Audit Office of NSW
	Mr Malachy Ward	WestConnex Liaison Officer, Haberfield Association
	Ms Cynthia Moore	Member, Haberfield Association

Date	Name	Position and Organisation
	Ms Sherrill Nixon	Head of the WestConnex subcommittee and Member, Haberfield Public School P&C
	Ms Rachel Brittliff	Member, Haberfield Public School P&C
	Ms Merilyn Fairskye	Co-convenor, Newtown Residents Against WestConnex
	Mr Ben Aveling	Co-convenor, Alexandria Residents Action Group
	Dr Lesley Treleaven	Convenor, Camperdown Residents Against WestConnex
	Professor Paul Torzillo	Head of Respiratory Medicine at Royal Prince Alfred Hospital, appearing with Camperdown Residents Against WestConnex
Monday 15 October 2018, Macquarie Room, Parliament House	Mr Dennis Cliche	Former Chief Executive Officer, Sydney Motorway Corporation
	Mr Peter Jones	Former Project Director, Stage 3, Sydney Motorway Corporation
	Mr Andrew Head	Chief Executive Officer, WestConnex
	Lord Mayor Clover Moore	Mayor, City of Sydney
	Ms Monica Barone	Chief Executive Officer, City of Sydney
	Mr Kim Woodbury	Chief Operations Officer, City of Sydney
	Mr Sebastian Smyth	Executive Manager Access and Transport, City of Sydney
	Mr Terry Rawnsley	Principal and Partner, SGS Economics and Planning
	Professor John Sheehan AM	Chairman, Desane Group Holdings Limited
	Mr Michael Parker	Acting Valuer General, Office of the Valuer General
	Mr Paul Goldsmith	Principal Valuer Compensation, Valuation Services, Property NSW
	Mr John Lozano	No WestConnex Public Transport
	Mr Matthew Doherty	EcoTransit
	Mr Jim Donovan	Action for Public Transport

Date	Name	Position and Organisation
	Dr Michelle Zeibots	Research Director, UTS Transport Research Centre, University of Technology Sydney
	Ms Janet Dandy-Ward	Treasurer, WestCONnex Action Group
	Ms Rhea Liebmann	Spokesperson, WestCONnex Action Group
	Dr Jane Durie	Spokesperson, WestCONnex Action Group
	Ms Kate Cotis	Resident, St Peters
	Ms Tamara Regan	Resident, St Peters
	Dr Sarina Kilham	Spokesperson, WestConnex subcommittee, St Peters Public School P&C
	Mr Richard Capuano	Former resident, St Peters
	Ms Shelley Jensen	Former resident, St Peters
Wednesday 7 November 2018, Macquarie Room,	Mr Marcus Ray	Deputy Secretary, Planning Services, Department of Planning and Environment
Parliament House	Mr David Gainsford	Executive Director, Priority Projects Assessment, Department of Planning and Environment
	Mr Glenn Snow	Director, Transport Assessments, Department of Planning and Environment
	Mr Mark Gifford	Chief Environmental Regulator, Environment Protection Authority
	Mr Stephen Lancken	Independent Chair, M4 East and New M5 Air Quality Community Consultative Committee
	Mr Ken Kanofski	Chief Executive, Roads and Maritime Services
	Ms Camilla Drover	Executive Director, Motorways Division, Roads and Maritime Services

Appendix 4 Minutes

Minutes no. 3

Friday 8 June 2018

Public Accountability Committee

Members' Lounge, Parliament House, Sydney, at 11.03 am

1. Members present

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Mr Khan

Ms Ward

Mr Field

2. Correspondence

The committee noted the following correspondence:

Received:

- 6 June 2018 – Letter from Mr Field, Mr Donnelly and Mrs Houssos requesting a meeting of the Public Accountability Committee to consider a proposed self-reference into the impact of the WestConnex project.

3. Consideration of terms of reference

The Chairman tabled a letter to the Committee Clerk signed by Mr Field, Mr Donnelly and Mrs Houssos requesting a meeting of the committee to consider the following self-reference:

Inquiry into the impact of the WestConnex project

1. That the Public Accountability Committee inquire into and report on the impact of the WestConnex project, including:
 - (k) the adequacy of the business case for the WestConnex project, including the cost-benefits ratio
 - (l) the cost of WestConnex project, including the size and reasons for overruns
 - (m) consideration of the governance and structure of the WestConnex project including the relationship between Sydney Motorway Corporation, Roads and Maritime Services, the Treasury and its shareholding Ministers
 - (n) the compulsory acquisition of property for the project
 - (o) the recommendations of the Audit Office of New South Wales and the Australian National Audit Office in regards to WestConnex
 - (p) the extent to which the project is meeting the original goals of the project as articulated in 2012
 - (q) the relationship between WestConnex and other toll road projects including the Sydney Gateway, Western Harbour Tunnel, F6 and Beaches Link
 - (r) the circumstances by which WestConnex and the Sydney Gateway were declared to be separate projects in 2017
 - (s) the cost of the project against its current valuation as determined through the sale of the Sydney Motorway Corporation and whether it represents a good investment for NSW taxpayers
 - (t) any other related matter.

2. That the committee report by 1 November 2018.

Resolved, on the motion of Mr Khan: That the committee defer consideration of the terms of reference until a later meeting.

Resolved, on the motion of Mr Donnelly: That the committee's meeting to consider the proposed terms of reference be scheduled for 9.30 am on Thursday 21 June 2018.

4. **Adjournment**

The committee adjourned at 11.10 am, until Thursday 21 June 2018, Members' Lounge, Parliament House (deliberative meeting to consider proposed self reference inquiry into the impact of the WestConnex project).

Sharon Ohnesorge
Committee Clerk

Minutes no. 4

Thursday 21 June 2018

Public Accountability Committee

Members' Lounge, Parliament House, Sydney, at 9.30 am

1. **Members present**

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Mr Field

Mrs Houssos

Mr Khan

Ms Ward

2. **Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes nos 2 and 3 be confirmed.

3. **Adjournment of meeting**

Resolved, on the motion of Mr Khan: That the committee adjourn until 2.15 pm today, Thursday 21 June 2018 in the Members' Lounge.

4. **Consideration of terms of reference**

The committee met at 2.18 pm.

The committee considered the following proposed self-reference, consideration of which was deferred at the committee's meeting on 8 June 2018:

Inquiry into the impact of the WestConnex project

1. That the Public Accountability Committee inquire into and report on the impact of the WestConnex project, including:
 - (u) the adequacy of the business case for the WestConnex project, including the cost-benefits ratio
 - (v) the cost of WestConnex project, including the size and reasons for overruns
 - (w) consideration of the governance and structure of the WestConnex project including the relationship between Sydney Motorway Corporation, Roads and Maritime Services, the Treasury and its shareholding Ministers

- (x) the compulsory acquisition of property for the project
 - (y) the recommendations of the Audit Office of New South Wales and the Australian National Audit Office in regards to WestConnex
 - (z) the extent to which the project is meeting the original goals of the project as articulated in 2012
 - (aa) the relationship between WestConnex and other toll road projects including the Sydney Gateway, Western Harbour Tunnel, F6 and Beaches Link
 - (bb) the circumstances by which WestConnex and the Sydney Gateway were declared to be separate projects in 2017
 - (cc) the cost of the project against its current valuation as determined through the sale of the Sydney Motorway Corporation and whether it represents a good investment for NSW taxpayers
 - (dd) any other related matter.
2. That the committee report by 1 November 2018.

Resolved, on the motion of Mr Donnelly: That paragraph 2 of the terms of reference be amended by omitting '1 November 2018' and inserting instead '1 December 2018'.

Mr Field moved: That the committee adopt the terms of reference as amended.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos, Mr Mason-Cox, Revd Nile.

Noes: Mr Khan, Ms Ward.

5. Conduct of the inquiry into the impact of the WestConnex project

5.1 Closing date for submissions

Resolved, on the motion of Mrs Houssos: That the closing date for submissions be 31 August 2018.

5.2 Stakeholder list

Resolved, on the motion of Mr Donnelly: That the Chairman's proposed stakeholder list be agreed to, and that members have until 10.00 am Monday 25 June 2018 to nominate additional stakeholders to the list.

5.3 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

5.4 Hearing dates

Resolved, on the motion of Mr Field: That the committee hold three hearings, with one reserve date, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

6. Adjournment

The committee adjourned at 2.27 pm, until Tuesday 24 July 2018, Macquarie Room, Parliament House (public hearing for inquiry into the scrutiny of public accountability in New South Wales).

Sharon Ohnesorge
Committee Clerk

Minutes no. 9

Tuesday 9 October 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney, at 8.46 am

1. Members presentRevd Nile, *Chairman*

Mr Colless (substituting for Mr Khan) (until 2.53 pm)

Mr Donnelly

Ms Faehrmann

Mrs Houssos (until 9.12 am)

Mr Mallard (substituting for Mrs Ward)

Mr Mookhey (substituting for Mrs Houssos for the duration of the WestConnex inquiry) (from 9.17 am)

Dr Phelps (substituting for Mr Mason-Cox)

2. Correspondence

The committee noted the following items of correspondence:

Received:

- 26 June 2018 – Email from Hon Shaoquett Moselmane MLC, Legislative Council Opposition Whip to secretariat, advising that the Hon Daniel Mookhey MLC will be a participating member on the impact of the WestConnex project inquiry
- 28 June 2018 – Email from Ms Kelly Goodwin, Director Corporate Communications, Infrastructure NSW to secretariat, advising that Infrastructure NSW will not be making a submission to the impact of the WestConnex project inquiry
- 9 July 2018 – Email from Ms Siobhan McDonnell, Program Coordinator, Australian National Audit Office to secretariat, advising that the Australian National Audit Office will not be making a submission to the impact of the WestConnex project inquiry
- 11 July 2018 – Letter from Mr Andrew Head, Group Executive, NSW Development, Transurban to secretariat, advising that they will not be making a submission at this time, due to Transurban's participation in the NSW Government's sale of the Sydney Motorway Corporation
- 16 July 2018 – Email from Mr Rick Montrone, Desane Properties Pty Limited to secretariat, advising that Desane will be making a submission to the impact of the WestConnex project inquiry, and formally requesting that the Group Chairman and Managing Director be invited to give evidence at a public hearing
- 4 September 2018 – Email from Mr Justin Field MLC to secretariat, advising that Ms Cate Faehrmann will be substituting for Mr Field for the duration of the impact of the WestConnex project inquiry
- 27 September 2018-3 October 2018 – Various emails between the secretariat and Ms Annabel Andrews, Executive Assistant to Mike Baird, Chief Customer Officer, Consumer Banking, National Australia Bank Limited regarding his attendance at one of the public hearings for the impact of the WestConnex project inquiry. Mr Baird is unavailable to attend any of the public hearings to be held 9, 11 and 15 October. Mr Baird has indicated that he is willing to appear on an alternative date in November
- 3 October 2018 – Email from Ms Ana Maria Rodriguez, Personal Assistant to Hon. Nick Greiner AC, to secretariat, advising that Mr Greiner is unable to attend the public hearing on 11 October
- 3 October 2018 – Email from Mr Spencer Hulme, Senior Legal Counsel, KPMG to secretariat, advising that KPMG representatives are unable to attend a public hearing on 11 October
- 4 October 2018 – Letter from Hon Natasha Maclaren-Jones MLC, Government Whip, Legislative Council to secretariat, advising that the Hon Rick Colless MLC will be substituting for the Hon Trevor Khan MLC on 9 October 2018 for the impact of the WestConnex project inquiry public hearing
- 4 October 2018 – Letter from Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Wes Fang MLC will be substituting for the Hon Trevor Khan MLC on 11 October 2018 for the impact of the WestConnex project inquiry public hearing

- 4 October 2018 – Letters from Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Shayne Mallard MLC will be substituting for the Hon Natalie Ward MLC on 9, 11 and 15 October 2018 for the impact of the WestConnex project inquiry public hearings.

Sent:

- 3 September 2018 – Email from secretariat, to Mr Andrew Head, Group Executive, NSW Development, Transurban, requesting that Transurban reconsider its position on lodging a submission to the impact of the WestConnex inquiry
- 2 October 2018 – Letter from Committee Chairman to Mr Mike Baird, former Premier of NSW, formally requesting that Mr Baird reconsider his availability to attend a public hearing and give evidence to the impact of the WestConnex project inquiry.

Resolved, on the motion of Mrs Houssos: That the committee accept Mr Baird's invitation to appear at a public hearing and give evidence to the inquiry into the impact of the WestConnex project on a date in November, and that the secretariat canvass availability with members.

3. Inquiry into the impact of the CBD and South East Light Rail Project

4. Inquiry into the impact of the WestConnex project

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 3, 4, 9, 11, 13-15, 17-19, 21, 23, 24, 26, 28, 29, 31, 32, 35, 36, 39-42, 45, 47, 48, 50, 51, 53, 54, 55, 56, 58, 59, 62-66, 69-71, 74-76, 82, 86-88, 91-96, 99, 101-102, 106-108, 110-113, 115-119, 122-124, 132, 139, 142-145, 147-149, 151-156, 159-161, 166-257, 259-267, 269-345, 347-348, 350, 351, 353-354, 356-358, 360, 365, 367-388, 390-393, 396, 402, 404, 405, 407, 411, 414, 418, 419, 420, 425-426, 433, 469-470, 495, 497, 511, 525, 530, 533 and 546.

4.2 Partially confidential submissions

Mr Donnelly moved: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 2, 5-8, 10, 12, 16, 20, 25, 27, 30, 37-38, 43-44, 46, 49, 52, 57, 60-61, 67-68, 72-73, 77-81, 83-84, 89-90, 98, 100, 103-104, 109, 114, 120-121, 125-129, 131, 133-138, 140-141, 146, 150, 157-158, 162-165, 258, 352, 355, 361, 408, 415, 417, 421, 438-456, 458-468, 471-482, 484, 486, 488-490, 492-494, 496, 499-505, 507-510, 513, 515, 516, 518-519, 521-524, 527-529, 531-532, 534, 536-541, and 543-544.

Question put.

The committee divided.

Ayes: Mr Colless, Mr Donnelly, Ms Faehrmann, Ms Houssos, Mr Mallard.

Noes: Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Dr Phelps: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submissions nos. 75, 85, 268, 359, 366, 429, 430, 431 and 498.

