

Joint Select Committee on the Cross City Tunnel

First Report

Cross City Tunnel

Tabled according to Legislative Council Standing Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Joint Select Committee on the Cross City Tunnel.

Cross City Tunnel. First report / Joint Select Committee on the Cross City Tunnel. [Sydney, N.S.W.] : NSW Parliament, 2006. —247 p. ; 30 cm

Chairman: Fred Nile.

“February 2006”.

ISBN 978-1-920788-11-7

1. Cross City Tunnel (Sydney, N.S.W.)
2. Tunnels—New South Wales—Sydney.
3. Toll roads—New South Wales—Sydney.
- I. Title.
- II. Nile, Fred.

388.13 (DDC)

"Tabled according to Legislative Council Standing Order 231".

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Terms of Reference

1. That a Joint Select Committee be appointed to inquire into and report on:
 - (a) the role of Government agencies in relation to the negotiation of the contract with the Cross City Tunnel Consortium,
 - (b) the extent to which the substance of the Cross City Tunnel contract was determined through community consultation processes,
 - (c) the methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Cross City Tunnel,
 - (d) the public release of contractual and associated documents connected with public private partnerships for large road projects,
 - (e) the communication and accountability mechanisms between the RTA and Government, including the Premier, other Ministers or their staff and the former Premier or former Ministers or their staff,
 - (f) the role of Government agencies in entering into major public private partnership agreements, including public consultation processes and terms and conditions included in such agreements, and
 - (g) any other related matters.
2. That the committee report:
 - (a) in relation to paragraphs 1 (a) to (e) by the first sitting day in February 2006, and
 - (b) in relation to paragraph 1 (f) by the first sitting day in April 2006.

These terms of reference were referred to the Committee by resolution of the Legislative Council on 15 November 2005, Minutes 128, item 14, page 1720 and Legislative Assembly 16 November 2005, Votes and Proceedings No 158, Item 28, page 1765. The full text of the resolution establishing the Committee appears at paragraph 1.6.

Committee Membership

Revd the Hon Fred Nile MLC	Christian Democratic Party	<i>Chairman</i>
The Hon Amanda Fazio MLC	Australian Labor Party	
The Hon Greg Pearce MLC	Liberal Party	
Ms Lee Rhiannon MLC	The Greens	
Mr Matt Brown MP (to 22 February 2006)	Member for Kiama Australian Labor Party	
Mr Andrew Constance MP	Member for Bega Liberal Party	
Mr Paul McLeay MP	Member for Heathcote Australian Labor Party	
Mr Michael Daley MP (from 22 February 2006)	Member for Maroubra Australian Labor Party	
Mr John Turner MP	Member for Myall Lakes The Nationals	

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Chairman's Foreword

From the opening date of 28 August 2005, the Cross City Tunnel has created great controversy. There has been considerable community anger about the disruption caused by changes to local streets in the Central Sydney area, from the narrowing of William Street to the removal of free direct access to the Harbour crossings.

There has been anger, too, over the level of the toll to use the tunnel, which at the current level of \$3.56 each way is not seen by road users as offering value for money. Road users have voted with their wheels in not using the tunnel, with traffic figures in February 2006 at around 30,000 per day, still far less than both the CrossCity Motorway and the RTA predicted.

The Committee has considered a wide range of issues relating to the Cross City Tunnel in this report, many of which can apply to Public Private Partnerships more generally and will be addressed more thoroughly in the Committee's Second Report. The most pressing issue, however, is how to overcome the chaos of the current situation as soon as possible.

It is for this reason that the Committee has taken the decisive step of recommending that the RTA immediately reverse all road changes that will not lead to a contractually imposed liability to pay compensation to the tunnel operators, and investigate the feasibility of reversing even those changes that may impose liability to pay compensation. If this recommendation is adopted, there will be an immediate relaxation of the restrictions to the freedom of movement of people in cars moving through the surface streets of Central Sydney.

The tunnel is an enhancement to the road network. Greater use of the tunnel will reduce congestion in Central Sydney, and for this reason I am happy that the Committee has also recommended that the RTA encourage the CrossCity Motorway company to reduce the toll immediately to the more reasonable level of \$2.90, which will encourage greater use of the tunnel.

In its hearings the Committee has heard from a wide range of people, from community groups affected by surface road changes associated with the Cross City Tunnel project to former Premiers, current heads of government departments including the RTA, the Department of Planning, and the Treasury, and the former head of the CrossCity Motorway company. On behalf of the Committee, I thank all of the witnesses for their co-operation and evidence.

While I appreciate the attendance of former Premiers and Ministers, I was disappointed that the current Premier and current Ministers declined to give evidence to the Committee. I believe the people of Sydney and New South Wales deserve to hear from the current leaders of the State to receive their perspective on the Cross City Tunnel. I considered resigning from the Chairman's position by way of protest, but feel that if I had done so the valuable investigative work of the Committee would have been delayed. I recognise the concern in the community over the Cross City Tunnel and feel it is important to report on the Committee's findings without delay, and make the Committee's strong recommendations known to the Government as soon as possible.

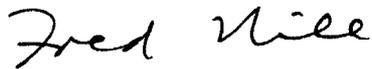
I am concerned that the draft report and details of the final report of this Committee were leaked to the media before the Committee had considered them. The leaking of reports before they have been discussed and adopted can lead to confusion over the Committee's consensual view and does not contribute to the public discussion of the issue. I will be taking strong action to discover the source of

the leak, which may include the Committee questioning those members of the media that have quoted from or referred to the draft report.

This report concentrates on the Cross City Tunnel. In addition to the recommendations about the toll level and the road changes, the report makes recommendations relating to planning for major infrastructure projects, methodology for tendering and contract negotiation, and the role of community consultation. The Second Report of the Committee will examine the role of government agencies in Public Private Partnerships more generally, expanding upon the recommendations made in this report.

I would like to thank the members of the Committee for their collaborative efforts during this first part of the Inquiry. I would also particularly like to thank the Committee secretariat - Rachel Simpson, Cathy Nunn, Laura Milkins, Simon Johnston and Madeleine Foley - for their invaluable assistance and hard work in preparing this excellent and very comprehensive report in such a short time frame.

I commend this report to the Government.



Revd Fred Nile MLC
Chairman

Executive Summary

The Cross City Tunnel (CCT) project encompasses two tunnels running east to west under the Sydney Central Business District (CBD) and associated street works. These include the narrowing of William Street and a range of other measures intended to alter traffic flows through, and in parts under, central Sydney. Affected areas include Darlinghurst, Paddington, Kings Cross, Woolloomooloo, East Sydney, Ultimo and Pyrmont. While the tunnel opened in August 2005, the associated street works are not due for completion until April 2006.

The primary objectives of the CCT project were to remove a significant proportion of east-west traffic from Central Sydney streets, improve the environment of Central Sydney streets and adjoining public spaces, improve the reliability of public transport within Central Sydney and improve travel times for vehicles travelling east-west across Central Sydney. Evidence presented to the Committee suggests that these objectives may have been compromised because of an overriding motivation to deliver the project at no net cost to Government.

The Government's Working With Government: Guidelines for Privately Financed Projects (Working With Government Guidelines) sets out the policy and procedures that agencies must follow when proceeding with the delivery of major projects through public-private partnerships. The adequacy of the guidelines has come under scrutiny during this inquiry, and the Committee recommends a number of changes to make them more useful for agencies.

Decision to privately finance the Cross City Tunnel

The decision to privately finance the CCT project was made at a time when government policy was focused on debt reduction. The great appeal of private finance for the project was that its construction could be brought forward and delivered earlier than public finance would have allowed, particularly given competing demands for public money, and the Government's debt reduction strategy.

It is clear that when determining the value for money for the CCT, the Government focused on a policy of 'no cost to government'. The value for money to those paying for the project, that is, the tunnel users, was not adequately considered.

Public interest evaluation

A key test in choosing to proceed with a major project is whether it will serve the public interest. The Committee heard that no formal public interest evaluation was undertaken for the CCT project, but that the community consultation undertaken during the environmental and planning processes would have served essentially the same purpose.

The Committee believes that there was an insufficient evaluation of the public interest before the decision was taken to open the project to the private sector. The Committee also believes that the current public interest evaluation contained in the Working With Government Guidelines is not clear. It does not specify who in 'Government' has the responsibility for undertaking the evaluation, and does not require the decision to be made public.

It is important for Government to establish that the public interest evaluation has been performed, and that the public interest is best served, before opening the project to the private sector.

The decision to ‘go to market’

The Government’s policy position on avoiding public debt was a major factor in the decision to provide the CCT through a privately financed project (PFP). The use of PFPs to provide infrastructure like the CCT has also meant that these have been provided to the community sooner than would have been the case if they had been funded by the public sector.

However, some benefits that may have been lost as a result of providing the CCT project through a PFP include the flexibility to make changes to the road network without exposure to financial liability, or the capacity to reduce the level of the toll to encourage greater use of the tunnel.

