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Submission to the Inquiry into Public Private Partnerships

Prepared for:

Public Accounts Committee of the NSW Legislative Assembly

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1.0 Background

This submission is made from concern that the principle of Public Private Partnerships has been perverted from its original intent.

The rise in PPP is being accelerated by the truism that government is dominated the politics of interest, particularly of immediate interests. That is, despite being ethically bound to govern for and on behalf of the long-term interests of the citizenry, decisions are made by those in power for short-term gain of personal, political party, agency and other vested interests.

Thus budgetary pressure has come about because fundamental and ongoing investment in essential infrastructure has been neglected, in a gross abrogation of the very duty that ostensibly defines public service.

That this neglect now necessitates injection of capital in excess of the state's budget is beyond argument, particularly as much of the state's infrastructure was established prior to ceding income taxation powers to the Commonwealth – the question lies in the principles and processes behind such partnerships.

2.0 Needs-driven Projects

Projects – whether submitted by agencies or the private sector – must originate with community need. The government's role is of service provision of essential public goods, not the creation of investment opportunities for the private sector, not the perpetuation of budgets for government agencies and enterprises. Community needs must be assessed at a central, research and planning level, removed from the party-political apparatus. This is to maintain reasoned objectivity over the actual social and economic environment, and to assess needs in that context, not through the various lenses of vested interests. This body should be fully transparent and accountable to the parliament, not the government.

3.0 Accountability to the People

The accountability of the centralised research and planning function must be to the people of NSW via the Parliament. Actual project selection, assessment and implementation by government must be vigorously scrutinised by the office of the Ombudsman, which should accordingly have its resources increased.

4.0 Aiming before Firing – Debating before Contracting

If a project is considered to be a priority community need, in the context of maximising community benefit, it should then be the subject of public and expert opinion, prior to calls for Expressions of Interest. Too often there appears to be a decision made by the government or its agencies that has not been subject to independent – public and expert – review, because their interests and the public's are in conflict. As a result, the public becomes contractually bound to poorly conceived projects, outside its long-term interest.

5.0 Agencies and Asset Management

The government maintains a policy of Total Asset Management (*State Infrastructure Strategic Plan 2002, 1.2.9*), which changes “focus by government from asset creation to strategic asset management”. Whilst this is an ostensible improvement in the sustainable management of assets, there must be safeguards in place to ensure that an agency-driven agenda does not result in inefficient service provision to the public.

Agencies have a tendency to take a narrow view of public interest, prioritising their own interest in securing and expending budget over the real needs of citizens. Accountability mechanisms are limited to reporting from the office of the Ombudsman and ad-hoc parliamentary inquiries, which seldom establish culpability and certainly never result in meaningful disciplinary action. As a result, agency heads and the government can make selfish short-term decisions that have little relative social or economic merit.

An agency emphasis on securing projects that can be funded through user charges, and maintained at little cost by that particular agency may have quite deleterious

effects on the public, through exposure to exorbitant pricing, reduction of choice, and failure to provide services of greatest need.

Therefore agencies must not only submit their proposed asset expenditures to government, but to the centralised, independent planning body (referred above), to achieve a fundamental match between apparent need and asset creation or maintenance. It is only by maintaining this independent planning function, with oversight by parliament, that the decisions of government can be properly evaluated for public benefit.

6.0 Contracting in the Public Interest

6.0.1 Maximising Public Benefit

The government and its agencies must contract in the public's long-term interest. If there is a true public need, then there will be true project demand – in a market sense.

User Pays infrastructure models – such as tollways – must be planned to maximise public freedom and access. This means that alternative uses are not precluded, for instance through closing routes, prohibiting alternative access, and generally conspiring to force the extraction of funds from the public.

An example of the perversion of the public good for private benefit is the Cross City tunnel. This project – ostensibly to build a fast alternative route across the city – has in effect shut down many of the pre-existing choices of movement between the eastern suburbs and the city and north shore. This project has been deliberately devised to decrease the efficiency of all other alternative choices, deliberately sabotaging public productivity for private gain.

6.0.2 Fair Pricing

Pricing must be established at a level that reflects the genuine demand for the proposed project – i.e. there must be extensive and impartial evaluation of potential

pricing to establish what would otherwise be considered a fair equilibrium price. Due consideration must also be made for achieving economic and social objectives. If there is an insistence that private equity investors require a specified return on their investment, then that return must be generated at the fair equilibrium price.

If the generation of a reasonable return is not possible at a fair equilibrium price, and the shortfall is an unacceptable one for the government – considering it has complete discretion over all actual and potential state revenue raising and expenditure – then the project should not proceed in its proposed form, as its costs of supply outweigh public demand for its benefits.

6.0.3 State Sovereignty

Sovereignty must be safeguarded by government. Too many infrastructure projects have already demonstrated the runaway nature of corporations when they maintain pricing control and/or ownership over essential infrastructure (e.g. Sydney Airport – a federal project, but nonetheless an archetype for commercial exploitation of an essential service).

Whilst operational control may be ceded initially, the state must maintain residual pricing power, and the power to share revenue upside or acquire the asset with minimal penalty if essential infrastructure is clearly delivering supra-normal profits to the operator rather than the public.

The operator must provide quarterly operating reports to the relevant agency, and the Ombudsman, and full audit powers must be maintained by the state. Should essential infrastructure need to be acquired for the reasons outlined above, there will be a ready market of capital investors willing to refinance essential infrastructure projects with such solid historical returns.

6.0.4 Competition for Public Benefit

There is an increasing need to replace infrastructure inadequate for ongoing economic and social requirements. The state is in a unique position to legally compel

the individuals and corporations to pay taxes and levies, giving it enormous power to invest in infrastructure for the long term. Yet this is accompanied by an ever-increasing surplus of global capital available for investment.

Transparency must be maximised to create markets for infrastructure. Government must increase the transparency of its PPP dealings so that it increases knowledge of existing mechanisms, and encourages new entrants with a desire to earn a relatively low-risk return on investment.

At present, the public entrusts negotiation of its interests to the executive government, and contracts are maintained as commercial in confidence. It is a very inefficient market if only the government and the contracted parties know the nature of the deal. It is only by opening such contracts up to public scrutiny that competitiveness for the planning, funding, construction and management of infrastructure can be created, as rivals compete for the business.

To allow the secrecy over these dealings to persist is to expose the public to the everyday downsides of an imperfect marketised existence (i.e. lives as price takers), without empowering them (via government) to extract maximum value for money by having investors and contractors openly innovate and compete for business.

7.0 Conclusion

This submission has been made in good faith by a concerned citizen, without any political memberships or affiliations. There is a widespread apathy towards the issues of poor governance, which the public generally accepts as given – “whatever decisions are made, by whatever party is in government, it won’t be for my benefit – it’ll be for the fat cats”.

Market-driven ideology has captured the public sphere, and if we are to accept this as a society, then we must at least make the market work on our own terms. We must seek to make the proponents of infrastructure schemes, the planning, the decision-making and the operational mechanisms, and their review fully visible to the public.