4.3 Confidential submissions

Ms Houssos moved: That the committee keep submission nos. 33-34, 97, 105, 268a, 506, 514, 517, 520 and 526 confidential, as per the request of the author as they contain identifying and/or sensitive information.

Question put.

The committee divided.

Ayes: Mr Colless, Mr Donnelly, Ms Faehrmann, Ms Houssos, Mr Mallard.

Noes: Dr Phelps.

Question resolved in the affirmative.

4.4 Publication status of submission no. 389 from Mr Hugh Jones

Resolved, on the motion of Dr Phelps: That the committee authorise the publication of submission no. 389, with the exception of identifying and/or sensitive information, and potential adverse mention, which is to remain confidential, as per the recommendation of the secretariat.

Resolved, on the motion of Dr Phelps: That the committee keep video footage attached to submission no. 389 confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information and potential adverse mention.

4.5 Submission no. 271 from the NSW Greens

Resolved, on the motion of Ms Faehrmann: That the committee authorise the publication of the first 25 pages of submission no. 271 from the NSW Greens, and that attachments to the submission, be kept confidential, and made available to committee members on request.

4.6 Pro forma from Mr Jamie Parker MP

Resolved, on the motion of Ms Faehrmann: That the committee publish one copy of the original pro forma received from Mr Jamie Parker MP on its website, noting the number of copies that have been received.

4.7 Allocation of questioning

Resolved, on the motion of Mrs Houssos: That the sequence of questions to be asked during the inquiry hearings on 9, 11 and 15 October alternate between opposition, crossbench and government members, in that order, with equal an proportion of time allocated being allocated to each.

4.8 In camera evidence

Mr Donnelly moved: That the committee proceed to take evidence from Leichhardt Against WestConnex on 9 October 2018 in camera.

Question put.

Ayes: Mr Colless, Mr Donnelly, Ms Faehrmann, Ms Houssos, Mr Mallard.

Noes: Dr Phelps.

Question resolved in the affirmative.

4.9 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services
- Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Phil Gardner, Deputy Secretary, Commercial, NSW Treasury
- Mr Jim Dawson, Executive Director, Commercial Assets, NSW Treasury
- Ms Kim Curtain, Executive Director, Infrastructure and Structured Finance, NSW Treasury
- Ms Sally Walkom, Executive Director, Commercial Branch, Department of Premier and Cabinet.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Peter Hehir, Convenor, Rozelle Against WestConnex (RAW)

- Mr Matthew Doherty, Member, Rozelle Against WestConnex (RAW)
- Mr Brian Gorman, Representative, North West Rozelle Residents
- Ms Denise Corrigan, Representative, North West Rozelle Residents.

Mr Hehir tendered the following document:

- Community newspaper, *Bottleneck*.

Mr Gorman tendered the following documents:

- Pamphlet, *Air quality: What we are breaking and what we can do about it*
- NSW Government community update, Western Harbour Tunnel, dated July 2018
- Data on particulate pollution from the CSIRO
- Photographs of traffic
- Map, Iron Cove Link
- Statement from WestConnex M4-M5 Link EIS.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Patrick Harris, Senior Research Fellow, Menzies Centre for Health Policy, University of Sydney School of Medicine, representing the Public Health Association of Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Councillor Darcy Byrne, Mayor, Inner West
- Mr John Warburton, Deputy General Manager, Community and Engagement, Inner West Council
- Mr Kendall Banfield, Manager, WestConnex Unit, Inner West Council
- Mr Sam Shaw, Environmental Projects Officer, Strathfield Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Kelvin Riordan, Convenor, NoW Annandale
- Mr Richard Dudley-Smith, Co-convenor, NoW Annandale
- Ms Ann-Therese King, Vice President and WestConnex Liaison Officer, Sydney Secondary College Leichhardt P&C
- Ms Jane Crawford, President, Sydney Secondary College Leichhardt P&C.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Glen Searle, Adjunct Associate Professor, Faculty of Architecture, Design and Planning, University of Sydney.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Mary Court, Secretary, Penrith Valley Community Unions, Spokesperson, No M4 Tolls.

Ms Court tendered the following document:

- Pamphlet, *No M4 Toll!*

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at

4.10 *In camera* hearing

The committee previously resolved to take in camera evidence from a panel of individuals.

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Mr Alex Stedman, Ms Stephanie Galbraith, Ms Shaza Barbar, Ms Janina Moaga and Hansard reporters.

The following witnesses were sworn and examined:

- Witness A
- Witness B
- Witness C.

The evidence concluded and the witnesses withdrew.

4.11 **Tendered documents**

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents tendered during the public hearing:

- Community newspaper, *Bottleneck*, tendered by Mr Hehir
- Pamphlet, *Air quality: What we are breaking and what we can do about it*, tendered by Mr Gorman
- NSW Government community update, Western Harbour Tunnel, dated July 2018, tendered by Mr Gorman
- Data on particulate pollution from the CSIRO, tendered by Mr Gorman
- Photographs of traffic, tendered by Mr Gorman
- Map, Iron Cove Link, tendered by Mr Gorman
- Statement from WestConnex M4-M5 Link EIS, tendered by Mr Gorman
- Pamphlet, *No M4 Toll!*, tendered by Ms Court.

4.12 **Additional witnesses**

Resolved, on the motion of Mr Mookhey: That representatives from Roads and Maritime Services be invited back to appear at the final public hearing in November.

Resolved, on the motion of Ms Faehrmann: That Mr Peter Jones, Project Director, Stage 3, Sydney Motorway Corporation, be invited to appear at the public hearing of 15 October 2018 alongside representatives from Sydney Motorway Corporation.

5. **Adjournment**

The committee adjourned at 17.46 pm, until Thursday 11 October, 9.20 am, Macquarie Room, Parliament House (WestConnex public hearing).

Stephanie
Committee Clerk

Minutes no. 10

Thursday 11 October 2018
Public Accountability Committee
Macquarie Room, Parliament House, Sydney at 9.21 am

1. **Members present**

Revd Nile, *Chairman*
Mr Donnelly

Ms Faehrmann
 Mr Fang (substituting for Mr Khan)
 Mr Mallard (substituting for Mrs Ward)
 Mr Mookhey (from 9.26 am)
 Dr Phelps (substituting for Mr Mason-Cox)

2. Correspondence

The committee noted the following items of correspondence:

Received

- 10 October 2018 – Email from Dr Christopher Standen to secretariat advising that he will be unable to appear at the public hearing on 11 October 2018
- 10 October 2018 – Email from Convenor, Leichhardt Against WestConnex to secretariat identifying potential witnesses
- 9 October 2018 – Email from Ms Kathy Calman to secretariat confirming that she has agreed to being identified in submission no. 436 from the WestConnex Action Group
- 9 October 2018 – Email from Ms Anne Picot to committee, requesting that the committee hear from residents of St Peters at a upcoming WestConnex public hearing
- 9 October 2018 – Email from the Hon Shaoquett Moselmane MLC to secretariat advising that the Hon Daniel Mookhey MLC will be substituting for the Hon Courtney Houssos MLC for the duration of the inquiry into the impact of the WestConnex project
- 5 October 2018 – Email from Ms Georgina Taylor, to secretariat requesting that Dr Ray Nassar and Mr Noel Child be invited to give evidence at a public hearing for the WestConnex inquiry
- 5 October 2018 – Email from Mr Malachy Ward to secretariat, advising that various individuals have agreed to being identified in submission no. 436 from the WestConnex Action Group
- 5 October 2018 – Email from Ms Emma Pierce, to secretariat confirming that she has agreed to being identified in submission no. 436 from the WestConnex Action Group
- 5 October 2018 – Email from Ms Siobhan McDonnell, Program Coordinator, Australian National Audit Office to secretariat advising that the Australian National Audit Office will not be available to appear at a public hearing for the impact of the WestConnex project inquiry
- 5 October 2018 – Email from Ms Sharon Laura to secretariat confirming that she has agreed to being identified in submission no. 436 from the WestConnex Action Group
- 4 October 2018 – Email from Ms Janet Ward, WestConnex Action Group to secretariat regarding the naming of third party individuals in submission no. 436 from the WestConnex Action Group.

Sent

- 10 October 2018 – Email from secretariat to Mr Andrew Ockenden, Public Relations and Communications, Sydney Motorway Corporation inviting Mr Peter Jones, Project Director, Stage 3, to appear to give evidence at the WestConnex public hearing on 15 October 2018.

3. Inquiry into the impact of the WestConnex Project

3.1 Ms Shelley Jenson – Submission and additional witness

Resolved, on the motion of Mr Donnelly: That the committee invite Ms Shelley Jenson to appear to give evidence at the public hearing on 15 October 2018.

3.2 Partially confidential submission

Resolved, on the motion of Ms Faehrmann: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying information in submission no. 22.

3.3 Public hearing schedule for Monday 15 October 2018

The committee noted the hearing schedule for Monday 15 October.

Resolved, on the motion of Ms Faehrmann: That the committee request that Mr Dennis Cliche, former Chief Executive Officer, Sydney Motorway Corporation and Mr Andrew Head, Chief Executive Officer, WestConnex, be invited to appear together, at the public hearing of the 15 October 2018.

3.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment
- Mr Glen Snow, Acting Executive Director, Priority Projects, Department of Planning and Environment.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Raymond Nassar, Specialist anaesthetist.

Dr Nassar tendered the following documents:

- Summary of study entitled 'Health Impact Assessment of a Predicted Air Quality Change by Moving Traffic from an Urban Ring Road into a Tunnel: The Case of Antwerp, Belgium'
- Figure entitled 'The 'pyramid of heath' effects associated with air pollution'.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr John English, Chairperson, Beverly Hills North Progress Association
- Ms Kathryn Calman, Member, Beverly Hills North Progress Association.

Mr English tendered the following document:

- Document outlining the impacts of the WestConnex project on Beverly Hills North.

Ms Calman tendered the following document:

- Document entitled 'property damage' providing case studies of property damage at homes in North Strathfield, Haberfield, St Peters and Beverley Hills.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Jim Betts, Chief Executive Officer, Infrastructure NSW
- Ms Marina Grobbelaar, Acting Deputy Chief Executive Officer and Head of Investor Assurance, Infrastructure.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Olsen, State Secretary, Transport Workers Union
- Mr Robert Rasmussen, Official, Transport Workers Union.

Mr Rasmussen tendered the following documents:

- Email from Transport Workers Union to Sydney Motorway Corporation regarding complaints from transport operators regarding heavy vehicle compliance obligations, dated 14 July 2017
- Letter from Sydney Motorway Corporation to Transport Workers Union, regarding heavy vehicle compliance obligations
- Photographs of interstate trucks at WestConnex construction sites.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General of New South Wales, Audit Office of New South Wales

- Mr Scott Stanton, Assistant Auditor-General, Financial Audit, Audit Office of New South Wales
- Ms Claudia Migotto, Assistant Auditor-General, Performance Audit, Audit Office of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Malachy Ward, WestConnex Liaison Officer, Haberfield Association
- Ms Cynthia Moore, Member, Haberfield Association
- Ms Sherrill Nixon, Head of WestConnex subcommittee and Member, Haberfield Public School P&C
- Ms Rachel Brittliff, Member, Haberfield Public School P&C.

Ms Nixon tendered the following document:

- Data on air quality at Haberfield Public School.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Merilyn Fairskye, Co-convenor, Newtown Residents Against WestConnex
- Mr Ben Aveling, Co-convenor, Alexandria Residents Action Group
- Dr Lesley Treleaven, Convenor, Camperdown Residents Against WestConnex
- Professor Paul Torzillo, Head of Respiratory Medicine at Royal Prince Alfred Hospital, appearing with Camperdown Residents Against WestConnex.

Mr Aveling tendered the following document:

- Extracts from the WestConnex M4-M5 Link Environmental Impact Statement and WestConnex Updated Strategic Business Case

Ms Fairskye tendered the following document:

- Map showing the location of heritage buildings in Newtown.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 5.20 pm.

3.5 Tendered documents

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents, tendered during the public hearing:

- Summary of study entitled 'Health Impact Assessment of a Predicted Air Quality Change by Moving Traffic from an Urban Ring Road into a Tunnel: The Case of Antwerp, Belgium', tendered by Dr Nassar
- Figure entitled 'The 'pyramid of health' effects associated with air pollution', tendered by Dr Nassar
- Document outlining the impact of the WestConnex project on Beverly Hills North, tendered by Mr English
- Document entitled 'property damage' providing case studies of property damage at homes in North Strathfield, Haberfield, St Peters and Beverley Hills, with the exception of identifying information, tendered by Ms Calman
- Email from Transport Workers Union to Sydney Motorway Corporation regarding complaints from transport operators regarding heavy vehicle compliance obligations, dated 14 July 2017, tendered by Mr Rasmussen
- Letter from Sydney Motorway Corporation to Transport Workers Union, regarding heavy vehicle compliance obligations, tendered by Mr Rasmussen
- Photographs of interstate trucks at WestConnex construction sites, tendered by Mr Rasmussen
- Extracts from the WestConnex M4-M5 Link Environmental Impact Statement and WestConnex Updated Strategic Business Case, tendered by Mr Aveling
- Map showing the location of heritage buildings in Newtown, tendered by Ms Fairskye.

4. Adjournment

The committee adjourned at 5.30 pm, until Monday 15 October 2018, 8.45 am, Macquarie Room, Parliament House (WestConnex public hearing).

Stephanie Galbraith
Committee Clerk

Minutes no. 11

Monday 15 October 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 8.47 am

1. Members present

Revd Nile, *Chairman*

Mr Donnelly

Ms Faehrmann

Mr Khan

Mr Mallard (substituting for Mrs Ward for the duration of the inquiry)

Mr Mookhey (from 8.56 am)

Dr Phelps (substituting for Mr Mason-Cox) (from 9.13 am until 3.36 pm, from 17.03 pm)

2. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minutes nos. 7, 8 and 9 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 12 October 2018 – Email from Mr Lee Jeloscek, Communications Manager, Transurban to secretariat, regarding Mr Head's appearance at a public hearing on 15 October 2018
- 12 October 2018 – Email from Ms Nicky Sutherland, Sydney Motorway Corporation to secretariat, regarding the appearance of Mr Cliche and Mr Jones at the public hearing on 15 October 2018
- 12 October 2018 – Email from Judge David Russell SC to secretariat, declining invitation to appear at public hearing for the WestConnex inquiry
- 12 October 2018 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Shayne Mallard MLC will be substituting for the Hon Natalie Ward MLC for the duration of the inquiry into the impact of the WestConnex project
- 12 October 2018 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Dr Peter Phelps MLC will be substituting for the Hon Matthew Mason-Cox MLC on 15 October 2018 for the inquiry into the impact of the WestConnex project hearing.