‘No cost to government’ policy

From a very early stage in the consideration of the CCT, the Government determined that the project would be delivered at no net cost to government.

While the project may have resulted in no net cost to government, it has resulted in significant cost to the community, through higher than anticipated tolls and added inconvenience for the users of local roads in the area between the East and West tunnel portals, leading to considerable frustration and anger and potentially leading to a political cost to government.

Adequacy of guidelines for Privately Financed Projects

The Committee considers that insufficient detail in the Working With Government Guidelines and the general nature of the document, and its wide audience, limits its effectiveness for agencies. The Committee believes that a separate, more detailed, policy on privately financed projects should be developed solely for government agencies. The policy should provide clear and unequivocal processes and procedures to be followed by agencies entering into privately financed projects, and provide avenues for escalation of issues where these may require variation from the standard processes and procedures. The Committee will be analysing this issue further in its second report.

Planning process

The CCT project underwent two environmental and planning assessment processes. In the initial Environmental Impact Statement (EIS) for the project, key areas that have since been identified as concerns for the community were assessed in terms of their contribution to achieving the primary objectives of the project. These include toll levels, traffic levels and traffic management measures.

The Committee is concerned that the secondary objective of ‘minimisation of the financial cost to government’, which the Committee understands effectively meant ‘no cost to government’, was the overriding concern at the time of the preparation and assessment of the supplementary EIS.

Subsequent alterations to tolls, traffic levels and traffic management measures were made both during and following the supplementary environmental assessment process. These changes appear to have occurred without the depth of analysis or assessment that was undertaken for the initial EIS.

The Committee understands that a view has formed in the community, and in the current Government, that the ‘no net cost to government’ imperative has adversely impacted on the CCT project’s primary objectives.

While agreeing that competition and innovation are desirable aspects of private sector participation in the provision of public infrastructure, the Committee believes that toll levels should be based on a range of considerations including financial objectives, strategic transport objectives and government policies on the reduction or management of vehicle movements. It would be preferable for the community to comment on toll levels proposed prior to the environmental planning and approval process occurring and prior to contract negotiations where toll levels would be set. These factors suggest that consideration of toll levels in the EIS process should remain.

Strategic Planning

The Committee considers that not enough attention was given to strategic planning at an early stage of the project, despite agencies that gave evidence to the Inquiry indicating that they followed Government policy in the consideration, planning and assessment of the CCT project.

The Committee believes that the deficiencies in strategic planning need to be addressed as a matter of urgency. This issue is considered further in the Committee's Second Report.

The Public Sector Comparator

Despite seeing a number of documents relating to the comparison of the private sector proposals with the Public Sector Comparator (PSC), the Committee remains unclear about the way in which the comparison was conducted.

The Committee has not seen an analysis of the comparison conducted in the case of the CCT leading to the decision that the CCM 'long 80 tunnel' proposal represented better value than the PSC.

The Committee has reservations about the process employed by the RTA in comparing the preferred proposal with the PSC. We accept the principle that allowing non-conforming proposals increases the potential to maximise innovative approaches from the private sector. The Committee is concerned, however, that the uncertainties deriving from a different project (in terms of revised Minister's Planning Conditions of Approval) make a comparison between the PSC and other consortia difficult.

Toll levels

Considerable concerns have been raised at both the level of the toll, and the communication of toll levels.

The CrossCity Motorway website provides detail on the quantum of the toll, but does not explain how the amount was calculated other than to say 'the toll was set by the RTA'. A clearer understanding of how the toll level is calculated would be of public interest. The lack of transparency about the level of the toll and the way in which it is calculated only increases public suspicion of toll roads.

The Committee believes that the public has the right to know how the toll is calculated. That information should at least be available on the website of the toll-road operator. The Committee notes that the amount of the toll is not advertised on entry to the tunnel, which is an obvious oversight and should be rectified immediately.

Community consultation

Community consultation and involvement in large-scale infrastructure projects such as the CCT is critical. The strength of feeling from the community about the inadequacy of the consultation in

relation to the CCT project development, construction and operation is such that the methods of consultation used should be reviewed.

The clear message from the CCT experience is that the community living in the area affected by the surface road changes associated with the tunnel felt that they had been ignored, misinformed, and treated with indifference or even contempt.

The Committee has witnessed the strength of feeling in the community around this issue during the hearings, and has heard from members of the community on both sides of the issue. There is a clear division of opinion within the community in relation to the closure of Bourke Street.

The Committee regrets and is disappointed at the apparent degree of animosity between community groups with opposing views on the status of Bourke Street, and notes that it may severely impact on the success of consultation.

The Committee agrees that the changes made to the road network are intended to funnel traffic into the CCT. However, the Committee believes that this is consistent with the project's primary objectives - to reduce traffic in central Sydney and thus improve urban amenity, as stated in the original EIS. The fact that the funnelling potentially leads to the financial benefit of the private operator is a consequence of the project being delivered as a PFP. If the project had been delivered by Government then the traffic would still be funnelled into the tunnel to pay a toll.

The anger and frustration of the community that has been expressed since the tunnel opened in August 2005 and was very clearly expressed during the Committee's inquiry, is a result of this funnelling and a lack of direct, toll-free alternative routes.

The Committee has recommended that the majority of road changes be reversed, and the remaining changes be investigated to see how feasible it is to reverse them.

The Committee believes that, notwithstanding the high toll levels and traffic congestion on surface streets, the CCT is an impressive feat of engineering excellence that will be considered an essential part of Sydney's road infrastructure for decades to come.

Public disclosure of documents

The Legislative Council order for papers relating to the CCT project in 2003 and 2005 uncovered a number of issues of concern to the community, including aspects of the negotiations between the RTA and CrossCity Motorway. Information that should have been made publicly available, for example, the toll increase following negotiation of the First Amendment Deed, was revealed in a manner that has unfortunately increased negative reaction to the tunnel and associated road changes.

The Committee supports the proposals in the Infrastructure Implementation Group's Review of Provision of Motorways in NSW and the changes they would make to the Government's draft guidelines. In addition, the Committee reinforces the need for the Government to consider the Auditor-General's recommendations. The specific recommendation of the Auditor General, that the guidelines be legislated to ensure clarity and certainty, will be examined in the Committee's second report.

Ministerial accountability

The Committee invited the former and current Premier, and former and current relevant Ministers to give evidence at public hearings. The failure of the current Premier and relevant ministers to attend made it difficult for the Committee to address the issue of ministerial accountability.

A range of issues of considerable importance in the development and execution of future major infrastructure projects have been raised during this Inquiry. The Committee's Second Report will further develop a number of these themes in greater detail, and provide further recommendations to Government.

Summary of Recommendations

- Recommendation 1** **36**
 That the *Working with Government: Guidelines for Privately Financed Projects* be made more prescriptive in relation to the public interest evaluation of projects before the decision to consider them as a Privately Financed Project. Specifically,
- the part of Government responsible for making the decision should be clearly identified
 - the decision, including a summary of the evaluation, should be made public.
- Recommendation 2** **54**
 That toll levels for future toll roads should not be assessed only in terms of what the private sector offers during tender processes and contract negotiations. Mechanisms must be in place to ensure that appropriate environmental and planning consideration is given, in particular, to the impact of tolls and tolling regimes on mode shift, traffic inducement, and value for money for the motorist.
- Recommendation 3** **60**
 That the review of the *Working with Government: Guidelines for Privately Financed Projects* consider specific issues raised in relation to the Cross City Tunnel project, including:
- process to be followed where both conforming and non-conforming bids are to be considered by agencies contemplating the use of privately financed projects
 - clearer guidance on the role of the environmental planning and assessment process and its relationship to other processes and procedures required in entering into privately financed projects.
- Recommendation 4** **60**
 That a separate, more detailed, policy on privately financed projects be developed to guide government agencies. This will be further considered in the Committee's second report.
- Recommendation 5** **60**
 That both the *Working with Government: Guidelines for Privately Financed Projects* and the detailed policy on privately financed projects include review mechanisms to ensure that changes to relevant government policy, changes to key agencies and structures, and significant issues arising out of project reviews of privately financed projects can be incorporated in an efficient and timely manner.
- Recommendation 6** **79**
 That the Summary of Contracts for future infrastructure projects include a summary of the comparison of the Public Sector Comparator with private sector proposals. The summary should:
- outline the criteria used in the comparison and relative weightings assigned to those criteria
 - include details of the analysis conducted against the criteria.
- Recommendation 7** **83**
 That the NSW Roads and Traffic Authority request that CrossCity Motorway place daily and monthly Cross City Tunnel traffic use figures on their website.