Sent:

- 12 October 2018 – Secretariat to Mr Lee Jeloscek, Communications Manager, Transurban regarding Mr Head's appearance at a public hearing on 15 October 2018
- 11 October 2018 – Secretariat to Ms Annabel Andrews, Executive Assistant to Mr Mike Baird, regarding Mr Baird's invitation to attend a public hearing.

4. Inquiry into the impact of the WestConnex Project

4.1 Partially confidential submissions

Resolved, on the motion of Khan: That the committee keep the following information confidential, as per the recommendation of the secretariat: names and/or identifying and sensitive information in submissions nos. 485 and 548.

4.2 Further hearing and reporting date

Resolved on the motion of Mr Khan: That the reporting date for the inquiry into the impact of the WestConnex project be 17 December 2018.

4.3 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Dennis Cliche, Former Chief Executive Officer, Sydney Motorway Corporation
- Mr Peter Jones, Former Project Director, Stage 3, Sydney Motorway Corporation

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Andrew Head, Chief Executive Officer, WestConnex.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Lord Mayor Clover Moore, City of Sydney
- Ms Monica Barone, Chief Executive Officer, City of Sydney
- Mr Kim Woodbury, Chief Operations Officer, City of Sydney
- Mr Sebastian Smyth, Executive Manager Access and Transport, City of Sydney
- Mr Terry Rawnsley, Principal and Partner, SGS Economics and Planning.

Lord Mayor Clover tendered the following document:

- Map entitled 'Cost of WestConnex and Associated Road Projects'.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Professor John Sheehan AM, Chairman, Desane Group Holdings Limited.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Michael Parker, Acting Valuer General, Office of the Valuer General
- Mr Paul Goldsmith, Principal Valuer Compensation, Valuation Services, Property NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Lozano, No WestConnex Public Transport
- Mr Matthew Doherty, EcoTransit
- Mr Jim Donovan, Action for Public Transport.

Mr Lozano tendered the following document:

- Case information on Syncora Guar. Inc. v. Alinda Capital Partners LLC.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Michelle Zeibots, Research Director, UTS Transport Research Centre, University of Technology Sydney.

Dr Zeibots tendered the following document:

- Document entitled 'Supplementary material to the submission to NSW Parliamentary Inquiry into WestConnex inquiry'.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Janet Dandy-Ward, Treasurer, WestConnex Action Group
- Ms Rhea Liebmann, Spokesperson, WestConnex Action Group
- Dr Jane Durie, Spokesperson, WestConnex Action Group.

Ms Dandy-Ward tendered the following documents:

- 16 photographs showing construction works at Campbell Street, and Euston Street, St Peters.

Ms Liebmann tendered the following documents:

- Correspondence from WestConnex Action Group to Sydney Motorway Corporation, dated 21 February 2017, regarding health and safety concerns on WestConnex worksites, and response from Sydney Motorway Corporation, dated 1 March 2017
- Correspondence from WestConnex Action Group to Minister Upton and the Chair and CEO of the Environment Protection Agency, dated 23 June 2017, and associated response from the Environment Protection Agency, dated 1 August 2017.
- Document containing various items of correspondence from WestConnex Action Group to the Minister for Health, the Minister for the Environment, the Minister for Planning and the Department of Planning and Environment regarding concerns about air quality at WestConnex construction sites, dated 20 April 2018 and associated responses from the Minister for Health, dated and Sydney Local Health District.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Kate Cotis, Resident, St Peters
- Ms Tamara Regan, Resident, St Peters
- Dr Sarina Kilham, Spokesperson, WestConnex subcommittee, St Peters Public School P&C.

Ms Cotis tendered the following document:

- Letter from Ms Camilla Drover, Roads and Maritime Services, to Ms Kate Cotis, regarding noise at property, dated 5 September 2018.

Dr Kilham tendered the following documents:

- Document containing correspondence between St Peters Public School P&C and various government agencies expressing concerns about emissions and other health impacts of the WestConnex project; and the St Peters Public School P&C Submission to the Environmental Impact Statement consultation process for the New M5.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Richard Capuano, Former resident, St Peters
- Ms Shelley Jensen, Former resident, St Peters.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at: 17.46 pm.

4.4 Tendered documents

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents, with the exception of identifying information, tendered during the public hearing:

- Map entitled 'Cost of WestConnex and Associated Road Projects', tendered by Lord Mayor Clover Moore

- Case information on Syncora Guar. Inc. v. Alinda Capital Partners LLC, tendered by Mr Lozano
- Document entitled 'Submission to NSW Parliamentary Inquiry into WestConnex inquiry', tendered by Dr Zeibots
- 16 photographs showing construction works at Campbell Street, and Euston Street, St Peters, tendered by Ms Dandy-Ward.
- Correspondence from WestConnex Action Group to Sydney Motorway Corporation, dated 21 February 2017, regarding health and safety concerns on WestConnex worksites, and response from Sydney Motorway Corporation, dated 1 March 2017, tendered by Ms Liebmann
- Correspondence from WestConnex Action Group to Minister Upton and the Chair and CEO of the Environment Protection Agency, dated 23 June 2017, and associated response from the Environment Protection Agency, dated 1 August 2017, tendered by Ms Liebmann
- Document containing various items of correspondence from WestConnex Action Group to the Minister for Health, the Minister for the Environment, the Minister for Planning and the Department of Planning and Environment regarding concerns about air quality at WestConnex construction sites, dated 20 April 2018 and associated responses from the Minister for Health, dated and Sydney Local Health District, tendered by Ms Liebmann
- Letter from Ms Camilla Drover, Roads and Maritime Services, to Ms Kate Cotis, regarding noise at property, dated 5 September 2018, tendered by Ms Cotis.
- Document containing correspondence between St Peters Public School P&C and various government agencies expressing concerns about emissions and other health impacts of the WestConnex project; and the St Peters Public School P&C Submission to the Environmental Impact Statement consultation process for the New M5, tendered by Dr Kilham.

4.5 Additional witnesses

Resolved, on the motion of Ms Faehrmann: That representatives from the Environment Protection Agency; the Secretary of the Department of Planning and Environment, or appropriate delegate; and the Independent Chair of the M4 East Air Quality Community Consultative Committee be invited to appear at a fourth public hearing for a period of up to two hours.

5. Adjournment

The committee adjourned at 18:00 pm, until Monday 5 November 2018, 9.30 am, Macquarie Room, Parliament House (Light rail public hearing).

Stephanie Galbraith

Committee Clerk

Minutes no. 14

Wednesday 7 November 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.47 am

1. Members present

Revd Nile, *Chairman*

Mr Donnelly

Ms Faehrmann

Mr Mallard

Mr Moselmane (substituting for Mr Mookhey) (from 1.00 pm)

Dr Phelps

Ms Voltz (substituting for Mr Mookhey) (until 12.00 pm)

2. Apologies

Mr Khan

3. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes nos. 10 and 11 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 12 October 2018 – Email from Ms Janette Willett to the secretariat, requesting that the committee invite Dr Noel Child to give evidence to the committee
- 14 October 2018 – Email from Mr Ben Aveling, Co-convenor, Alexandria Residents Action Group to the secretariat, providing additional information on the benefit-cost ratio of the WestConnex project
- 17 October 2018 – Email from Ms Frances Vumbaca to the secretariat, calling for a Royal Commission or inquiry into the property valuation system
- 17 October 2018 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Dr Peter Phelps MLC will be substituting for the Hon Matthew Mason-Cox MLC for the duration of the inquiry into the impact of the WestConnex project
- 21 October 2018 – Email from Witness B, Leichhardt Against WestConnex to secretariat, regarding the publication of evidence taken *in camera*
- 22 October 2018 – Email from Mr Sam Shaw, Environmental Projects Officer, Strathfield Council, to the secretariat, reaffirming the Council's position on the WestConnex project
- 25 October 2018 – Email from Mr Stuart Dennon to the Chair, calling for a Royal Commission into land acquisition in New South Wales
- 26 October 2018 – Letter from Ms Kathryn Calman, Convenor, Beverly Hills Progress Association to Committee, providing additional information to the committee regarding the work of the organisation
- 26 October 2018 – Letter from Ms Kathryn Calman, Convenor, Beverly Hills Progress Association to committee, advising of the preferred publication status of individuals referred to in tabled document.

Resolved, on the motion of Mr Donnelly: That the committee keep correspondence from Witness B, dated 21 October 2018, confidential, as per the recommendation of the secretariat, as it contains identifying information.

5. Inquiry into the impact of the WestConnex Project

5.1 Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: Submission nos. 362-364, 394, 395, 399, 401, 416, 419a, 430a, 434, 435, 437, 470, 491, 525, 545, 547, 548a, 548b, 553, 555 and 556.

5.2 Partially confidential submissions

Ms Faehrmann moved: That the committee keep the following information confidential, as per the request of the author: names and/or identifying information in submissions nos. 130, 427, 457, 466, 483, 506, 517, 535 and 542.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mallard, Ms Voltz.

Noes: Dr Phelps.

Question resolved in the affirmative.

5.3 Requested change in publication status of submission nos. 355 and 506

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of submission nos. 355 and 506, as per the request of the authors.

5.4 Answers to questions on notice

The committee noted that the following questions on notice and supplementary questions were published under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Roads and Maritime Services, received 30 October 2018.

Resolved, on the motion of Mr Mallard: That the committee publish answers to questions on notice from Witness A and Witness B, Leichhardt Against WestConnex, with the exception of identifying information relating to Witness A and Witness B.

5.5 Publication of *in camera* transcript

Resolved, on the motion of Ms Faehrmann: That the committee:

- authorise the partial publication of the transcript of the *in camera* evidence given by Leichhardt Against WestConnex on the 9 October 2018, as requested by the witnesses,
- redact all identifying information,
- publish the transcript on the committee's website.

5.6 Timeframe for return of answers to questions on notice

Resolved, on the motion of Dr Phelps: That witnesses appearing at the public hearing of 7 November 2018 be requested to return answers to questions on notice and/or supplementary questions from members within 14 days of the date on which questions are forwarded to the witnesses by the committee clerk.

5.7 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were examined on their former oath:

- Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment
- Mr Glenn Snow, Director, Transport Assessments, Department of Planning and Environment.

The following witnesses were sworn and examined:

- Mr David Gainsford, Executive Director, Priority Projects Assessment, Department of Planning and Environment
- Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority
- Mr Stephen Lancken, Independent Chair, M4 East Air Quality Community Consultative Committee, and New M5 Air Quality Community Consultative Committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were examined on their former oath:

- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services
- Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.01 pm.

The public and media withdrew.

6. Inquiry into the impact of the CBD and South East Light Rail Project

6.1 Extension of the reporting date

Resolved, on the motion of Mr Mallard: That the committee extend the inquiry reporting date to 25 January 2019 and that the Chairman report this extension to the House.

7. Adjournment

The committee adjourned at 3.07 pm until Thursday 29 November 2018 (Light Rail hearing).

Stephanie Galbraith
Committee Clerk

Minutes no. 16

Thursday 29 November 2018

Public Accountability Committee

Jubilee Room, Parliament House, Sydney, at 9.35 am

1. Members present

Revd Nile, *Chairman* (from 9.45 am)

Mr Mason-Cox, *Deputy Chair* (from 12.55 pm)

Mr Donnelly

Ms Faehrmann (from 9.45 am)

Mrs Houssos

Mr Khan (from 9.35 am until 10.09 am, from 10.35 am)

Mr Mallard

Mr Searle (participating from 12.55 pm until 1.10 pm, from 1.48 pm until 2.30pm, from 2.55 pm)

2. ***

3. ***

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 12 November 2018 – Email from Mr Steve Lancken, Independent Chair of the M4 East and New M5 Air Quality Community Consultative Committees, requesting that certain answers to questions on notice be kept confidential.

Sent:

- ***

5. ***

6. Inquiry into the impact of the WestConnex project

6.1 Request for questions on notice to be kept confidential

Resolved, on the motion of Mr Donnelly: That the question on notice taken by Mr Steve Lancken, Independent Chair, M4 East and New M5 Air Quality Community Consultative Committees, regarding his fee arrangements for services provided, be kept confidential, as per his request.

6.2 Clarification of evidence provided by Mr Lancken

Resolved, on the motion of Ms Faehrmann: That the committee write to Mr Steve Lancken, Independent Chair, M4 East and New M5 Air Quality Community Consultative Committees seeking clarification of his evidence provided on 7 November 2018 relating to the number of appointments made to the M4 East Air Quality Community Consultative Committee.

7. ***

8. Adjournment

The committee adjourned at 3.10 pm, until Tuesday 11 December 2018, McKell Room, Parliament House (WestConnex report deliberative).