- Recommendation 8** **85**
 That any policy of charging private consortia a fee for a ‘right to operate’ a piece of infrastructure be expressly discontinued.
- Recommendation 9** **90**
 That any information relevant to an increase in toll pricing resulting from contract variations should be transparent and publicly available. The information should include:
- the original toll price proposed
 - toll price projections for each period where a price escalation or Consumer Price Index increase is provided in the contract
 - the price component of specific contract variations that increase the toll price.
- Recommendation 10** **107**
 That the Government review existing community consultation practices, particularly in relation to major infrastructure projects, and develop standardised, plain English guidelines available to the community defining ‘community consultation’ in relation to such projects.
- Recommendation 11** **107**
 That the Government refer the issue of community consultation to the Standing Committee on Social Issues to conduct a review of the experiences of New South Wales residents with consultation processes, and perform a comparative study of best practice consultation methods.
- Recommendation 12** **114**
 That the NSW Roads and Traffic Authority ensure that the community consultation process in relation to Bourke Street’s future status is inclusive and considers the wide variety of opinions and views in the community. The process should be conducted with a view to addressing the opposing views and if possible develop a consolidated position.
- Recommendation 13** **114**
 The trial closure of Bourke Street ends on 28 February 2006. The Committee recommends that the NSW Roads and Traffic Authority immediately reopen the street while the review is being conducted.
- Recommendation 14** **126**
 That the NSW Roads and Traffic Authority immediately reverse the traffic measures identified in Appendix 5 of this report and categorised as category B, C or D and further investigate reversing those referred to as category A as soon as possible.
- Recommendation 15** **126**
 That the Government continue to encourage the operators of the Cross City Tunnel to lower the toll. A reduction of the toll to \$2.90, as suggested by the NSW Roads and Traffic Authority’s traffic consultants, would be revenue neutral and improve patronage of the tunnel.
- Recommendation 16** **134**
 That the Government finalise the revised guidelines for public release of documents, taking into consideration the recommendations of the Infrastructure Implementation Group’s *Review of Future Provision of Motorways in NSW* and the Auditor General.

Recommendation 17

134

That the revised guidelines for the public release of documents clarify the status of amendments or variations to existing contracts.

Glossary

the Committee	The Joint Select Committee on the Cross City Tunnel.
First Report	The Joint Select Committee on the Cross City Tunnel's First Report on the Cross City Tunnel.
'short tunnel'	The tunnel proposed by the NSW Government in 1998, in a document titled <i>Cross City Tunnel – Improving the Heart of the City</i> . The proposal incorporated a 1.2 km tunnel running from William Street near the Australian Museum, under Park and Druiitt Streets, to Sussex Street. A toll of \$2.00 each way was estimated.
'long tunnel'	The tunnel detailed in the original Environmental Impact Statement, approved by the Minister for Planning in October 2001. The proposal incorporated two separate tunnels of 1.8km for eastbound and westbound traffic, each with two lanes. The westbound exit would link directly to the Western Distributor and the eastbound exit would be within the Kings Cross Tunnel. A speed limit of 70 km/h would apply in the main tunnels.
'long 80 tunnel'	The existing tunnel, proposed by the CrossCity Motorway Consortium and approved by the Minister for Planning following a Supplementary Environmental Impact Statement process. The proposal included a speed limit of 80km/h and was extended in length to 2.1km, with the east entrance and exit further to the east of the Kings Cross Tunnel.
Material Adverse Effect	An MAE (Material Adverse Effect) occurs if there is a change to any of the local road traffic arrangements listed in the Cross City Tunnel Project Deed clauses 18.2-18.4 and the change adversely impacts on CCM's ability to carry out the project, repay the project debt or pay the projected return to equity investors.
Project Deed	The Cross City Tunnel Project Deed is the principal contract between the RTA and CCM for the construction and operation of the Cross City Tunnel project.
Cross City Tunnel project	The CCT project includes the Tunnel itself and the surrounding surface works such as the changes to William Street.
Central Sydney	An area including the CBD but extending to Woolloomooloo/Darlinghurst/Paddington to the east, Surry Hills to the south, Ultimo/Pyrmont to the west, and the Rocks/Circular Quay to the north.

Abbreviations

BCC – Budget Committee of Cabinet

BCF – Business Consideration Fee

CCM – CrossCity Motorway Pty Ltd

CCT – Cross City Tunnel

CLG – Community Liaison Group

DIPNR – Department of Infrastructure, Planning and Natural Resources

DUAP – Department of Urban Affairs and Planning

EIS – Environmental Impact Statement

EP&A Act – Environmental Planning and Assessment Act 1979

ICAC – Independent Commission Against Corruption

IIG – Infrastructure Implementation Group

IPCC – Infrastructure and Planning Committee of Cabinet

KCT – King’s Cross Tunnel

NRMA – National Roads and Motorists Association Ltd

PAC – Public Accounts Committee

PAFA Act – Public Authorities (Financial Arrangements) Act 1987

PAR – Preferred Activity Report

PFPP – Privately Financed Project

PPP – Public Private Partnership

PSC – Public Sector Comparator

RTA – NSW Roads and Traffic Authority

SEIS – Supplementary Environmental Impact Statement

SHFA – Sydney Harbour Foreshore Authority

Chapter 1 Introduction

Establishment of the Committee and the Inquiry

- 1.1** On 15 November 2005, the Hon John Della Bosca MLC moved a motion in the Legislative Council to appoint a joint select committee to inquire into the Cross City Tunnel (CCT).
- 1.2** A number of amendments to the above motion were proposed, debated and agreed to:
- that the terms of reference include the communication and accountability mechanisms between the RTA and Government
 - that the terms of reference include the role of Government agencies in entering into major public-private partnerships
 - that leave be given to members of either House to appear before and give evidence to the committee
 - that a member of either House who is not a member of the committee may take part in the public proceedings and question witnesses but not vote or be counted for the purposes of a quorum or division
 - that it be an instruction to the Legislative Council General Purpose Standing Committee No. 4 that it not undertake any inquiry into the Cross City Tunnel or related matters.
- 1.3** The resolution for appointment of the Committee was forwarded to the Legislative Assembly for consideration.¹
- 1.4** On 10 November 2005 General Purpose Standing Committee No 4 considered and resolved to proceed with a self-reference into issues related to the Cross City Tunnel. On 15 November 2005 the Chair of the Committee advised the House of the self-referral. The resolution of the Legislative Council establishing the Joint Select Committee on the Cross City Tunnel includes an instruction to General Purpose Standing Committee No 4 that it not undertake any inquiry into the Cross City Tunnel or related matters.²
- 1.5** On 16 November 2005, on the motion of the Hon Joseph Tripodi MP, the then Minister for Roads, the Legislative Assembly considered and agreed to the Legislative Council's message that for the appointment of a Joint Select Committee without amendment.³
- 1.6** On 17 November 2005, a message was received by the Legislative Council from the Legislative Assembly agreeing to the Council's message proposing that the Joint Select

¹ Legislative Council, New South Wales, *Minutes of Proceedings, No 128*, 1st Session of the 53rd Parliament, 15 November 2005, item 14

² Legislative Council, New South Wales, *Minutes of Proceedings, No 128*, 1st Session of the 53rd Parliament, 15 November 2005, item 14, clause 11

³ Legislative Assembly, New South Wales, *Votes and Proceedings, No 158*, 1st Session of the 53rd Parliament, 16 November 2005, item 28

Committee be established.⁴ The Committee was established according to the following resolution passed in both Houses:

1. That a Joint Select Committee be appointed to inquire into and report on:
 - (a) the role of Government agencies in relation to the negotiation of the contract with the Cross City Tunnel Consortium,
 - (b) the extent to which the substance of the Cross City Tunnel contract was determined through community consultation processes,
 - (c) the methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Cross City Tunnel,
 - (d) the public release of contractual and associated documents connected with public private partnerships for large road projects,
 - (e) the communication and accountability mechanisms between the RTA and Government, including the Premier, other Ministers or their staff and the former Premier or former Ministers or their staff,
 - (f) the role of Government agencies in entering into major public private partnership agreements, including public consultation processes and terms and conditions included in such agreements, and
 - (g) any other related matters.
2. That, notwithstanding anything to the contrary in the standing orders of either House, the committee consist of eight members, as follows:
 - (a) four members of the Legislative Council, of whom:
 - (i) one must be a government member,
 - (ii) one must be an opposition member, and
 - (iii) two must be cross-bench members, one of whom will be Revd Mr Nile,
 - (b) four members of the Legislative Assembly, of whom:
 - (i) two must be government members, and
 - (ii) two must be opposition members.
3. That the members be nominated in writing to the Clerk of the Parliaments and the Clerk of the Legislative Assembly by the relevant party leaders and the independent and cross-bench members respectively within seven days of this resolution being agreed to by both Houses.
4. That Revd Mr Nile be the Chair of the committee.
5. That the Chair of the committee have a deliberative vote and, in the event of an equality of votes, a casting vote.
6. That, notwithstanding anything to the contrary in the standing orders of either House, at any meeting of the committee, any four members of the committee will constitute a quorum, provided that the committee meets as a joint committee at all times.