Tina Higgins
Committee Clerk

Minutes no. 17

Tuesday 11 December 2018
Public Accountability Committee
McKell Room, Parliament House, Sydney at 10.04 am

1. Members present

Revd Nile, *Chairman*
Mr Donnelly
Ms Faehrmann (until 3.37 pm)
Mr Farlow (substituting for Mr Khan)
Mr Mallard
Mr Mookhey
Dr Phelps

2. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minutes nos. 14 and 16 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received

- 5 November 2018 – Email from Ms Sherill Nixon, Haberfield Parents & Carers Association to committee providing clarification of statement made at public hearing of 11 October 2018
- 5 November 2018 – Email from Mr Brian Gorman to committee providing supplementary information to the WestConnex inquiry
- 5 November 2018 – Email from Ms Denise Corrigan to committee providing supplementary information to the WestConnex inquiry, including a response from Rozelle Public School Parents & Carers Association
- 6 November 2018 – Email from Mr Ben Aveling, Alexandria Residents Action Group, to committee providing supplementary information to the WestConnex inquiry
- 6 November 2018 – Email from Mr Kendall Banfield, WestConnex Unit Manager, Inner West Council to secretariat providing supplementary information to the WestConnex inquiry
- 6 November 2018 – Email from Mr Peter Georgiades, Equilibria to committee regarding air quality in tunnels
- 7 November 2018 – Email from Ms Georgina Taylor to committee regarding evidence provided by Roads and Maritime Services at public hearing of 7 November 2018
- 7 November 2018 – Email from Mr Peter Hehir, Rozelle Against WestConnex, providing supplementary information to the WestConnex inquiry
- 11 November 2018 - Email from Mr Steve Lancken, Independent Chair, M4 and New M5 Air Quality Community Consultative Committees to secretariat requesting that certain answers to questions on notice be kept confidential
- 13 November 2018 – Four emails from Ms Kate Cotis to committee, providing supplementary information to the WestConnex inquiry including six attachments and two video clips
- 14 November 2018 – Email from Ms Rhea Liebmann, WestConnex Action Group to secretariat providing supplementary information to WestConnex inquiry

- 19 November 2018 – Email from Mr Richard Capuano to committee providing supplementary information to the WestConnex inquiry
- 26 November 2018 – Email from Ms Kathryn Calman, Beverly Hills Progress Association to committee providing supplementary to the WestConnex inquiry
- 26 November 2018 – Email from Ms Kate Cotis to committee providing additional information to the WestConnex inquiry
- 26 November 2018 – Letter from Ms Camilla Drover, Executive Director, Roads and Maritime Services to Chair providing additional information about dilapidation studies and the Independent Property Impact assessment Panel
- 27 November 2018 – Email from Ms Georgina Taylor, to committee providing information on the health impacts of road traffic
- 27 November 2018 – Email from Ms Georgina Taylor, to committee providing information on the unfiltered stack review process as specified within the F6 Environmental Impact Statement
- 1 December 2018 – Correspondence from Mr Steven Lancken, Independent Chair, M4 East and New M5 Air Quality Community Consultative Committees, in response to the committee's requested clarification of his evidence relating to the number of appointments made to the M4 East Air Quality Community Consultative Committee
- 3 December 2018 – Email from Ms Sally Virgoe to committee providing additional information to the WestConnex inquiry
- 3 December 2018 – Emails from Ms Maree Laing, Community Organiser WestConnex Unit, Inner West Council, regarding request for video footage of WestConnex public hearings to post on the Council's YouTube channel
- 10 December 2018 – Letter from Mrs Natasha McLaren-Jones MLC to secretariat, advising that Mr Scott Farlow MLC will be substituting for Mr Trevor Khan MLC at the report deliberative meeting for the impact of the WestConnex project inquiry on 11 December 2018.

Sent:

- 30 November 2018 – Email from secretariat to Mr Steven Lancken, Independent Chair, M4 and New M5 Air Quality Community Consultative Committees regarding his request that certain answers to questions on notice be kept confidential.

4. Inquiry into the impact of the WestConnex Project

4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: Submission nos. 93, 94, 397, 398, 400, 403, 412, 413, 422, 424, 430b, 549.

4.2 Partially confidential submissions

Resolved, on the motion of Mr Mallard: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submissions nos. 349, 406, 409, 410, 423, 552.

Resolved, on the motion of Mr Mallard: That the committee keep the following information confidential, as per the recommendation of the secretariat: identifying information in submissions nos. 268b and 428.

4.3 Confidential submissions

Resolved, on the motion of Mr Mookhey: That the committee publish submission nos. 487, 512, 520, 526, as partially confidential with the authors' names suppressed.

4.4 Attachment to submission 268

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of attachment 1 to submission no. 268, with the exception of identifying information which is to remain confidential as per the recommendation of the secretariat.

4.5 Answers to questions on notice

The following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Jim Donovan, Action for Public Transport, received 15 October 2018
- answers to questions on notice from Professor John Sheehan AM, Chairperson, Desane Properties, received 24 October 2018
- answers to questions on notice from Ms Kathryn Calman, Beverly Hills Progress Association, received 26 October 2018
- answers to questions on notice from Dr Ray Nassar, specialist anaesthetist, received 5 November 2018
- answers to questions on notice from Inner West Council, received 6 November 2018
- answers to questions on notice from the Department of Premier and Cabinet, received 6 November 2018
- answers to supplementary questions from Audit Office of NSW, received 7 November 2018
- answers to questions on notice from the Department of Planning and Environment, received 7 November 2018
- answers to questions on notice from No WestConnex Annandale, received 7 November 2018
- answers to questions on notice from Dr Patrick Harris, Public Health Association of Australia, received 7 November 2018
- answers to questions on notice from Transport Workers Union, received 7 November 2018
- answers to questions on notice from NSW Treasury, received 7 November 2018
- answers to questions on notice from Infrastructure NSW, received 11 November 2018
- answers to questions on notice and supplementary questions from Mr Andrew Head, WestConnex, received 14 November 2018
- answers to questions on notice and supplementary questions from Mr Dennis Cliche, former Chief Executive Officer, Sydney Motorway Corporation, received 14 November 2018
- answers to questions on notice from EcoTransit, received 14 November 2018
- answers to questions on notice from Mr Richard Capuano, received 14 November 2018
- answers to questions on notice from the Office of the Valuer General, received 14 November 2018.
- answers to questions on notice from WestConnex Action Group, received 14 November 2018
- answers to questions on notice from Audit Office of NSW, received 19 November 2018
- answers to questions on notice from Environment Protection Authority, received 26 November 2018
- answers to questions on notice from Department of Planning and Environment, received 27 November 2018
- answers to questions on notice from Roads and Maritime Services, received 27 November 2018
- answers to questions on notice from Mr Steven Lancken, Independent Chair, M4 East and New M5 Air Quality Community Consultative Committees (materials that have public status), received 1 December 2018.

4.6 Request for video footage

Resolved, on the motion of Mr Mookhey: That the committee authorise the provision of video footage of the WestConnex inquiry public hearings of 9, 11 and 15 October 2018 and 7 November 2018 to the Inner West Council subject to the Inner West Council's written agreement to the Broadcasting Guidelines.

4.7 Consideration of Chair's draft report

The Chairman submitted his draft report entitled *Impact of the WestConnex project*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Mookhey: That paragraph 1.1 be amended by omitting 'an estimated cost of \$16.8 billion' and inserting instead 'the current design estimated to cost \$16.8 billion'.

Resolved, on the motion of Mr Mookhey: That paragraph 1.1 be amended by omitting 'and Port Botany' after 'Sydney Airport'.

Resolved, on the motion of Mr Mookhey: That Figure 1 amended by inserting 'Note: This map was published in 2015 and has been subject to change since that time.'

Resolved, on the motion of Dr Phelps: That paragraph 1.3 be amended by:

- a) inserting 'There was also support expressed for the WestConnex project from business, transport and infrastructure groups.' after 'this report.'
- b) omitting 'A summary of these concerns' and inserting instead 'A summary of the concerns'.

Resolved, on the motion of Mr Mookhey: That paragraph 1.4 be amended by omitting 'WestConnex comprises' and inserting instead 'WestConnex now comprises'.

Resolved, on the motion of Mr Mookhey: That the heading of Table 1 be amended by omitting 'Open to traffic' and inserting instead 'Opening date/Expected opening date'.

Resolved, on the motion of Dr Phelps: That the following new paragraph be inserted after paragraph 1.7:

'The 'missing link' is the connection between the end of the M4 at Strathfield and the end of the Western Distributor at Rozelle. Motorway plans for the Sydney Basin had, from the early 1950s, included a direct connection from the Sydney CBD to Penrith. In 1977, however, community concerns about the M4 East prompted the then government to abandon these plans and to sell the land reserved for the proposed motorway.'

Resolved, on the motion of Ms Faehrmann: That the following new paragraphs be inserted after paragraph 1.8:

'The committee also received evidence from Dr Michelle Zeibots, who was a member of the NSW Government Expert Advisory Panel for the development of the NSW Long Term Transport Masterplan, that WestConnex was not part of the Advisory Panel's discussions in relation to the Masterplan [FOOTNOTE: Submission 497, Dr Michelle Zeibots, p 2.] However in December 2012, the WestConnex was identified as a priority project in the NSW Government's Long Term Transport Master Plan. In her submission Dr Zeibots described her reaction to this:

I recall feeling deeply disappointed at the time on seeing a masterplan with almost every motorway that had ever been suggested since 1948 included in the document. This stood in stark contrast to everything we had been asked to make input on and I remember feeling 'let down' that the eventual outcome was so different to all of our discussions. [FOOTNOTE: Submission 497, Dr Michelle Zeibots, p 5.]

In regard to how this may have occurred, Dr Zeibots states in her submission that:

I believe that many people within TfNSW [Transport for NSW] at that time as well as the Minister did comprehend the need to improve public transport, but were 'out manoeuvred by others in their political party who preferred urban motorway development. That these same people do not rely on empirical data or a strong 'evidence base' when formulating their positions is evident in the stark difference between the materials outcomes that have been achieved by these motorways and the 'beliefs and ideals' expressed before construction that were used to justify them. [FOOTNOTE: Submission 467, Dr Michelle Zeibots, p 5].'

Resolved, on the motion of Mr Mookhey: That paragraph 1.22 be amended by inserting at the end: 'It was the successor to the WestConnex Delivery Authority, a public subsidiary corporation of Roads and Maritime Services under the *Transport Administration Act 1988*. [FOOTNOTE: NSW State Archives and Records, WestConnex Delivery Authority, www.records.nsw.gov.au/agency/6915].'

Resolved, on the motion of Ms Faehrmann: That paragraph 1.24 be amended by inserting at the end: 'Construction company consortia including CPB and Lendlease had a major role in stakeholder engagement and complaints mechanisms during the construction phase'.

Resolved, on the motion of Dr Phelps: That paragraph 1.28 be amended by omitting 'the majority equity holder' and inserting instead 'the largest equity holder'.

Resolved, on the motion of Ms Faehrmann: That paragraph 1.43 be amended by omitting 'WestCONnex Action Group expressed a broad range of concerns about the project including: a lack of project transparency; inappropriate project planning and development; underestimated project costs; and inadequate consultation processes' and inserting instead 'WestCONnex Action Group expressed a broad range of concerns about the project including: a lack of project transparency; conflicts of interests and bias towards pro-motorway planning interests through the planning process and development; underestimated project costs; inadequate consultation processes; and negative community health impacts'.

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after paragraph 1.51:

'A number of individuals with significant expertise made submissions and/or gave evidence before the committee. These included Professor Paul Torzillo, Dr Ray Nassar, Dr Glen Searle and Dr Michelle Zeibots.'

Resolved, on the motion of Dr Phelps: That paragraph 1.54 be amended by omitting 'considerable community opposition' and inserting instead 'considerable local community opposition'.

Resolved, on the motion of Ms Faehrmann: That paragraph 1.54 be amended by:

- (a) inserting 'and that some of these impacts will continue for many years'. after 'construction of the project'.
- (b) inserting at the end 'The benefits were also contested by other stakeholders and a number of independent transport planning experts'.

Ms Faehrmann moved: That the following new paragraph be inserted after paragraph 1.54:

'The committee notes with concern the circumstances surrounding the way in which the government made its decision to build WestConnex.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Noes: Mr Farlow, Mr Mallard, Dr Phelps.

Question resolved in the affirmative.

Dr Phelps moved: That the following new finding be inserted after paragraph 1.54:

Finding X

The WestConnex project is, notwithstanding issues of implementation raised in this report, a vital and long-overdue addition to the road infrastructure of New South Wales. The committee supports complete construction, including Stage 3 and the Rozelle Interchange.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Question resolved in the affirmative.

Chapter 2

Resolved, on the motion of Mr Mookhey: That paragraph 2.4 be amended by inserting 'using the NSW Treasury and Transport for NSW policies for the preparation of business cases' after 'the Sydney Motorways Project Office'.

Resolved, on the motion of Ms Faehrmann: That paragraph 2.4 be amended by inserting at the end: 'The government also invited a number of companies into the Sydney Motorways Project Office to participate in the scoping stages, including Macquarie, Leightons and AECOM'. [FOOTNOTE: Roads and Maritime Services / RMS.13.2909.0220 - RMS.13.2909.0220, <https://tenders.nsw.gov.au/rms/?event=public.cn.view&CNUUID=9E8AB610-B320-7DE0-E39C78CD1A92895F>; Submission 436, WestCONnex Action Group, p 20].

Resolved, on the motion of Ms Faehrmann: That the following new paragraphs be inserted after paragraph 2.22:

'The Audit Office found:

[S]ome issues with the underlying analysis which we believe a full Gateway review should have identified. These deficiencies related to the way the business case dealt with risks around traffic projections, project cost, economic benefits, financial analysis, governance arrangements and the procurement strategy.

We have discussed these deficiencies with the auditees. We have chosen to follow the established convention and not publish information that would reveal Cabinet decisions or deliberations. Most of the information would reveal Cabinet-in-confidence matters. [FOOTNOTE: Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 31.]'

Resolved, on the motion of Ms Faehrmann: That paragraph 2.25 be omitted as follows: 'The audit report also stated that had a Gate Zero Gateway review been conducted, it would have provided independent assurance that the project was justified', and the following new paragraph be inserted instead:

'The audit report also stated that:

On balance, we believe that a Gate Zero Gateway review should have been conducted. It would have provided independent assurance that the project was justified ... Infrastructure NSW's roles at this stage of the WestConnex project were in conflict. It was responsible for developing the WestConnex concept and at the same time it was the key agency responsible for providing assurance to Government over major capital projects including WestConnex. [FOOTNOTE: Audit Office of New South Wales, *WestConnex: Assurance to the Government*, 2014, p 17.]'

Resolved, on the motion of Mr Mookhey: That paragraph 2.26 be amended by inserting at the end: 'for advice for successive Australian Governments'.

Resolved, on the motion of Ms Faehrmann: That the following new paragraphs be inserted after paragraph 2.42:

'Other experts

Dr Glen Searle gave evidence that costs had not been included in the business case which would have altered conclusions about cost/benefit ratio.

Dr Searle told the inquiry that the WestConnex business case had "serious inadequacies", lacked transparency and suffered from the problem of being used to justify a decision that had already been made rather than weighing up the costs and benefits before it was made. [FOOTNOTE: Evidence, Dr Glen Searle, 9 October 2018, pp 70-71.]

This meant that there was "little incentive for the government to prepare an exhaustive analysis that compared this project with alternatives, and much incentive to prepare a narrowly based case". [FOOTNOTE: Submission 3, Dr Glen Searle, p 11.]