⁴ Legislative Council, New South Wales, *Minutes of Proceedings, No 130*, 1st Session of the 53rd Parliament, 17 November 2005, item 2

7. A member of either House who is not a member of the committee may take part in the public proceedings of the committee and question witnesses but may not vote, move any motion or be counted for the purpose of any quorum or division.
8. That the committee report:
 - (a) in relation to paragraphs 1 (a) to (e) by the first sitting day in February 2006, and
 - (b) in relation to paragraph 1 (f) by the first sitting day in April 2006.
9. That leave be given to members of either House to appear before and give evidence to the committee.
10. That the time and place for the first meeting be Thursday 1 December 2005 at 1.00 pm in room 1153.

1.7 In accordance with the resolutions the Legislative Assembly set the date and time for the first meeting of the Committee, which was held on Thursday 1 December 2005 at 1:00pm.

1.8 The terms of reference for the inquiry require the Committee to report in two stages. The Committee is to report on terms of reference 1(a) to 1(e) by the first sitting day in February 2006, that is 28 February 2006 and on term of reference 1(f) by the first sitting day in April 2006, that is 4 April 2006.

Operation of the Committee

1.9 As the motion to establish the Committee originated in the Legislative Council, the Joint Select Committee on the Cross City Tunnel is administered by the Department of the Legislative Council. This is the first Legislative Council administered joint select committee since 1981, when the Joint Select Committee Inquiry into the Western Division of New South Wales was formed.

1.10 At its first meeting the Clerk of the Parliaments informed the Committee that, according to practice, the operation of the Committee is governed by the Standing Orders of the Legislative Council.

Conduct of the Inquiry

Call for submissions

1.11 The Committee advertised a call for submissions in major Sydney metropolitan newspapers, in local newspapers circulated in the areas affected by the CCT, including the Wentworth Courier, the Inner Western Suburbs Courier and the Glebe & Inner Western Weekly, and on the Parliament website. Specific stakeholders were also invited to make submissions, including relevant Government agencies such as the NSW Roads and Traffic Authority (RTA), NSW Treasury and the Department of Planning, CrossCity Motorway Pty Ltd (CCM), project consultants, community groups and non-government organisations.

1.12 In response to the call for submissions the Committee received 69 submissions. The Committee received submissions from major stakeholders including the RTA and CCM. Submissions were also received from various community groups, non-government organisations and individuals. A full list of submissions is available at Appendix 1.

Public hearings and site visit

- 1.13** In preparing its first report, the Committee conducted six days of hearings, with a total of 59 witnesses from 31 organisations. Seven of these witnesses, namely from key agencies like the RTA, NSW Treasury and CCM, appeared more than once before the Committee. A full list of witnesses appears in Appendix 2.
- 1.14** On Monday 13 February 2006 the Chairman and members of the Committee visited the Cross City Tunnel and surrounding streets to view first hand the Tunnel and ongoing associated surface works. Details of the site visit appear in Appendix 3.

Information available

- 1.15** Tabled documents, answers to questions on notice, correspondence, transcripts of evidence and submissions published by the Committee are available via the Committee's website, www.parliament.nsw.gov.au/crosscitytunnel.

Appearance of Ministers

- 1.16** To enable the Committee to fully address term of reference (e), former and current Members of Parliament were invited to give evidence before the Committee. The Hon Bob Carr, former Premier; the Hon Michael Egan, former Treasurer; the Hon Craig Knowles, former Minister for Infrastructure, Planning and Natural Resources; and the Hon Dr Andrew Refshauge, former Minister for Planning all gave evidence before the Committee.
- 1.17** On 9 December 2005 the Committee also invited the Premier and a number of current Ministers to appear before the Committee. In response the Hon Morris Iemma MP, Premier and then Treasurer; the Hon Carl Scully MP, Minister for Police, and then Minister for Utilities (formerly Minister for Roads and Minister for Transport); the Hon Frank Sartor MP, Minister for Planning; and the Hon Joseph Tripodi MP, then Minister for Roads, all informed the Committee they would not be available to appear.⁵
- 1.18** The Committee resolved on 24 January 2006 to reissue the invitations to the Premier and Ministers. The Premier, Minister for Police and the then Minister for Roads again informed the Committee they would not be available to appear as 'there have been numerous opportunities to question me, both in the media and Parliament, about this matter'⁶ and 'there have numerous occasions on which non-Government members could ask questions without notice of me'.⁷ A written response was not received from the Hon Frank Sartor MP in relation to the reissued invitation.
- 1.19** On 1 February 2006 the Committee resolved to again reissue the invitation to the Hon Morris Iemma MP, the Hon Carl Scully MP, the Hon Frank Sartor MP and the Hon Joseph Tripodi

⁵ Correspondence available at www.parliament.nsw.gov.au/crosscitytunnel

⁶ Correspondence from the Hon Morris Iemma, Premier and Treasurer, to the Chairman, 31 January 2006

⁷ Correspondence from the Hon Joseph Tripodi, Minister for Roads, to the Chairman, 30 January 2006

MP to appear before the Committee. This letter also included questions from the Committee (relating to the terms of reference).

- 1.20 The Committee received written responses to its questions from the Premier, and Ministers Scully, Tripodi and Sartor on 10 February 2006. In these letters, the Premier, Mr Scully, Mr Tripodi and Mr Sartor did not indicate that their availability to attend a public hearing had changed.
- 1.21 The failure of the Premier and Ministers to attend is discussed in Chapter 8.

Other relevant inquiries and reports

- 1.22 The Committee is aware that there have been, and are, several bodies investigating issues relating directly or indirectly to the Cross City Tunnel. These include the Infrastructure Implementation Group (IIG), the NSW Audit Office, the Legislative Assembly Public Accounts Committee (PAC) and the Independent Commission Against Corruption (ICAC). The Committee has been informed by material published from a number of these inquiries.

Infrastructure Implementation Group Review of Future Provision of Motorways in NSW

- 1.23 In December 2005, the newly formed NSW Premier's Department Infrastructure Implementation Group released the *Review of Future Provision of Motorways in NSW (IIG Review)*. The Government have agreed to adopt the recommendations of the IIG Review. This First Report includes and considers relevant issues and recommendations raised in the IIG Review.

NSW Audit Office Performance Audit

- 1.24 The *Auditor-General's Report to Parliament 2005, Volume 4* commented specifically on the issue of contract summaries. The report identified a number of concerns, including the lack of standardisation in the structure of contract summaries across different agencies, the non-mandatory nature of guidelines governing the preparation of contract summaries and the lack of a requirement for the Audit Office to table in Parliament the findings of its review of agencies' contract summaries. The Report also announced that the Audit Office would be conducting a performance audit on aspects of the Cross City Tunnel project that likely to examine three specific aspects:
- the upfront payment of approximately \$96 million made by the successful consortium to the RTA
 - the RTA's decision making processes in relation to road closures, and
 - the circumstances surrounding amendments to the Cross City Tunnel Project Deed in December 2004.⁸

⁸ NSW Auditor General, *Auditor General's Report to Parliament 2005, Volume 4*, p5

Public Accounts Committee Inquiry

- 1.25 An inquiry into public private partnerships is being conducted by the Legislative Assembly's Public Accounts Committee. The inquiry's terms of reference are:
- (a) New South Wales, Australian and international legislative and policy frameworks and practices regarding private sector investment in public infrastructure
 - (b) government models for evaluating and monitoring private investment in public infrastructure
 - (c) the framework for risk allocation between the public and private sectors and its application, especially how well risk is assessed, allocated and managed
 - (d) the extent of opportunities to share knowledge across and between agencies, and
 - (e) the extent to which agencies are managing Intellectual Property issues.

Independent Commission Against Corruption Investigation

- 1.26 Following release of papers tabled in the Legislative Council in response to a call for papers under standing order 52, newspapers reported that staff of the Shadow Minister for Roads and Leader of the Nationals, Mr Andrew Stoner MP, had come across correspondence from the then Minister for Roads, Mr Carl Scully MP, to the then Minister for Planning, Mr Craig Knowles MP, alleging that Cabinet minutes setting out the cost of relocating the tunnel's ventilation stack in Darling Harbour had been leaked to the Cross City Motorway Consortium, potentially impacting on the Government's negotiating position. The matter led to wide-ranging accusations and was ultimately referred to the Independent Commission Against Corruption by Mr Stoner on 4 November 2004.⁹ This referral is still being considered by the ICAC.
- 1.27 Witnesses before the inquiry were asked questions on the matter before ICAC. Parliamentary committees, like the Houses, are not constrained from discussing a matter that is being considered by another inquiry or court, including the ICAC, except by its own conventions. The issue was aired before the Committee, however the Committee chose to not exercise its powers and question the witnesses further.

Complaint referred to NSW Law Society

- 1.28 A complaint made to the Office of the Legal Services Commissioner in January 2006 by Committee member Ms Lee Rhiannon MLC relating to an alleged conflict of interest on the part of the RTA's provider of legal advice in relation the Cross City Tunnel, Clayton Utz, has been referred to the NSW Law Society.¹⁰

Report structure

- 1.29 This First Report addresses terms of reference 1(a) – (e). The report primarily focuses on the approach taken by the Government, the RTA and CrossCity Motorways Pty Ltd in

⁹ *Legislative Council Procedural Highlights*, No 20, July to December 2005, p10

¹⁰ 'Law firm attacked on tunnel,' *The Australian* 16 January 2006, p3

coordinating and negotiating the development of the Cross City Tunnel and associated works as a Privately Financed Project (PFP)/Public Private Partnership (PPP). Further recommendations will be made in the Second Report in relation to terms of reference (f), due to be tabled by 4 April 2006.

- 1.30 Chapter 2** provides an overview of the history and background to the Cross City Tunnel. The chapter includes a chronology of relevant events, and a series of maps outlining the road changes associated with the Cross City Tunnel project.
- 1.31 Chapter 3** examines the context in which the decision to provide the Cross City Tunnel project as a Public Private Partnership was made, and considers the impact of the ‘no cost to government’ policy.
- 1.32 Chapter 4** examines the planning requirements for the project and strategic planning issues identified from the example of the Cross City Tunnel project. The relationship between statutory planning requirements and government decision-making is also examined.
- 1.33 Chapter 5** examines the process of contract negotiation in detail, and the methodology used for tendering. The role of the RTA during the tendering process and the contract negotiations is described, including an examination of the impact of the policy of ‘no cost to government’ on the contract negotiations.
- 1.34 Chapter 6** examines the issue of community information, with a particular focus on the influence of community consultation on the substance of the contract.
- 1.35 Chapter 7** examines the issue of public control of the road network. The chapter also addresses the issue of whether the Cross City Tunnel represents a loss of control of the road network as a result of clauses in the Project Deed.
- 1.36 Chapter 8** examines the issue of public disclosure of documents, and the accountability mechanisms between the Government and the RTA.
- 1.37** This first report was considered by the Committee on 22 and 23 February 2006. Minutes of the Committee are included at Appendix 8.
- 1.38** The Committee relied on a range of documents and reports in preparing this report, in addition to the submissions and evidence received. The documents include contract information, official government publications and guidelines as well as papers tabled in the Legislative Council in response to orders for papers made under standing order 52. Further information on orders for papers can be found in Chapter 8. The documents used to inform the Committee are outlined in Chapter 2.

Chapter 2 Background

The Cross City Tunnel had a long genesis, with a range of options considered over a number of years before a final model was selected and constructed. The Cross City Tunnel project itself was a lengthy and complex process, which has yet to be completed. A number of agencies at the state and local government level were involved. This chapter outlines the history of the Cross City Tunnel, including the key agencies and processes involved, and provides an overview of key material the Committee considered in examining the negotiations, consultation and other processes relating to the Cross City Tunnel and associated works. This chapter is intended to accompany the analysis conducted in later chapters.

Cross City Tunnel project

- 2.1 The Cross City Tunnel project consists of two stages: the Cross City Tunnel, which opened to traffic on 28 August 2005, and associated surface works, which are due to be completed by April 2006.

Stage One - Cross City Tunnel

- 2.2 The Cross City Tunnel is a privately financed, constructed, owned and operated tollway, which will pass into public ownership after 18 December 2035. Two main east and west 2.1 km tunnels run between the eastern side of Darling Harbour and Kings Cross, linking the Western Distributor to New South Head Road. The eastbound tunnel also connects with the southbound Eastern Distributor. A connection to the Domain Tunnel allows traffic from the eastern suburbs to directly access the harbour crossings. Diagrams of the Cross City Tunnel are included at the end of this chapter.

Stage Two – Surface Works

- 2.3 The majority of the Stage Two surface works commenced following the opening of the Cross City Tunnel. The Stage Two works are associated with achieving the urban amenity objectives of the project and include:

improvements to surface roads, including new bus and bicycle lanes, intersection improvements, ‘traffic calming’ measures, wider footpaths and other improvements to pedestrian facilities, to take advantage of the opportunities afforded by reduced traffic congestion.¹¹

- 2.4 Changes to William Street are the most obvious component of the Stage Two works. The William Street upgrade involves the narrowing of William Street and inclusion of bicycle lanes, street trees, improved footpaths, transit lanes, inset parking bays, street furniture and smart poles.

¹¹ RTA, *Cross City Tunnel: Summary of contracts*, June 2003, p1

2.5 Other areas affected include:

- Harbour Street, Druiitt Street, Sir John Young Crescent, Park Street (between Elizabeth and College streets)
- Darling Harbour, with road changes aimed to ‘minimise congestion on the eastern edge of Darling Harbour’¹².
- Traffic management measures in Paddington, Rushcutters Bay, Woolloomooloo, East Sydney.¹³

Cross City Tunnel models

2.6 The Cross City Tunnel underwent significant modification and change between the initial Government commitment to commence the project through to its construction. Throughout the report the following terminology has been used to distinguish the three main variations.

Model	Details
The ‘short tunnel’	1.2 km tunnel, exiting William Street near Museum of Sydney. Taking approx 40,000 vehicles. Two way toll of \$2. Cost estimated at \$273M. Published in ‘Transforming the Heart of the City’ (1998)
The ‘long tunnel’	Approximately 2 km tunnels exiting in the Kings Cross Tunnel to the east, and connecting to the Western Distributor in the west. Two way toll of \$2.50. First described in the initial Cross City Tunnel Environmental Impact Statement (2000)
The ‘long 80 tunnel’	Approximately 2.1km tunnels exiting east of the Kings Cross Tunnel to the east, and connecting to the Western Distributor in the west. Two way differential tolling of \$2.50 and \$5.00 (later increased to \$2.65 and \$5.30). ¹⁴ First described in the Supplementary Environmental Impact Statement (2002).

¹² RTA, *The Cross City Tunnel: Release of the Preferred Activity Report*, May 2001, p3

¹³ Submission 1, RTA.

¹⁴ A connection to the Domain Tunnel allows traffic from the eastern suburbs to directly access the Harbour crossings at a base toll of \$1.25

Key parties in the Cross City Tunnel project

2.7 This section outlines the key Ministers, Government agencies and private organisations involved in the Cross City Tunnel Project.

Ministers

Minister for Roads

2.8 The Minister for Roads, who is responsible for RTA, was delegated authority by Treasurer under *Public Authorities (Financial Arrangements) Act 1987 (PAFA Act)* to enter into the contract with CCM on behalf of the Government.¹⁵

2.9 Ministers for Roads during the Cross City Tunnel Project were:

- Hon Carl Scully MP, from 28 November 1996 to 21 January 2005
- Hon Michael Costa MLC, from 21 January 2005 to 3 August 2005
- Hon Joseph Tripodi MP, from 3 August 2005 to 16 February 2006.

Minister for Planning

2.10 The Minister for Planning is responsible for Department of Planning, Department of Urban Affairs and Planning and is the consent authority under *Environmental Planning and Assessment Act 1979 (EP&A Act)* for the Cross City Tunnel Project.

2.11 Relevant Ministers for Planning during the Cross City Tunnel Project are:

- Hon Craig Knowles MP, Minister for Urban Affairs and Planning from 4 April 1995 to 8 April 1999 and Minister for Infrastructure, Planning and Natural Resources 2 April 2003 to 3 August 2005
- Hon Dr Andrew Refshauge MP, Minister for Urban Affairs and Planning from 8 April 1999 to 21 November 2001 and Minister for Planning from 21 November 2001 to 2 April 2003
- Hon Frank Sartor MP, Minister for Planning, from 3 August 2005.

¹⁵ *Public Authorities (Financial Arrangements) Act 1987* (NSW), section 63E

Treasurer

2.12 The role of the Treasurer in privately financed projects is to authorise the Minister for Roads to sign-off on the project.

2.13 Relevant Treasurers during the Cross City Tunnel project are:

- Hon Michael Egan MLC, Treasurer from 3 April 1995 to 21 January 2005
- Hon Morris Iemma MP, Premier and Treasurer from 3 August 2005 to 16 February 2006.

Budget Committee of Cabinet

2.14 The Budget Committee of Cabinet (BCC) approves for major capital works. Approval must be given throughout the following stages by the BCC for the project to be accepted. The five stages are:

- project definition
- expressions of interest and short listing
- detailed proposals and assessment
- negotiations and contracts and
- disclosure and implementation.¹⁶

2.15 Membership of the BCC changes from time to time, as determined by Cabinet. The BCC that approved the selection of the preferred proponent for the Cross City Tunnel Project, as well as the non-conforming proposal put forward by them, comprised Hon Bob Carr MP, Hon Dr Andrew Refshauge MP, Hon Michael Egan MLC, and Hon John Della Bosca MLC.

Key Government Agencies***Roads and Traffic Authority of New South Wales (RTA)***

2.16 In the Cross City Tunnel Project, the RTA is the proponent for the activity for the purposes of the *Environmental Planning and Assessment Act 1979*, and is the Government representative in terms of the contract negotiation and entry into the Project Deed.