Dr Searle listed costs that have been ignored, including the cost of building extra roads to cope with traffic flowing from WestConnex, increased congestion on some local roads, loss of property value, health impacts including the costs of increased noise and pollution, costs to public transport revenue, loss of heritage and biodiversity and the impact of project construction on communities and business. He told the inquiry that while some costs are hard to estimate, most of these costs could be financially assessed using standards models. [FOOTNOTE: Submission 3, Dr Glen Searle, p 11.]

A number of individual submitters including Professor Paul Torzillo, Dr Ray Nassar and Dr Michelle Zeibots made similar points. [FOOTNOTE: for example see Evidence, Professor Paul Torzillo, Head of Respiratory Medicine and Critical Care, Royal Prince Alfred Hospital, 11 October 2018, p 74; Submission 210, Dr Raymond Nassar, p 13; and Submission 497, Dr Michelle Zeibots, p 5].

Resolved, on the motion of Dr Phelps:

- a) that paragraph 2.49 be amended by omitting 'the business case development stages of the WestConnex project' and inserting instead 'the development stage of the first business case for the WestConnex project'.
- b) that paragraph 2.50 be amended by omitting 'business case put forward' and inserting instead 'first business case put forward'.
- c) that paragraph 2.51 be amended by omitting 'during the business case development stages' and inserting instead 'during the first business case development stage'.
- d) That Finding 1 be amended by omitting 'development of the business cases' and inserting instead 'development of the first business case'.

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after Finding 1:

'The consideration of the full range of costs and benefits is fundamental to the credibility of a business case and is a crucial step in the investment decision making process for public infrastructure projects. The committee shares the concerns raised by numerous inquiry participants that the NSW Government was not required to consider the full range of costs in the business case for the WestConnex project, including costs to public health, amenity, biodiversity, extra road building, and losses to public transport.'

Ms Faehrmann moved: That the following new paragraph be inserted after Finding 1:

'The committee also agrees with inquiry participants who gave evidence that, if these costs were adequately considered and if the cost blow outs and scope changes were taken into account, it is probable that an updated business case would not have a positive cost-benefit ratio.'

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps.

Question resolved in the negative.

Ms Faehrmann moved: That the following new findings be inserted after Finding 1:

'Finding X

That the NSW Government made its decision to build WestConnex before a business case had been developed and a business case was subsequently prepared to justify this decision.

Finding X

That if the full range of costs were adequately considered, and if the cost blow outs and scope changes were taken into account, it is probable that an updated business case for the WestConnex project would not have a positive cost-benefit ratio.'

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That the following new finding be inserted after Finding 1:

'Finding X

That the NSW Government was not required to consider the full range of costs in the business case for the WestConnex project, including costs to public health, amenity, biodiversity, extra road building, and losses to public transport.'

Dr Phelps moved: That paragraphs 2.52 to 2.54, and finding 2 be omitted as follows:

'The analysis of different options to address a problem or policy issue is an important step in the investment decision making process. This ensures that a project represents value for money for the people of New South Wales. It also strengthens a project's justification, providing confidence that a chosen solution is the best solution.

The committee shares the concerns raised by numerous inquiry participants relating to the absence of a comprehensive options analysis. While the committee acknowledges the importance of investment in the state's motorway network, it is clear that the NSW Government failed in its obligation to undertake a full and robust options analysis at the outset of the WestConnex project. Had such an assessment been completed, many of the concerns raised about the WestConnex project as the right solution to address Sydney's long term transport needs, may have been avoided or at least ameliorated.

The committee finds that the NSW Government failed to adequately consider alternative options at the commencement of the WestConnex project. This failure has undermined the justification for the project and has exacerbated community opposition.

Finding 2

That the NSW Government failed to adequately consider alternative options at the commencement of the WestConnex project. This failure has undermined the justification for the project and has exacerbated community opposition.'

Question put.

The committee divided.

Ayes: Mr Farlow, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mallard, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 2.53 be omitted as follows: 'The committee shares the concerns raised by numerous inquiry participants relating to the absence of a comprehensive options analysis. While the committee acknowledges the importance of investment in the state's motorway network, it is clear that the NSW Government failed in its obligation to undertake a full and robust options analysis at the outset of the WestConnex project. Had such an assessment been completed, many of the concerns raised about

the WestConnex project as the right solution to address Sydney's long term transport needs, may have been avoided or at least ameliorated.', and the following new paragraph be inserted instead:

'The committee shares the concerns raised by numerous inquiry participants relating to the absence of a comprehensive options analysis. It is clear that the NSW Government failed in its obligation to undertake a full and robust options analysis at the outset of the WestConnex project. The committee heard compelling evidence of the benefit to other cities around the world which have chosen not to invest in new motorways and instead invested in reducing car use and improving public transport. Had such an assessment been completed, then it would have been clear that the public funds spent on the WestConnex project would have been better spent on public transport, including for western Sydney.'

Question resolved in the negative.

Ms Faehrmann moved: That the following new finding be inserted before Finding 2:

'Finding X

That the NSW Government should have invested the public funds spent on the WestConnex project on improving public transport, including for western Sydney.'

Question resolved in the negative.

Mr Mookhey moved: That paragraph 2.55 be amended by:

- a) omitting: 'The committee firmly believes that for all future large scale infrastructure projects, that a detailed options analysis be completed' and inserting instead: 'The committee firmly believes that all future large scale infrastructure projects costing more than \$1 billion should be subject to public planning inquiries, and a detailed options analysis be completed'.
- b) inserting the following dot point 'hold public planning inquiries' before the first dot point 'prepare a detailed options analysis'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Noes: Mr Farlow, Mr Mallard, Dr Phelps.

Question resolved in the affirmative.

Mr Mookhey moved: That Recommendation 1 be amended by inserting the following dot point 'hold public planning inquiries' before the first dot point 'prepare a detailed options analysis'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Noes: Mr Farlow, Mr Mallard, Dr Phelps.

Question resolved in the affirmative.

Ms Faehrmann moved

- a) 'That Recommendation 1 be omitted as follows: 'That the NSW Government for future large scale infrastructure projects:
 - prepare a detailed options analysis
 - ensure that this analysis is independently peer reviewed in accordance with the requirements of the Infrastructure Investor Assurance Framework

- publish both the analysis and a summary of the peer review prior to the commencement of construction of that project'.
- b) 'That the following new recommendation be inserted instead:
- 'That the NSW Government for future large scale infrastructure projects:
- prepare and publish a detailed options analysis prior to the production of the strategic business case
 - ensure that this analysis is independently peer reviewed in accordance with the requirements of the Infrastructure Investor Assurance Framework, and is published before issuing contracts'.

Question resolved in the negative.

Dr Phelps moved: 'That paragraph 2.66 be amended by omitting 'were not adequately considered' and inserting instead 'may not have been catered for'.

Mr Mookhey then moved: 'That the motion be amended by omitting 'may not have been catered for' and inserting instead 'not required to be.'

Amendment put.

Question resolved in the affirmative.

Original question, as amended, put.

Question resolved in the affirmative.

Ms Faehrmann moved: 'That the following new Finding be inserted after 2.76:

'Finding X

The transparency arrangements pertaining to the WestConnex business case have been unsatisfactory.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Noes: Mr Farlow, Mr Mallard, Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Ms Faehrmann: 'That paragraph 2.77 be amended by omitting 'has restricted the ability' and inserting instead 'has restricted the ability of key stakeholders, local councillors and other interested parties'.

Dr Phelps moved: 'That paragraph 2.77 be amended by omitting 'This has helped exacerbate community opposition to the project'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Rev Nile.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: 'That the following new paragraphs be inserted after 2.78:

'The committee is not persuaded by NSW Treasury's refusal to publish the base-case financial model for the next 42 years for reasons of commercial confidentiality.

With the NSW Government ruling out the further sale of its remaining equity in the WestConnex project, there is no future competitive process to harm. Furthermore the

enforceable undertaking by Sydney Transport Partners to the ACCC to publish vehicle use data for WestConnex tolled roads reduces the value of the base-case financial model for participants in any future competitive process.

With penalties to be incurred by NSW taxpayers calculated with reference-in-contract to the base-case financial model, taxpayers deserve to have this information. The NSW Government should immediately publish the base-case financial model for the WestConnex project.'

Resolved, on the motion of Dr Phelps: That Recommendation 3 be omitted: 'That the NSW Government publicly disclose the preliminary and final business cases, including the cost benefit analysis, for all major infrastructure projects subject to the appropriate redaction of commercial in confidence information', and the following new recommendation be inserted instead:

'That the NSW Government:

- publish the strategic business cases, appropriately redacted of commercial in confidence information, for all major infrastructure projects,
- publish the base-case financial models for future infrastructure projects, 18 months after either:
 - a) the commencement of construction on a project, or
 - b) after the opening of the first stage of a project, whichever comes first, and
- publish the cost benefit analysis at the same time as the base-case financial model is published.'

Resolved, on the motion of Mr Mookhey: That the following new recommendation be inserted after Recommendation 3:

'Recommendation X

That the NSW Government immediately publish the base-case financial model for the WestConnex project.'

Chapter 3

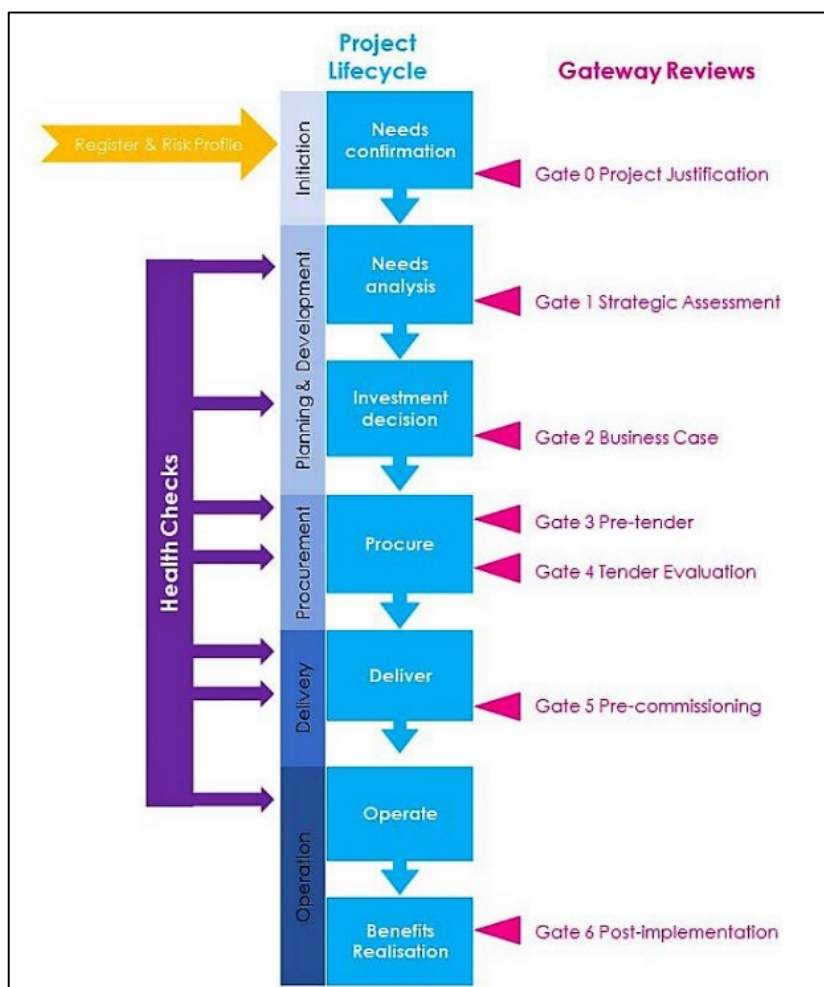
Resolved, on the motion of Mr Mookhey: That Table 3 be amended by:

- a) inserting a new dot point 'Operation of linked claims regime for contractor disputes' after the dot point 'Management of concession agreement from government side of contract'
- b) inserting a new dot point 'Commonwealth borrowing and NSW Government equity contributor' after the dot point 'Any further project development work'
- c) omitting 'Funding and financing of WestConnex' and inserting instead 'Private funding and financing'.

Resolved, on the motion of Mr Mookhey: That the following heading be inserted after paragraph 3.9: **'Infrastructure NSW'**.

Resolved, on the motion of Mr Mookhey: That the following diagram titled 'Project lifecycle assurance' be inserted after paragraph 3.10:

Figure X – Project lifecycle assurance



Source: Infrastructure NSW, *Infrastructure Investor Assurance Framework*, 2016, p 15.'

Resolved, on the motion of Mr Mookhey: That paragraph 3.14 be amended by:

- omitting 'Infrastructure investor assurance is a confidential process and reports are confidential.', and inserting instead 'The NSW Government's policy is for the Infrastructure Investment Assurance Framework to operate as a confidential process, with all reports confidential'
- omitting 'The Infrastructure Investment Assurance Framework explains the rationale' and inserting instead 'Infrastructure NSW explains the rationale'.

Resolved, on the motion of Mr Mookhey: That paragraph 3.21 be amended by inserting at the end: 'The Sydney Motorway Corporation is not subject to the *Government Information (Public Access) Act 2009*. [FOOTNOTE: Public Accountability Legislation Amendment (Sydney Motorway Corporation) Bill 2017.]'

Ms Faehrmann moved: That paragraph 3.35 be amended by amended by omitting 'It is further noted that Infrastructure NSW has undertaken 36 reviews on various aspects of the WestConnex project with four more being undertaken at the time of writing this report' and inserting instead:

'It is of concern that Infrastructure NSW has undertaken 36 reviews on various aspects of the WestConnex project with four more being undertaken at the time of writing this report but that none of these reviews have been made publicly available or provided to key stakeholders including members of Parliament or local governments.'

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 3.36 be amended by omitting 'This provides the committee with some comfort that the governance arrangements are operating as intended'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Rev Nile, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved:

- a) that paragraph 3.36 be amended by omitting 'However it is very difficult to ignore the fact that the delivery of the WestConnex project by Sydney Motorway Corporation, a private company, has provided the government with a potential means to obscure its operations and remove delivery of the project from public scrutiny. The committee finds that the delivery of the WestConnex project by Sydney Motorway Corporation has weakened the accountability and disclosure rules that would have otherwise applied had the project been delivered by a government agency'.
- b) that Finding 3 be omitted: 'That the delivery of the WestConnex project by Sydney Motorway Corporation has weakened the accountability and disclosure rules that would have otherwise applied if the project had been delivered by a government agency'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Rev Nile.