2.17 Key personnel involved in the Cross City Tunnel Project were:

- Mr Paul Forward, Chief Executive Officer (December 1999 – October 2005)
- Mr Mike Hannon, Acting Chief Executive Officer (October 2005 – present)
- Mr Les Wielinga, Director, Motorways

¹⁶ NSW Government, *Working with Government: Guidelines for Privately Financed Projects*, November 2001, table 3.1, p16

- Mr Chris Ford, Director, Traffic and Transport
- Mr Brett Skinner, Director, Finance

Department of Planning

2.18 Responsibility for administering the planning approval process is undertaken by the Department of Planning. Their role, at the time of the development and approval of the Cross City Tunnel Project, was:

- to consult with the RTA about strategic planning and assessment
- to issue Director General's requirements for the development of the Environmental Impact Statement
- to assess the environmental impact of the project and advise the Minister
- to monitor compliance with planning conditions of approval.

2.19 Responsibility for planning and environmental assessment has moved between departments as a result of restructures and amalgamations of agencies over a number of years. Relevant agencies and the periods for which they were responsible for planning assessment, approval and monitoring functions are:

Department of Urban Affairs and Planning	To December 2001
PlanningNSW	December 2001 – May 2003
Department of Urban and Transport Planning	May 2003 – July 2003
Department of Infrastructure, Planning and Natural Resources	July 2003 to August 2005
Department of Planning	August 2005 to present.

Treasury

2.20 A specialist Private Projects Branch was established in the NSW Treasury as it was seen that a 'concentration of expertise is needed in the public sector to assist agencies with PFP proposals and provide government advice to the private sector'.¹⁷

2.21 The role of Treasury in relation to the Cross City tunnel project was to consult with the RTA and to advise the RTA on key decisions regarding financial aspects of the project.

Department of Environment and Conservation (DEC)

2.22 Advice to the Department of Planning on environmental standards and conditions that should apply to the construction and operation of the tunnel.

2.23 Formerly known as the Environmental Protection Authority (EPA).

¹⁷ NSW Government, *Working with Government Guidelines*, November 2001, p2

Other government agencies

2.24 The Cross City Tunnel Project involved a range of other agencies including:

- State Transit Authority
- Department of Health (in-tunnel air quality standards)
- Energy Australia
- Sydney Harbour Foreshore Authority (SHFA)
- State Rail Authority

CrossCity Motorway consortium

2.25 The consortium selected to finance, build, own, operate and maintain the tunnel for the concession term. The internal arrangements of the consortium and associated companies are complex, and it is not necessary for the purposes of the Committee's report to exhaustively describe the arrangements.

2.26 The consortium sponsors were:

- Baulderstone Hornibrook Pty Limited
- Bilfinger Berger Aktiengesellschaft (AG)
- Deutsche Bank Aktiengesellschaft (AG)¹⁸

2.27 The CrossCity Motorway Nominees No. 2 Limited (the Trustee) and CrossCity Motorway Pty Limited (the Company). These two entities entered the Cross City Tunnel Project Deed (Project Deed) with the RTA.

2.28 Bilfinger Berger AG and Baulderstone Hornibrook Pty Limited formed a joint venture partnership (BBHJV) for the purpose of designing, constructing and commissioning the project for the Trustee.

2.29 Both the Trustee and the Company are owned by CrossCity Motorway Holdings Pty Ltd, which is owned in turn by equity investors including CKI City Tunnel Investment (Malaysian) Limited, a subsidiary of Cheung Kong Infrastructure Holdings Limited; Bilfinger Berger BOT GmbH, a subsidiary of Bilfinger Berger AG; and a number of smaller superannuation trust equity investors.¹⁹

2.30 The total capital raised for the Cross City Tunnel project is estimated by Treasury at \$846 million, of which \$343.5 million is equity.²⁰

¹⁸ RTA *Cross City Tunnel: Summary of contracts*, June 2003, p14-15

¹⁹ RTA, *Cross City Tunnel: Summary of contracts*, June 2003, p14-15

²⁰ Answers to questions on notice taken during evidence 1 February 2006, Dr Kerry Schott, NSW Treasury, Question 21, p4

- 2.31 For the purposes of this report, CrossCity Motorway Pty Ltd (CCM) is the company with overall responsibility for the construction and operation of the Cross City Tunnel.

Key documents

- 2.32 There are a range of key documents central to the Cross City Tunnel Project referred to throughout this Report. The documents are all publicly available, either through the RTA or Treasury website, or were tabled with the Legislative Council. Where documents are available via agencies, references to websites are made. These are summarised below:

General documents

Cross City Tunnel – Improving the Heart of the City (October 1998)²¹

- 2.33 This was the initial Cross City Tunnel concept and proposed a 1.2 km tunnel running from William Street near the Australian Museum, under Park and Druitt Streets, to Sussex Street (the ‘short tunnel’). A toll of \$2.00 each way was estimated. The concept was launched by the Premier, Hon Bob Carr, and by the Minister for Roads and Minister for Transport, Hon Carl Scully, and was publicly exhibited in a number of locations and on the RTA website. There was a three-month public comment period.

- 2.34 *Cross City Tunnel – Improving the Heart of the City* included an outline of the planning process that would be followed, including:

- initial design proposal, including stakeholder consultation and decision to proceed
- design refinement, including modifications based on consultation and detailed analysis; further stakeholder consultation and selection and development of preferred design
- preparation of an Environmental Impact Statement (EIS)
- EIS exhibited for comment
- RTA review of proposal, in light of submissions received to EIS
- Minister for Urban Affairs and Planning consideration and approval of proposal, subject to conditions
- RTA determines to proceed, subject to any conditions of approval.²²

- 2.35 At this stage, the estimated cost of the Cross City Tunnel was \$273 million. A number of options were considered, including a longer tunnel running under Market Street. However, the option selected at this stage was chosen as it was ‘shorter and less expensive than [the] Market Street option ... [that was] estimated to cost more than \$400 million.’²³

²¹ available at www.parliament.nsw.gov.au/crosscitytunnel, see Submission 1 appendices

²² RTA, *Cross City Tunnel – Improving the Heart of the City*, October 1998, p15

²³ RTA, *Cross City Tunnel – Improving the Heart of the City*, October 1998, p14

Action for Transport 2010²⁴

2.36 The November 1999 publication, *Action for Transport 2010*, produced by the Minister for Transport to detail the Government's strategic transport plan leading into the first years of the 21st century, contained a chapter on the Cross City Tunnel, 'Making Space for Cyclists and Walkers', citing the Government's objectives in pursuing the tunnel. These objectives were to:

- reduce traffic congestion through provision of a fast east-west link
- allow surface improvements, including improved public transport running times, bicycle ways and greater pedestrian amenity and safety.²⁵

The tunnel would be "an exclusively electronic public or private tollway".²⁶ In addition, *Action for Transport 2010* canvassed the possibility that the reduction in traffic through the city streets may "allow a light rail service through the city to be considered as a future option."²⁷

Working with Government: Guidelines for Privately Financed Projects²⁸

2.37 The *Working with Government: Guidelines for Privately Financed Projects (Working with Government Guidelines)* were issued in November 2001. They state the Government's policy and procedures for entering into privately financed projects (a form of public private partnership, or PPP). PPPs and privately financed projects are discussed further in Chapter 3.

Premier's Memorandum, No 2000-11, Disclosure of Information on Government Contracts with the Private Sector²⁹

2.38 This memorandum sets out public disclosure requirements of agencies that enter into contracts with the private sector.

2.39 The public disclosure of documents relating to major road infrastructure projects is discussed in Chapter 8 of this Report.

Pre-Signing Report³⁰

2.40 The RTA's *Pre-Signing Report* is an internal document prepared by the RTA with the purpose of detailing 'how key issues have been managed and resolved in the period since the appointment of CrossCity Motorway (CCM) as the RTA's preferred consortium for the construction of the Cross City Tunnel.'³¹

²⁴ provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

²⁵ Department of Transport, *Action for Transport 2010*, November 1999, pp24-25

²⁶ Submission 1, RTA, Appendix 2, *Action for Transport 2010*, pp24-5

²⁷ Submission 1, Appendix 2, *Action for Transport 2010*, p25

²⁸ available at www.treasury.nsw.gov.au/wwg/pdf/wwgguidelines.pdf

²⁹ available at www.premiers.nsw.gov.au/TrainingAndResources/Publications/MemosAndCirculars/Memos/2000/M2000-11.htm

³⁰ provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

³¹ RTA, *Pre-Signing Report*, undated, p2

Finalisation Report³²

- 2.41 The RTA's *Finalisation Report* is a document prepared by the RTA prior to the *Pre-Signing Report* by the RTA's Evaluation Panel in order to 'complete RTA's due diligence in verifying the final transaction.'³³

Planning documents***Director General's Requirements for the Cross City Tunnel Project***³⁴

- 2.42 The *Director General's Requirements for the Cross City Tunnel Project* were developed following the Government's decision to proceed with the tunnel. On 22 July 1999, the Director General of Planning issued requirements for the preparation of the initial EIS by the RTA, in accordance with the *EP&A Act 1979*. These provided guidance to the RTA on what environmental and planning standards and plans, including Local Environment Plans and State Environmental Planning Policies, were required to be considered.

Cross City Tunnel – Environmental Assessment³⁵

- 2.43 On 24 September 1999, the RTA released the *Cross City Tunnel – Environmental Assessment*. This document, issued in line with the *Director General's Requirements for the Cross City Tunnel Project* outlined above, was a brochure outlining the Government's key objectives in constructing the tunnel, and the process that would be undertaken in planning and executing the project. The tunnel model envisaged in this document (the 'long tunnel') included alterations to the Government's original model, with a number of the features of Sydney City Council's preferred model. Twenty two thousand copies of the publication were distributed, a reply paid comment form and toll free phone information number were provided and the plan was publicly displayed at Customs House, Circular Quay, from 24 September to 11 December 1999. The RTA has indicated in its submission that there was widespread community support for the proposal.³⁶

Cross City Tunnel Environmental Impact Statement (EIS)³⁷

- 2.44 The EIS for the Cross City Tunnel was prepared by PPK Environment and Infrastructure Pty Ltd (Evans and Peck) on behalf of the RTA. Under s112 of the *EP&A Act 1979*, agencies must assess whether an infrastructure project requires an Environmental Impact Statement.
- 2.45 The EIS, a document comprising 7 volumes, provided detail of the proposed tunnel, its construction and operation, and of other associated works, including the proposed toll level

³² provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

³³ RTA, *Finalisation Report*, undated, p1 of cover brief

³⁴ available in Cross City Tunnel: Environmental Impact Statement, volume 1, appendix B

³⁵ provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

³⁶ Submission 1, p3

³⁷ available at www.rta.nsw.gov.au

and the toll escalation formula to be used, traffic management measures in surrounding/affected areas, and associated works.

- 2.46 The EIS for the Cross City Tunnel was placed on public display by the proponent, the RTA, in August 2000. The public consultation period was from 2 August to 6 October 2000. The EIS was advertised in the media and exhibited at 18 locations and on the RTA website. The locations are listed in Appendix 7.

Cross City Tunnel Representations Report³⁸

- 2.47 The *Cross City Tunnel Representations Report* comprises information on the submissions (representations) that were received by the RTA in response to the public exhibition of the EIS. The report was submitted to the Department of Planning in May 2001.

Cross City Tunnel Preferred Activity Report³⁹

- 2.48 The *Cross City Tunnel Preferred Activity Report* outlines the modifications to the EIS that the RTA proposed in response to the public representations contained in the *Cross City Tunnel Representations Report*. It was submitted to the Department of Urban Affairs and Planning together with the *Cross City Tunnel Representations Report* in May 2001.

Proposed Cross City Tunnel Kings Cross to Darling Harbour: Director General's Report⁴⁰

- 2.49 The *Proposed Cross City Tunnel Kings Cross to Darling Harbour: Director General's Report* was prepared by the Department of Urban Affairs and Planning under s115C of the *EP&A Act*, and provided an independent assessment of the proposed project prior to the Minister for Urban Affairs and Planning's decision. The report considered the EIS, representations made in submissions to the EIS and other factors, and considered the environmental and amenity impacts. The report contained recommendations relating to conditions of approval for the proposed tunnel.

Cross City Tunnel Planning Approval Conditions⁴¹

- 2.50 The *Cross City Tunnel Planning Approval Conditions* were issued by the Minister for Urban Affairs and Planning, these conditions are required to be adhered to by the RTA (as the proponent) in the construction and operation of the tunnel. There were 240 Planning Conditions of Approval associated with the initial EIS approval issued by the Minister for Urban Affairs and Planning in October 2001.

³⁸ available at www.rta.nsw.gov.au

³⁹ available at www.rta.nsw.gov.au

⁴⁰ www.planning.nsw.gov.au/assessingdev/pdf/consents/pr_crosstunnel.pdf

⁴¹ www.planning.nsw.gov.au/assessingdev/pdf/consents/c_crosstunnel.pdf

Cross City Tunnel Supplementary Environmental Impact Statement (SEIS)⁴²

- 2.51** The SEIS for the Cross City Tunnel was prepared by Evans and Peck on behalf of the RTA, following the selection by the RTA of the non-conforming proposal submitted by CCM – the ‘long 80 tunnel’.
- 2.52** The SEIS, a document comprising 2 volumes, provided detail of the modifications to the EIS proposed tunnel, its construction and operation, and of other associated works, including the proposed toll level and the toll escalation formula to be used, traffic management measures in surrounding/affected areas, and associated works.
- 2.53** The SEIS for the Cross City Tunnel was placed on public display by the proponent, the RTA, in August 2002. The public consultation period was from 1 August to 31 August 2002. The EIS was advertised in the media and exhibited at 19 locations and on the RTA website. The locations are listed in Appendix 7.

Cross City Tunnel Supplementary Representations Report⁴³

- 2.54** The *Cross City Tunnel Supplementary Representations Report* comprises information on the submissions (representations) that were received by the RTA in response to the public exhibition of the SEIS. The report was submitted to the Department of Planning on 4 November 2002.

Cross City Tunnel Supplementary Preferred Activity Report⁴⁴

- 2.55** The *Cross City Tunnel Supplementary Preferred Activity Report* outlines the modifications to the EIS that the RTA proposed in response to the public representations contained in the *Cross City Tunnel Supplementary Representations Report*. It was submitted to the Department of Urban Affairs and Planning together with the *Cross City Tunnel Supplementary Representations Report* in November 2002.

Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report⁴⁵

- 2.56** The *Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report* was prepared by the Department of Planning under s115C of the *EP&A Act*, and provided an independent assessment of the proposed modifications to the approved project prior to the Minister for Planning's decision. The report considered the SEIS, representations made in submissions to the SEIS and other factors, and considered the environmental and amenity impacts of the modifications only. The report contained recommendations relating to conditions of approval for the modified proposal.

⁴² available at www.rta.nsw.gov.au

⁴³ available at www.rta.nsw.gov.au

⁴⁴ available at www.rta.nsw.gov.au

⁴⁵ available at www.planning.nsw.gov.au/assessingdev/pdf/consents02/rep_ckt_section1-8.pdf

Cross City Tunnel Modification Conditions of Approval⁴⁶

- 2.57 The *Cross City Tunnel Modification Conditions of Approval* were issued by the Minister for Planning, these conditions are required to be adhered to by the RTA (as the proponent) in the construction and operation of the tunnel. There were 292 Planning Conditions of Approval associated with the modified proposal issued by the Minister for Planning on 12 December 2002.

Contracts***Cross City Tunnel Project Deed (Project Deed)***⁴⁷

- 2.58 The Cross City Tunnel Project Deed (Project Deed) was signed on 18 December 2002 between the RTA, the Trustee and the Company, which sets out the terms under which the Trustee and the Company must finance, plan, design, construct and maintain the Cross City Tunnel and associated works, collect tolls, and hand over the Cross City Tunnel to the RTA.

Cross City Tunnel Summary of Contracts⁴⁸

- 2.59 The *Cross City Tunnel Summary of Contracts* was prepared by the RTA in accordance with the public disclosure requirements of the *Working with Government Guidelines*, provides an outline of the development and execution of the Cross City Tunnel project, and a summary of the main contracts for the project. Tabled in Parliament in February 2004.

Cross City Tunnel First Amendment Deed (First Amendment Deed)⁴⁹

- 2.60 The Cross City Tunnel First Amendment Deed (First Amendment Deed) was entered into between RTA and CrossCity Motorway on 23 December 2004, enabling the provision of additional works, paid for by CrossCity Motorway.

Cross City Tunnel First Amendment Deed Summary⁵⁰

- 2.61 The *Cross City Tunnel First Amendment Deed Summary* was published in November 2005 and prepared in accordance with the *Working with Government Guidelines* and with Premier's Memorandum 200-11. Includes overview of the circumstances requiring the amendment deed and the key provisions.

⁴⁶ available at www.planning.nsw.gov.au/assessingdev/pdf/consents02/con_ctt_schedule2-changes

⁴⁷ provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

⁴⁸ available at www.treasury.nsw.gov.au/wwg/crosscity.htm

⁴⁹ provided in response to the Legislative Council order for papers regarding the Cross City Tunnel

⁵⁰ available at www.rta.nsw.gov.au/constructionmaintenance/downloads/cct/cct_amending_deed

Cross City Tunnel chronology

2.62 The following chronology is drawn from a number of sources including key documents, media reports and evidence from hearings. It is intended to provide a brief overview of important stages in the history of the Cross City Tunnel project. Greater detail and consideration of the issues is contained in the body of the Report.