Question resolved in the negative.

Ms Faehrmann moved: That Finding 3 be amended by inserting at the end: ', including the important provisions of the *Government Information (Public Access) Act 2009*'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Noes: Mr Farlow, Mr Mallard, Dr Phelps.

Question resolved in the affirmative.

Dr Phelps moved: That paragraphs 3.37, 3.38, 3.39 and Finding 4 be omitted as follows:

'The committee asserts that the infrastructure projects being delivered on behalf of the public, and funded through public monies collected from taxes and user charges, should be subject to robust levels of transparency and scrutiny. Despite the WestConnex project's multi-billion dollar price tag, Sydney Motorway Corporation is not subject to the same levels of transparency and accountability arrangements that govern the rest of the public sector. This is unsatisfactory.'

'The sale of Sydney Motorway Corporation is discussed in the next section, and the committee acknowledges that the sale of a majority to the private sector is a fundamental component of the financing and delivery strategy for the WestConnex project. However, it could be reasonably argued that the sale will exacerbate existing transparency and accountability concerns. The sale also further reduces the ability of this Parliament to scrutinise and hold to account those responsible for the delivery of the WestConnex project.'

The committee finds that the recent sale of a majority interest in Sydney Motorway Corporation to the private sector will likely exacerbate existing transparency and accountability concerns relating to the WestConnex project.

Finding 4

That the recent sale of a majority interest in Sydney Motorway Corporation to the private sector will likely exacerbate existing transparency and accountability concerns relating to the WestConnex project.'

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That paragraph 3.37 be amended by inserting 'with the NSW Government retaining major ongoing equity interest' after 'from taxes and user charges'.

Resolved, on the motion of Mr Mookhey: That paragraph 3.38 be amended by omitting 'However, it could be reasonably argued that' and inserting instead 'However, it is likely that'.

Ms Faehrmann moved:

- a) that paragraph 3.39 be amended by omitting 'will likely exacerbate existing' and inserting instead 'will exacerbate existing'.
- b) that Finding 4 be amended by omitting 'will likely exacerbate existing' and inserting instead 'will exacerbate existing'.

Question resolved in the negative.

Dr Phelps moved: That paragraph 3.40 and Recommendation 4 be omitted as follows:

'The committee asserts that lessons must be learnt for the delivery of future infrastructure projects. It is recommended that the NSW Government ensure that the delivery of future large-scale infrastructure projects, irrespective of whether they are delivered privately or publicly, be subject to the same levels of transparency and accountability that would be required of a project delivered by a public sector body.'

Recommendation 4

That the NSW Government ensure that the delivery of future large-scale infrastructure projects, irrespective of whether they are delivered privately or publicly, be subject to the same levels of transparency and accountability that would be required of a project delivered by a public sector body.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mallard, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That:

- a) paragraph 3.40 be amended by inserting at the end: 'including the important provisions of the *Government Information (Public Access) Act 2009*'.
- b) recommendation 4 be amended by inserting at the end: 'including the important provisions of

Question resolved in the negative.

Mr Mookhey moved: That the following new recommendation be inserted after Recommendation 5:

'Recommendation X

That the NSW Government use public subsidiary corporations for all future motorways.'

Question resolved in the negative.

Mr Mookhey moved: That the following new recommendation be inserted after Recommendation 5:

'Recommendation X

That the NSW Government establish 'follow the dollar' powers for the Audit Office of New South Wales.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Noes: Mr Farlow, Mr Mallard, Dr Phelps.

Question resolved in the affirmative.

Resolved, on the motion of Mr Mookhey: That paragraph 3.50 be amended by omitting: 'explained why it was important' and inserting instead 'said it was important'.

Mr Mookhey moved: That paragraph 3.51 be omitted: as follows: 'Mr Gardner expressed his confidence that the sale of the 51 per cent stake in Sydney Motorway Corporation to Sydney Transport represented "a great outcome for the State".'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey.

Noes: Ms Faehrmann, Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Mookhey moved: That paragraph 3.54 be amended by omitting 'reduce the overall burden on the taxpayer' before ', and free up funds'.

Question put and negated.

Mr Mookhey moved: That paragraph 3.55 be amended by omitting 'The \$9.3 billion that was raised through the sale is a welcome boost to the state's financial position' and inserting instead 'The \$9.3 billion sale of 51 per cent of the Sydney Motorway Corporation means the current NSW Government has privatised over \$60 billion in public assets since it came to office'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Ms Faehrmann moved:

- a) that paragraph 3.55 be omitted as follows: 'The \$9.3 billion that was raised through the sale is a welcome boost to the state's financial position. Despite this it remains unclear as to what the NSW Government's total contribution to the WestConnex project will be upon completion' and that the following new paragraphs be inserted instead:

"The committee does not agree with the rationale for privatisation put forward by government. At a time of historically low interest rates, and given the ongoing costs that will accrue to taxpayers through a tolling regime which disproportionately affects the people and businesses of western Sydney, the committee believes that public infrastructure projects of the scale of WestConnex should not be financed and delivered by the private sector.

It also remains unclear what the NSW Government's total contribution to the WestConnex project will be upon completion.'

b) that the following new recommendation be inserted after paragraph 3.55:

'Recommendation X

That at a time of historically low interest rates, public infrastructure projects of the scale of WestConnex should not be financed and delivered by the private sector.'

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That the following new finding be inserted after 3.55:

'Finding X

The funding model used for the WestConnex project has enabled the government to bring forward investment, reduce the overall burden on the taxpayer, freed up funds to be allocated to other public services, removed the requirement to borrow money, and improved the State's financial position.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Question resolved in the affirmative.

Dr Phelps moved: That paragraph 3.63 be amended by omitting: 'Ms Court said that she had been informed that many people will bypass WestConnex if they can find a way, causing congestion on other parts of the road network:

The lot of them say that if they can find a way of not going on that WestConnex, they will do it. But the thing is, when they bypass it, everywhere they go it has put too much congestion on the rest of the road.'

Question resolved in the negative.

Dr Phelps moved: That paragraph 3.65 be amended by inserting 'Toll fatigue is a controversial concept. The recent movement figures of 150,000 vehicles per day using the M4, following the reintroduction of a toll at Silverwater, indicate that the toll has not been a significant disincentive to the use of the motorway' after 'pay on travel including toll roads [FOOTNOTE: NSW Government, RMS, 'Widened M4 traffic volume data', <https://www.rms.nsw.gov.au/about/corporate-publications/statistics/traffic-statistics/m4-volume-data.html>]'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Mr Mookhey moved: That paragraph 3.66 be amended by omitting 'is a welcome development to help address the issue' and inserting instead 'has so far had little impact on helping under-pressure families living in the most tolled city in the world'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Mookhey moved:

- a) That paragraph 3.66 be amended by omitting 'It is important that the government work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties' and inserting instead 'With the NSW Government's toll relief program offering inadequate relief, the NSW Government should immediately introduce a cashback scheme, similar to the M5 cashback scheme, for WestConnex Stage 1A'.
- b) That Recommendation 6 be omitted: 'That the NSW Government work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties' and the following new recommendation be inserted instead:

'That the NSW Government immediately introduce a cashback scheme similar to the M5 cashback scheme for WestConnex State 1A.'

Question resolved in the negative.

Resolved, on the motion of Mr Mallard: That paragraph 3.66 be amended by omitting 'the committee is concerned to note the disproportionate impact that tolls are having on the people and businesses of Western Sydney', and inserting instead 'The committee notes the impact of a toll on the people and businesses of western Sydney who travel east of Parramatta. The committee also notes that all major arterial connections from north, south and eastern Sydney are also currently subject to tolls (being the M2, M7, Lane Cove Tunnel, Harbour Bridge and Harbour Tunnel, Cross City Tunnel, Eastern Distributor and M5)'.

Dr Phelps moved:

- a) that paragraph 3.67 be amended by inserting 'conduct an extensive advertising campaign and' after 'that the NSW Government'.
- b) that Recommendation 6 be amended by inserting 'conduct an extensive advertising campaign and' after 'That the NSW Government'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Question resolved in the affirmative.

Resolved, on the motion of Mr Mookhey: That the following new paragraphs and recommendation be inserted after paragraph 3.67:

'The committee is concerned that truck drivers have not received an adequate explanation of why they are charged tolls three times other motorists to recover the impact heavy vehicle drivers have on roads, given these costs are recovered through diesel taxation. Evidence about the onerous impact these tolls have on indebted owner-drivers, and the impact on road safety, is deeply concerning.

It is recommended that the NSW Government urgently review the *Industrial Relations Act 1996* to clearly establish cost-recovery mechanisms for NSW owner-drivers.

Recommendation X

That the NSW Government urgently review the *Industrial Relations Act 1996* to clearly establish cost-recovery mechanisms for the NSW owner-drivers.

Resolved, on the motion of Dr Phelps: That paragraph 3.79 be amended by omitting 'frequent commentator' and inserting instead 'frequent critic'.

Mr Mookhey moved: That paragraph 3.87 be amended by omitting 'For some the removal of the Sydney Gateway provides reason to challenge the premise for the WestConnex project as a whole' and inserting instead 'The Committee agrees the removal of the Sydney Gateway destroys the original justification of the WestConnex project'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Mr Mookhey moved: That the following new finding be inserted after paragraph 3.87:

'Finding X

The removal of the Sydney Gateway destroys the original justification of the WestConnex project'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That the following new paragraph and finding be inserted after 3.87:

'The Sydney Gateway was clearly a key part of the rationale and business case for the WestConnex project and the committee finds that its removal will likely have led to a significant change in the cost-benefit analysis for the entire project.

Finding X

That, given the Sydney Gateway project was a key part of the original rationale and business case for the WestConnex project, its removal from the WestConnex project will likely have led to a significant change in the cost-benefit ratio for the entire project.

Ms Faehrmann moved:

- a) that paragraph 3.88 be amended by omitting 'however, a reasonable argument could be made' and inserting instead 'The committee finds that'.
- b) that the following new finding be inserted after paragraph 3.88:

'Finding X

That the separation of the Sydney Gateway Project from the WestConnex project was an attempt by the NSW Government to hide further WestConnex project cost increases.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Ms Faehrmann moved: That the following new paragraph and finding be inserted after paragraph 3.89:

'It is concerning that senior executives of major government bodies that have played crucial role in the development of WestConnex should supply the public accountability committee with vague and conflicting information, including not providing accurate dates and documentation regarding crucial decisions, such as the date of the scrapping of the Sydney Gateway Project.

Finding X

The Committee finds that it is unacceptable that the Government and senior bureaucrats were not able to supply the committee with accurate dates and documentation regarding crucial decisions, like the date of the scrapping of the Sydney Gateway Project.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That the following new finding be inserted after paragraph 3.89:

'Finding X

The Sydney Gateway project has been substantially enhanced with additional road and rail options which were not envisaged in the original concept. The new proposal is strategically important to New South Wales and should be constructed.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Question resolved in the affirmative.

Ms Faehrmann moved: That paragraphs 3.98, to 3.100 be omitted as follows:

'The committee acknowledges that some have called for Stage 3 of the WestConnex project to be cancelled. While the committee acknowledges the concerns and frustrations of some in the community regarding the WestConnex, the fact remains that the project is almost 50 per cent complete.

Contracts for Stage 3 have been signed. If Stage 3 was not to proceed it would likely cost the government an enormous amount of money. This cost would be borne by the taxpayers of New South Wales and would likely lead to the government having to withdraw planned expenditure and investment in other areas.

Further if Stage 3 did not proceed the projected benefits of the WestConnex project as a whole would not be realised. WestConnex has been designed as an integrated system for motorways. If it were to not be completed a major component of the government's integrated transport network plan would not be realised', and that the following new paragraphs and recommendation be inserted instead:

'The committee acknowledges that a number of key stakeholders and inquiry participants have called for Stage 3 of the WestConnex project to be significantly reduced or cancelled. The Committee notes that a vague estimate of 'billions' for the cost of cancelling Stage 3

was given by the WestConnex CEO. Claims of 'sovereign risk' were also made, however this claim was refuted by SGS Economics and Planning who provided the example of the Victorian state government's cancelling of the East West tunnel which did not impact in this way.

While the contracts for Stage 3 have been signed, the contracts for Stage 3b have not yet been signed and the Modification for the M4-M5 Link has not been approved and more information has been sought from the Department of Planning.

If Stage 3 was not to proceed a significant amount of money would be payable, however the impacts of proceeding have not been properly quantified and may show that the benefits outweigh the real costs of continuing with this Stage as proposed.

The committee therefore recommends that there be an immediate halt to stages 3 and 3b of the WestConnex project until a thorough and independent investigation and assessment of costs and impacts be undertaken.

Recommendation X

That there be an immediate halt to stages 3 and 3b of the WestConnex project until a thorough and independent investigation and assessment of costs and impacts be undertaken.'

Question put.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That the following new finding be inserted after paragraph 3.100:

'Finding X

Stage 3 of the WestConnex is strategically important to New South Wales and should be constructed, not merely because of the massive financial penalties which would apply were it to be cancelled, but because without Stage 3 the benefits of the WestConnex project as a whole would not be realised.'

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Question resolved in the affirmative.

Mr Mallard moved: That the following new recommendation be inserted after 3.100:

'Recommendation X

That the NSW Government proceed with Stage 3 of WestConnex'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps

Noes: Ms Faehrmann.

Question resolved in the affirmative.

Mr Mookhey moved: That the following new recommendation be inserted after paragraph 3.100:

'Recommendation X

That the NSW Government immediately publish a full account of all costs to be incurred by NSW taxpayers if Stage 3 contracts were cancelled'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Dr Phelps.

Noes: Mr Farlow, Mr Mallard, Revd Nile.

Question resolved in the affirmative.

Mr Mookhey moved: That the following new recommendation be inserted after paragraph 3.100:

'Recommendation X

That the NSW Government refrain from entering into any other major WestConnex contract until the return of the writs after March 2019 State Election.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Mr Mallard, Revd Nile, Dr Phelps.

Question resolved in the negative.

Chapter 4

Resolved, on the motion of Dr Phelps: That paragraph 4.18 be amended by omitting 'as a result of the equipment having been inoperable for the last three to five years' after 'air quality monitoring responsibilities'.

Ms Faehrmann moved: That the following paragraphs be inserted after paragraph 4.23:

'Wider air quality impacts

Professor Paul Torzillo, Head of Respiratory Medicine and Critical Care, Royal Prince Alfred Hospital, gave evidence that his concerns about air quality went beyond ventilation stacks to the impacts on drivers and residents and pedestrians near motorways. He told the Committee:

In cities like Sydney, traffic-related air pollution contributes about a one-third of total air pollution. This matters because there is a lot of international experience of road developments like WestConnex and what they all find is these developments increase vehicle use and they increase the number of cars coming into the city. [FOOTNOTE: Evidence, Professor Paul Torzillo, 11 October 2018, p 74].

Professor Torzillo told the committee that a recent study by the University of New South Wales on the impact of traffic-related air pollution estimated that the cost of air pollution for the healthcare system in Australia is somewhere between \$11 billion and \$24 billion. He concluded that:

the sorts of public transport facilities and utilities that are being advocated...need to be considered in the context of these really substantial potential savings in the healthcare sector, which across the country are in the order of billions of dollars. [FOOTNOTE: Evidence, Professor Paul Torzillo, 11 October 2018, p 74].'

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 4.24 be amended by omitting 'understands' and inserting instead 'acknowledges the expert advice regarding the negative health impacts of unfiltered ventilation stacks and comments by members of the government, including the now Premier Gladys Berejiklian, as to the need for filtration stacks in their electorates. The committee acknowledges the advice of health professionals and the World Health Organisation in relation to fine particle pollution and the need for filtration systems and supports the'.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

Noes: Mr Farlow, Revd Nile, Mr Mallard, Dr Phelps.

Question resolved in the negative.

Dr Phelps moved: That paragraphs 4.25 to 4.27 and finding 5 be omitted as follows:

'References by inquiry participants to findings of the World Health Organisation and the NSW Ministry of Health regarding the health effects of traffic related pollution challenge the NSW Government's assertion that the WestConnex tunnel ventilation facilities are following world's best practice. This is particularly troublesome considering some ventilation stacks will be located next to or near schools.

The committee recognises that as a result of community concern, in addition to a lack of trust in the government's air monitoring responsibilities, communities affected by the construction of WestConnex have undertaken their own air quality monitoring as a means to measure the prevalence of known carcinogens PM2.5 and PM10.

The committee finds it unacceptable that members of the community feel it necessary to undertake air quality monitoring in lieu of the responsible government agencies.

Finding 5

It is unacceptable that members of the community feel it necessary to undertake air quality monitoring in lieu of the responsible government agencies.'

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Ms Faehrmann moved: That paragraph 4.27 and Finding 5 be amended by inserting 'some government air quality monitors in the inner west have not been operational for periods of time, that there is no government roadside air quality monitoring and that ' after 'unacceptable that'.

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That paragraph 4.28 and Recommendation 7 be amended by omitting 'the publication of data' and inserting instead 'ensure the real time publication of all air quality data for WestConnex in a single online location. This should include the retention of historical information and the development of user friendly tools to understand and interpret the data'.

Ms Faehrmann moved: That the following new paragraph and recommendation be inserted after paragraph 4.28:

'It is also recommended that the NSW Government trial a series of roadside air monitors at pedestrian level beside major road and review whether its current air monitoring program is adequate to assess the air quality impacts caused by major roads.

Recommendation X

That the NSW Government trial a series of roadside air monitors at pedestrian level beside major road and review whether its current air monitoring program is adequate to assess the air quality impacts caused by major roads.'

Question resolved in the negative.

Dr Phelps moved: That

- a) paragraph 4.44 be omitted as follows: 'The committee notes the opposition expressed by inquiry participants to government claims that non-filtered ventilation stacks are safe and follow world's best practice. The committee also recognises the concerns of stakeholders that non-filtered ventilation stacks will not remove carcinogenic pollutants from tunnel emissions but will rather disperse such pollutants further and wider than the tunnel ventilation facility itself. This could adversely affect the health of many communities along the WestConnex corridor',
- b) paragraph 4.45 be amended by omitting 'does not provide' and inserting instead 'provides',
- c) paragraph 4.46 be omitted as follows: 'While the committee is encouraged by the acknowledgment of both Roads and Maritime Services and the Department of Planning and Environment that the WestConnex tunnels can be retrofitted with filtration if required, the committee is of the view that filtration should be included during the construction phase. Therefore the committee recommends that the NSW Government install, on all current and future motorway tunnels, filtration systems in order to reduce the level of pollutants emitted from ventilation stacks.', and inserting instead:

'The committee is encouraged by the acknowledgement of both Roads and Maritime and the Department of Planning and Environment that the WestConnex tunnels can be retrofitted with filtration. The committee also supports independent scientific monitoring of air quality by the Environmental Protection Agency and, if this monitoring demonstrates that air quality is below baseline standards, to install filtration systems on ventilation stacks',

- d) the following new recommendation be inserted after paragraph 4.46:

'Recommendation X

That the NSW Government continue to monitor air quality in the areas around ventilation stacks and, if necessary, install filtration systems.'

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Dr Phelps: That paragraph 4.47 be amended by omitting 'Further, the committee is uncertain about the integrity of' and inserting instead 'The committee notes the creation of'.

Ms Faehrmann moved: That the following new finding be inserted after paragraph 4.47:

'Finding X

The committee finds that the Air Quality Community Consultative Committees and the processes used to identify the most appropriate locations for air monitoring is lacking in integrity.'

The committee divided.

Ayes: Ms Faehrmann.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile, Dr Phelps.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That the following new recommendation be inserted after paragraph 4.47:

'Recommendation X

That the NSW Government undertake a review and audit of the Air Quality Community Consultative Committees and the locations for air quality monitoring for the New M5.'

Resolved, on the motion of Dr Phelps: That the case study: Affected resident, Dr Jacinta Green, be amended by omitting 'sight' and inserting instead 'site'.

Resolved, on the motion of Ms Faehrmann: That the following new paragraph be inserted after paragraph 4.62:

The City of Sydney is concerned that based on the results from the air quality monitoring stations installed at St Peters Public School, air quality around the school has been found to be significantly negatively impacted by WestConnex construction. The City is also concerned that the reports from the air quality monitoring station were not passed on to the school or parents, despite frequent requests. In its submission The City wrote that it had been advised that concerns about air quality raised by residents with Ministers and government agencies are forwarded to the SMC. With the adoption of an updated Ambient Air Quality National Environment Pollution Measure standards for particulates in 2015, emissions at various sites along the M5 are likely to exceed the new standards, putting thousands of young children and the elderly at risk. [FOOTNOTE: Submission 311, City of Sydney, p 12]'

Resolved, on the motion of Ms Faehrmann: That the subheading before paragraph 4.66 be amended by inserting 'and vegetation' at the end.

Resolved, on the motion of Ms Faehrmann: That paragraph 4.67 be amended by inserting 'It was also concerned that open space at the St Peters Interchange would not be usable due to potential health impacts as a result of vehicle emissions and recommended that the Sydney Motorway Corporation provide indoor sporting facilities [FOOTNOTE: Submission 311, City of Sydney, p 14].' after 'Euston Road'.

Resolved, on the motion of Dr Phelps: That paragraphs 4.91 to 4.93 be amended by omitting 'CFMEU' and inserting instead 'CFMMEU'.

Dr Phelps moved: That paragraph 4.105 be amended by omitting 'severe and multiple' after 'The committee acknowledges'.

Question resolved in the negative.

Resolved, on the motion of Dr Phelps: That paragraph 4.105 be amended by inserting 'some' after 'multiple health impacts felt by'.

Dr Phelps moved: That paragraph 4.106 be amended by omitting 'is alarmed' and inserting instead 'notes'.

Question resolved in the negative.

Dr Phelps moved: That the final sentence in paragraph 4.108 and recommendation 9 be omitted as follows:

'This should happen without delay and it is recommended that the NSW Government establish a WestConnex mental health support and wellbeing service.'

Recommendation 9

That the NSW Government establish a WestConnex mental health support and wellbeing service.'

Question resolved in the negative.

Ms Faehrmann moved: That the following new finding and recommendation be inserted after paragraph 4.108:

'Finding X

The committee finds the amount of night works undertaken by WestConnex near residents unacceptable.

Recommendation X

Mitigation measures must ensure that residents health and wellbeing is prioritised in order to mitigate the severe health impacts which occur as a result of exposure to noise over extended periods including ensuring night works are minimised.'

Question resolved in the negative.

Ms Faehrmann left the meeting at 3.37 pm.

Resolved, on the motion of Mr Donnelly: That the first dot point in recommendation 10 be amended by omitting 'a' after 'conduct' and inserting instead 'an immediate'.

Resolved, on the motion of Dr Phelps: That paragraph 4.114 be amended by omitting 'at face value' after 'The committee accepts'.

Resolved, on the motion of Dr Phelps: That the following new finding be inserted after paragraph 4.114:

'Finding X

The committee welcomes the additional 'green space' that the WestConnex project will provide to the residents of the Inner West of Sydney.'

Resolved, on the motion of Mr Donnelly: That recommendation 11 be amended by omitting 'kept' and inserting instead 'fully delivered as promised'.

Dr Phelps moved: That paragraphs 4.128 and 4.149 and finding 6 be omitted as follows:

'The committee considers that the mitigation measures employed by the various government departments and agencies to date have not been adequate so as to mitigate the pervasive noise emanating from the construction sites.

It is appalling to hear that residents affected by intense night works have only been provided with foam ear plugs and/or noise cancelling headphones with limited offers of alternative accommodation. The committee finds that the various mitigation measures offered by Roads and Maritime Services, are wholly inadequate to substantially reduce heavy construction noise. The committee is of the view that more needs to be done to reduce the noise impacts of construction on residents who are unable to relocate, seek alternative accommodation or change their daily routines.

Finding 6

That the various noise mitigation measures offered by Roads and Maritime Services are wholly inadequate to substantially reduce heavy construction noise.'

Question resolved in the negative.

Resolved, on the motion of Mr Mallard: That paragraph 4.129 be amended by omitting 'appalling' and inserting instead 'disturbing'.

Resolved, on the motion of Mr Donnelly: That the following new recommendation be inserted after paragraph 4.130:

'Recommendation X

That the NSW Government monitors and publicly reports on its new noise minimisation measures for the WestConnex project to ensure that the improvements being sought are achieved.'

Chapter 5

Resolved, on the motion of Dr Phelps: That paragraph 5.3 be amended by inserting 'time' after 'which'.

Dr Phelps moved: That paragraph 5.92 be amended by omitting 'tried to hide these reviews from the public in the first instance' and inserting instead 'did not release these reviews in spite of wide public calls'.

Question put.

The committee divided.

Ayes: Mr Farlow, Revd Nile, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Mr Mookhey.

Question resolved in the affirmative.

Dr Phelps moved: That paragraphs 5.95 to 5.96 and recommendation 14 be omitted as follows:

'The committee received evidence from a number of stakeholders who claimed that RMS deliberately provided offers below market value. While RMS confirmed that all valuations are completed by independent licensed valuers, the committee sees merit in the Tasmanian system where the acquiring authority does not administer offers of compensation at any point in the process but rather it is the Valuer General's responsibility. Such a system could potentially minimise claims of bias and conflicts of interest.

The committee recommends that the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.

Recommendation 14

That the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.'

Question put.

The committee divided.

Ayes: Dr Phelps.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Mookhey, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Dr Phelps: That paragraph 5.95 be amended by omitting 'Such a system could potentially minimise claims of bias and conflicts of interest.' after the Valuer General's responsibility'.

Dr Phelps moved: That paragraph 5.97 and recommendation 15 be omitted as follows:

'The committee notes that its recommendations on compulsory acquisition thus far are forward looking. They are not retrospective and therefore will not directly address the grievances expressed by property owners who have already had their homes acquired by RMS for the WestConnex project. However, the committee believes that those property owners who have had their property compulsorily acquired, and remain unsatisfied about the process and their treatment, should have their grievances addressed by government. It is recommended that the NSW Government devise a process, through which property owners can apply to have the process by which their property was compulsorily required, reviewed.

Recommendation 15

That the NSW Government devise a mechanism, through which property owners can apply to have the process by which their property was compulsorily required, reviewed.'

The committee divided.

Ayes: Dr Phelps.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard Mr Mookhey, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mr Mookhey: That recommendation 15 be amended by inserting '; and that the NSW Government examine whether Proposed Acquisition Notices are being speedily resolved in the interests of owners' after 'compulsorily required, reviewed.'

Dr Phelps moved: That paragraph 5.124 and finding 7 15 be omitted as follows:

'The committee understands that many residents do not trust the relevant authorities in relation to dilapidation reporting and the resolution of complaints due to perceived lack of independence and conflicts of interest. That a local council is shouldering the financial responsibility to provide independent dilapidation surveys for its residents is a reflection of how little trust residents have in the WestConnex project. The committee finds that local government should not have to step in to alleviate concerns held by residents in relation to State Significant Infrastructure projects, such as the WestConnex, when it is the responsibility of the NSW Government.

Finding 7

Local government should not have to step in to alleviate concerns held by residents in relation to State Significant Infrastructure projects, such as the WestConnex, when it is the responsibility of the NSW Government.'

The committee divided.

Ayes: Dr Phelps, Mr Farlow, Mr Mallard.

Noes: Mr Donnelly, Mr Mookhey, Revd Nile.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That finding 7 be omitted: 'Local government should not have to step in to alleviate concerns held by residents in relation to State Significant Infrastructure projects, such as the WestConnex, when it is the responsibility of the NSW Government', and the following new finding be inserted instead:

'Local government is an active representative of their local communities. It is the decision of relevant local government whether or not to engage in dealing with resident's concerns about WestConnex.'

Question resolved in the negative.

Resolved, on the motion of Mr Mallard: that recommendation 17 be amended by omitting 'extend' and inserting instead 'consider extending'.

Chapter 6

Resolved, on the motion of Dr Phelps: That the first dot point in paragraph 6.33 be amended by omitting 'one day before *The Daily Telegraph* published a story about the proposed sites' after 'in the area,'.

Resolved, on the motion of Dr Phelps: That paragraph 6.34 be amended by omitting 'noted that' and inserting instead 'claimed that'.

Resolved, on the motion of Dr Phelps: That paragraph 6.35 be amended by omitting 'stipulated that' and inserting instead 'said that'.

Resolved, on the motion of Dr Phelps: That paragraph 6.36 be amended by omitting 'informed that' and inserting instead 'said that'.

Dr Phelps moved: That

- (a) paragraph 6.42 be amended by omitting 'However, on balance of criticisms made, it is questionable whether these authorities have actually engaged in meaningful community consultation'.
- (b) paragraph 6.45 be omitted as follows: 'Therefore, the committee finds that while extensive consultation for the WestConnex project has been undertaken, it also appears that this consultation has been ineffective and has lacked an empathetic approach to community members.'
- (c) finding 8 be omitted as follows: 'That while extensive consultation for the WestConnex project has been undertaken, it appears that this consultation has been ineffective and has lacked an empathetic approach'.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Dr Phelps.

Noes: Mr Donnelly, Mr Mookhey, Revd Nile.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Mallard moved: That finding 8 be amended by omitting 'ineffective and has lacked an empathetic approach' and inserting instead 'less than effective for some affected individuals and communities'.

Question resolved in the negative.

Resolved, on the motion of Dr Phelps: That paragraph 6.77 be omitted as follows: 'The Inner West Council's efforts to address complaints by establishing the WestConnex Unit is to be commended. However, the committee is concerned that this adds another agency to an already complex system of complaints-handling. It should be the NSW Government's role to provide a single point of contact for complaints-handling and make this clear to the community'.

Resolved, on the motion of Mr Donnelly: That the following new recommendation be inserted after recommendation 18:

'Recommendation X

That the NSW Government monitors and publically reports on the new Community Complaints Mediator for the WestConnex project to ensure that the improvements being sought regarding community engagement and complaints handling are achieved'.

Resolved, on the motion of Mr Mallard: That the following new recommendation be inserted after recommendation 18:

'Recommendation X

That all major infrastructure projects have a centralised complaints management system that is accessible 24/7, transparent and empowered to respond effectively in a short time frame.'

Resolved, on the motion of Mr Donnelly: That:

- a) The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, pro forma submissions provided by Mr Jamie Parker MP and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be

published by the committee, except for those documents kept confidential by resolution of the committee;

- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) That the report be tabled on 17 December 2018
- i) That the Chair hold a press conference on 17 December 2018.

5. Adjournment

The committee adjourned at 16.58 pm *sine die*.

Alex Stedman
Committee Clerk

Appendix 5 Dissenting statements

The Hon Daniel Mookhey MLC and The Hon Greg Donnelly MLC, Australian Labor Party

WestConnex promised much -

Port Botany would directly connect with Sydney's major arterial roads. Traffic would be taken from neighbourhood roads. Travel times would shorten; air quality rules, the world's best; tolls, modest. Premiers O'Farrell, Baird and Berijiklian said: judge them, and the project, by these standards.

How is Westconnex faring? This inquiry says...badly.

Westconnex is costing taxpayers more and delivering less. Construction too often has skirted planning conditions supposed to protect surrounding neighbourhoods. The State has been too insensitive to the trauma inflicted on families who lost their homes in the compulsory acquisition stages. The development of the original business cases would not pass muster today under the Government's own policies. The Government (clearly) has lost the community's confidence about air standards.

The report is critical of the NSW Government's failings in these spheres; and it's right to be. But the report should have been tougher on tolls.

The M4 Toll

It's clear that the Stage 1A M4 Toll is hoovering up money from Western Sydney families so to cross-subsidise the otherwise uneconomic sections off the road.

That's why this Government says the most trafficked section of Westconnex, which drew only \$500 million from the projects supposed \$16.8 billion budget, must stay tolled for 42 years even though every dollar spent to add some new lanes will be recouped by tolls by 2019/2020.

Inquiry witnesses were aghast. They were right to be. We agree with them.

The Government says their 'toll-relief' policy is dulling the hip-pocket pain they themselves have caused.

Here are the facts⁶⁰⁷ about the Government's toll-relief programme the Labor Opposition has uncovered:

⁶⁰⁷ 'DALEY, MCKAY & CAR: BEREJIKLIAN GOVERNMENT TOLL RELIEF FAILS - BRING BACK THE M4 CASHBACK', Thursday, 15 November 2018,

<u>Postcode</u>	<u>Suburbs included</u>	<u>Motorists stung by the M4 toll</u>
2145	Westmead, Greystanes, Wentworthville, South Wentworthville, Girraween, Constitution Hill, Pendle Hill, Pemulwuy, Mays Hill	9,333
2148	Blacktown, Prospect, Huntingwood, Arndell Park, Kings Park, Marayong	8,059
2153	Baulkham Hills, Norwest, Bella Vista, Winston Hills	7,542
2170	Warwick Farm, Liverpool, Liverpool South, Lurnea, Moorebank, Mount Pritchard, Prestons, Hammondville, Casula, Chipping Norton	7,351
2155	Kellyville, Rouse Hill, Kellyville Ridge, Beaumont Hills, North Kellyville	7,044
2112	Putney, Ryde, Denistone East	5,272
2154	Castle Hill	5,050
2122	Eastwood, Marsfield	5,019
2066	Riverwood, Northwood, Lane Cove, Lane Cove West, Lane Cove North, Longueville, Linley Point	4,985
2144	Auburn	4,875

More than 550,000 motorists have paid the M4 toll, less than five per cent (27,694) have received assistance under the existing scheme, according to documents released under Freedom of Information.

Western Sydney would fare better under a Cashback scheme similar to that on the M5 motorway than under this Government's little used registration refund programme. We asked the inquiry to recommend:

That the NSW Government immediately introduce a cashback scheme similar to the M5 Cashback scheme for Westconnex Stage 1A"

It did not.

Western Sydney families would have been better-off if it had.

The Hon Dr Peter Phelps MLC, Liberal Party**WestConnex Inquiry – Dissenting Report**

It is unsurprising, but still disappointing, that I need to file a dissenting report, given that this inquiry has, for the most part, simply been a litany from anti-car Green extremists, whinging Baby Boomers, and NIMBY's – and often people who are all three. The conduct of the public hearings, has had the aura of a Festivus in Balmain Town Hall, rather than the serious consideration of matters at hand.

Firstly, it is notable that the Draft Report's original Findings had nothing positive to say about WestConnex. Yet surely the *a priori* question is: Is this needed? Is this desirable? Ultimately, the majority of the Committee agreed that it was, but only after I suggested amendments along those lines. Were this to have been foremost in the Committee's deliberations, then a large amount of time that was wasted on submissions and testimony from people who objected to this basic premise would have been avoided.

Secondly, there was good reason to exorcise the irrational and false testimony from this report, yet most of it remained in. The basic principle appears to have been that delusions and misinformation should be promulgated without comment, provided that they were sincerely held. The suggestion that the EPA or the Valuer-General were, somehow, lacking in independence to the point of being lickspittles for WestConnex, is so far out of the realm of rational thought, that it provides demonstrable refutation for Richard Hofstadter's view that 'the paranoia style' is the preserve of the political Right. Yet this report seeks to exculpate and justify these utterly unreasonable views.

To take two examples: that of Ms Court and Cr Byrne. Both assert that it would be bad to build WestConnex – in the case of the former, because people will not want to pay the tolls and that will lead to congestion on adjoining roads; in the case of the latter, because people going to the airport will find themselves in a traffic jam at Haberfield following the construction of Stage I. Both of these arguments are irrational.

In Ms Court's case, she accepts that there will be a certain demand for road use from motorists, yet fails to grasp that this demand will be present whether the motorway is or is not built. Indeed, not building it guarantees congestion, whereas building it (even with a toll) may ameliorate the situation. In Cr Byrne's case, one is tempted to ask: how do people from Western Sydney get to the airport now? From the northwest, they take the M7-M2-Harbour route; from the southwest, the MS provides a direct link; and from the west, one can either take the M4 to the northern route, or M4-M7 to the southern route. Assuming, as Cr Byrne does, that opening Stage I will lead people

in the West to skip these routes and take the M4 all the way in, only to get stuck in a suburban traffic jam, is demeaning to the intelligence of the people of Western Sydney.

There were also submissions which asserted that there was too much construction noise during the day for people who worked at home, alongside submissions from those who said that there was too much noise at night for people to sleep -both of which were accepted and reported with a straight face. If neither at night nor during the day, then when is this project to be built? The answer, of course, for most participants, the answer is "never".

There were submissions from 'community groups' with fancy-sounding names, who could only claim seven actual group members; or groups which claimed a 'open mind' about the project, but ran anti-WestConnex campaigns and websites.

Thirdly, the idea that a 'lack of information' has 'exacerbated community concern' about the project is ridiculous. While it is undeniable that some aspects of this project are deserving of legitimate criticism, there is no evidence to support the notion that any amount of information would have placated the anti-car Green ideologues or superannuated NIMBY's who provided the bulk of the opposition. These people just hate motorways (even motorways that go underground) and, by implication, they hate anyone who do not live in their exclusive inner city enclaves that are conveniently serviced by trains, buses, light rail, and ferries.

Moreover, there was more than sufficient opportunity to adduce information about the project, through Estimates hearings, questions to Ministers with and without notice, and even Standing and *ad hoc* committee inquiries.

With regard to the claim that there was 'widespread' opposition to the project –the Committee received fewer than 600 substantial submissions to the inquiry, whereas the State electorates of Newtown and Balmain alone have around 110,000 voting adults. And I am sure the +150,000 people who use the new, widened M4 every workday would also have views about the utility and desirability of the construction of the complete WestConnex project. But only the aggrieved ever bother to make submissions and, unfortunately, these make up the bulk of what the Report publishes as 'evidence'.

Underlying much of the criticism of the project in the final report seems to be an implicit yearning for a return to 'the good old days' when there was a Department of Public Works and/or a Department of Main Roads, and infrastructure was paid for by taxes and/or government borrowing. This nostalgia for the 1950's may well be the view of the non- government parties, but if so, then they should have shown a bit more courage and made their archaic views explicit.

The 1,000 words for a dissenting report is too few to adequately express just how dreadful this inquiry was, and a large part of its resultant report.

All that needs to be said is this: the Liberal/National Government has corrected the massive error committed by Neville Wran who, in 1977, bowed to pressure from inner-city luvvies, to cancel the M4 East and sell off the land. WestConnex should be built; and now it will be.

PETER PHELPS

Ms Cate Faehrmann MLC, The Greens

Inquiry into the impact of the WestConnex project

Dissenting report from Cate Faehrmann

This has been an extremely important inquiry and the final committee report details a litany of failures by the NSW Government in the delivery of the WestConnex project which have had a real and lasting negative impact on people's lives, have eroded public trust and had significant costs for taxpayers. The community anger and opposition to the project is clear and ongoing.

It is also evident that this was all avoidable and for this reason I believe that, as a first step, the NSW Government should apologise to the people of NSW for the inept and ill-considered decision to build the WestConnex tollway.

If implemented, many of the recommendations will undoubtedly improve the decision making, transparency, accountability and community support for future large infrastructure projects.

There are however a number of concerns I have with the final report:

1. WestConnex should never have been approved or built

I do not support the finding that WestConnex is 'a vital and long-overdue addition to the road infrastructure of New South Wales'.

The committee heard compelling evidence of the benefit to other cities around the world which have chosen not to invest in new motorways and instead invested in reducing car use and improving public transport. If an assessment of alternatives to WestConnex had been completed, then it would have been clear that public funds should have been spent on improving public transport instead.

Finding: *That the NSW Government should have invested the public funds spent on the WestConnex project on improving public transport, including for western Sydney.*

2. Halt Stages 3 and 3b

I disagree with the committee's support for the completion of Stages 3 and 3b. The committee heard from a number of key stakeholders and inquiry participants who called for Stage 3 of the WestConnex project to be significantly reduced or cancelled.

It is still possible to cancel these stages. While the contracts for Stage 3 have been signed, the contracts for Stage 3b have not yet been signed and the Modification for the M4-M5 Link has not been approved. The committee heard evidence about the possible 'sovereign risk' this could cause, however this claim was refuted by SGS Economics and Planning who provided the example of the Victorian state government's cancelling of the East West tunnel which did not impact in this way.

I accept that a significant amount of money would be payable if the stages were cancelled, however the impacts of proceeding have not been properly quantified and may show that the benefits outweigh the real costs of continuing with these stages as proposed.

Recommendation: *That there be an immediate halt to stages 3 and 3b of the WestConnex project until a thorough and independent investigation and assessment of costs and impacts be undertaken.*

Recommendation: *That the NSW Government refrain from entering into any other major WestConnex contract until the return of the writs after March 2019 State Election.*

3. The WestConnex business case is flawed

The committee heard compelling evidence from a number of witnesses about the flawed business case development and decision making process.

Finding: *That the NSW Government made its decision to build WestConnex before a business case had been developed and that the business case was subsequently prepared to justify this decision.*

Finding: *That if the full range of costs were adequately considered, and if the cost blow outs and scope changes were taken into account, it is probable that an updated business case for the WestConnex would not have a positive cost-benefit ratio.*

4. Privatisation was a mistake

The evidence presented to the committee did not support the rationale for privatisation put forward by government and supported by the committee. At a time of historically low interest rates, and given the ongoing costs that will accrue to taxpayers through a tolling regime which disproportionately affects the people and businesses of western Sydney, public infrastructure projects of the scale of WestConnex should not be financed and delivered by the private sector.

It was also evident that privatisation has directly undermined transparency, accountability, adherence to conditions of approval and public confidence.

Recommendation: *That at a time of historically low interest rates, public infrastructure projects of the scale of WestConnex should not be financed and delivered by the private sector.*

5. The Sydney Gateway removal was a sneaky attempt to hide cost increases

The committee acknowledges that the removal of the Sydney Gateway will likely have led to a significant change in the cost-benefit analysis for the entire project. I believe the evidence presented to the committee also clearly showed that the separation of the Sydney Gateway Project from the WestConnex project was an attempt by the NSW Government to hide further WestConnex project cost increases.

It is also concerning that senior government officials gave the committee vague and conflicting information regarding the scrapping of the Sydney Gateway Project, including not providing accurate dates and documentation.

Finding: *That the separation of the Sydney Gateway Project from the WestConnex project was an attempt by the NSW Government to hide further WestConnex project cost increases.*