Chronology of key events relating to the Cross City Tunnel

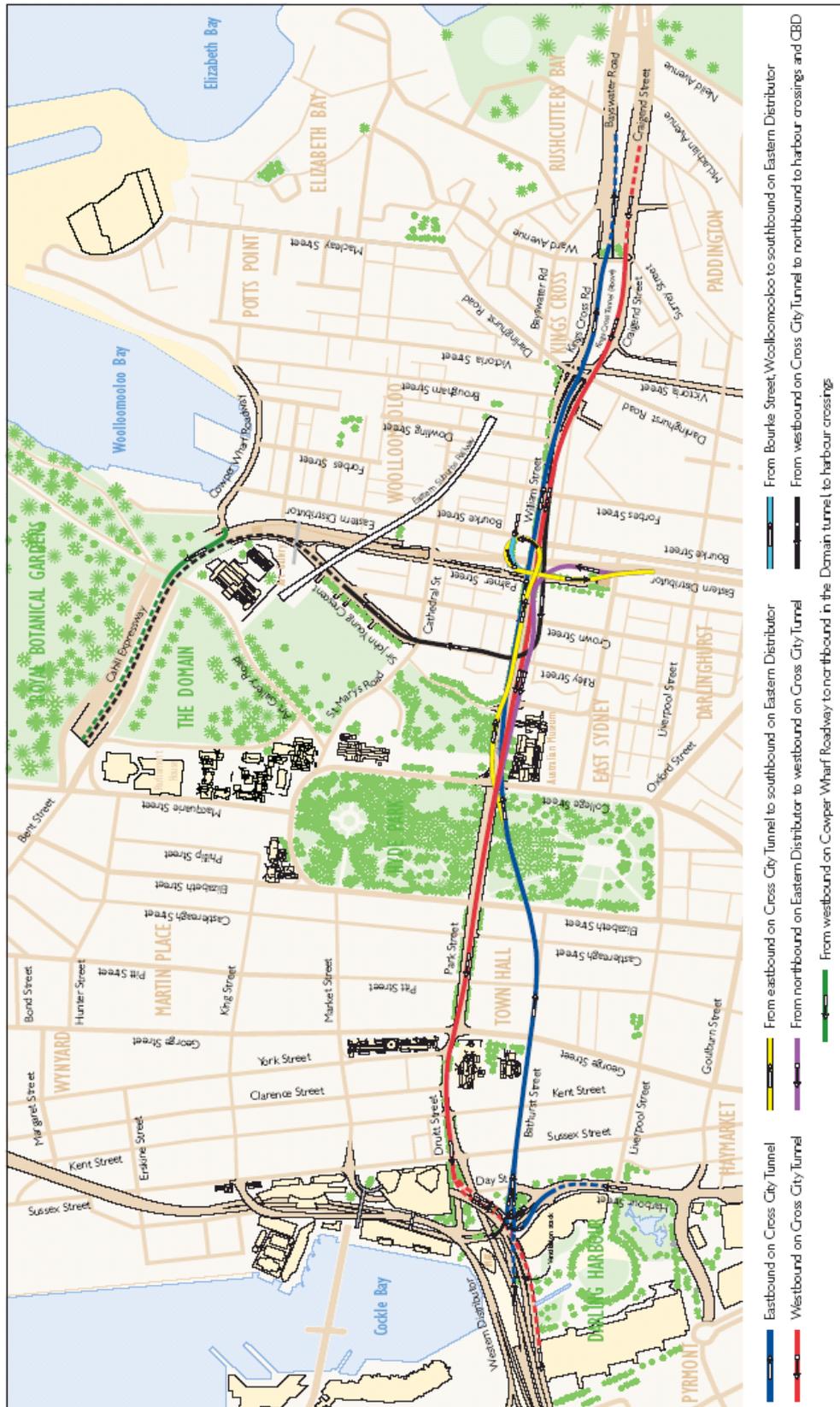
Date	Event
1990	The State Government and City of Sydney Council propose a tunnel under Park Street leading to an underground car park and bus interchange.
1995	City of Sydney Council propose a tunnel from the Western Distributor under Market Street and Hyde Park connecting to William Street near Boomerang Street.
22 Oct 1998	Premier (Mr Carr) and Minister for Roads (Mr Scully) release an exhibition for comment on the initial concept (the 'short tunnel') in a 16 page report titled <i>The Cross City Tunnel: Improving the Heart of the City</i> . \$2.00 toll is flagged.
April 1999	The City of Sydney Council releases the <i>Cross City Tunnel Alternative Scheme</i> . This was a longer tunnel than proposed in the 1998 <i>Improving the Heart of the City</i> , running to the eastern end of the Kings Cross Tunnel, including narrowing William Street.
22 July 1999	Director General of Planning issues requirements for the preparation of the initial EIS by letter to the RTA.
24 Sept to 11 Dec 1999	The RTA publishes the modified proposal in the brochure <i>Cross City Tunnel, Environment Assessment</i> .
Nov 1999	The <i>Action for Transport 2010</i> plan released and includes the project in section titled, 'Making space for cyclists and walkers'.
2 Aug 2000	The RTA releases the <i>Cross City Tunnel Environmental Impact Statement</i> for public comment.
15 Sept 2000	The RTA invites <i>Registrations of Interest</i> from the private sector parties 'for the financing, design, construction, operation and maintenance of the Cross City Tunnel project' (<i>Cross City Tunnel: Summary of Contracts</i> , June 2003, p 10).
6 Oct 2000	Closing date for submissions to the EIS.
23 Oct 2000	Closing date for registrations of interest to construct and operate the tunnel.
Feb 2001	Minister for Roads (Mr Scully) announces that 3 consortia have been short listed to prepare detailed proposals: CrossCity Motorways (CCM), E-TUBE and Sydney City Tunnel Company.
14 May 2001	The RTA submits the <i>Preferred Activity Report</i> to the Department of Urban Affairs and Planning (DUAP) with a <i>Cross City Tunnel Representations Report</i> .
19 May to 18 June 2001	<i>Preferred Activity Report</i> , containing more than 20 modifications to the proposal as presented in the EIS, publicly exhibited.

16 Aug 2001	RTA presents an <i>Addendum to the Representations Report</i> to the DUAP.
Sept 2001	The <i>Proposed Cross City Tunnel: Director General's Report</i> , as required under s115C of the <i>Environmental Planning and Assessment Act</i> is submitted to the Minister for Urban Affairs and Planning.
3 Oct 2001	Planning approval, including 240 conditions, is granted by the Minister of Urban Affairs and Planning (Dr Refshauge).
Oct 2001	Detailed proposals for implementation of the project lodged by the three consortia and reviewed by assessment panel.
Feb 2002	Budget Committee of Cabinet approves CCM to be selected as preferred proponent and for the CCM 'long 80 tunnel' option to be selected as the preferred proposal.
27 Feb 2002	Minister for Roads (Mr Scully) announces CCM is the preferred proponent. The tender submission from CCM incorporated changes to the Approved Activity that the Minister for Roads considered would provide more benefits and reduce construction related impacts to the community. As a result of the proposed changes a number of additional environmental impacts would occur. A supplementary EIS is prepared.
14 Mar 2002	Letter from the Treasurer (Mr Egan) to the Minister for Roads (Mr Scully) stating 'A key objective of the project has been its development at no net cost to Government' and 'It is not certain as this time that the project can achieve a 'no net cost' to Government' outcome. If the project cannot proceed without a Government contribution, any such contribution would need to be funded out of the RTA's existing forward capital program'.
30 Jul to 31 Aug 2002	<i>Supplementary Environmental Impact Statement</i> goes on public display. Displayed at 19 locations and the RTA website, with a toll free number for public comment. 25,000 copies of the brochure were distributed.
4 Nov 2002	<i>Supplementary Cross City Tunnel Representations Report</i> was submitted by the RTA to DUAP drafted in response to the Supplementary EIS, as a result of additional studies and community feedback. Further alterations to the project proposed.
25 Nov 2002	<i>Supplementary Cross City Tunnel Representations Report</i> released to the public. The right hand turn out of Cowper Wharf Road was reinstated. The report was displayed at 19 locations and the RTA website, with a toll free information line. 5,000 copies of the brochure were distributed.
Dec 2002	<i>Cross City Tunnel: Proposed Modifications of Approved Project – Director General's Report</i> was completed.
12 Dec 2002	Planning approval granted by the Minister for Planning (Dr Refshauge). Approved route twice the length of the 1998 initial concept. Projected approval subject to 292 Conditions of Approval.
16 Dec 2002	Approval given by the Treasurer (Mr Egan) to sign project deed, under <i>Public Authorities (Financial Arrangements) Act 1987</i> .
18 Dec 2002	Contract between CCM consortium and RTA is signed, to finance, construct, operate and maintain the CCT. Differential tolling, \$2.50 per car and \$5.00 for heavy vehicles
28 Jan 2003	Major work starts on the \$680 million Cross City Tunnel.

3 Mar 2003	RTA meets the Auditor General to explain that if the terms of the CCT had been made public during the negotiations of the Lane Cove Tunnel Project Deed, those negotiations would have been compromised (Lane Cove Tunnel Project was signed on 4 December 2003).
24 June 2003	The first order for the production of state papers by the Legislative Council relating to the Cross City Tunnel. Focuses on documents relating to contract negotiations for the financing, construction, operation and maintenance of the Cross City Tunnel. Sir Laurence Street, independent Legal Arbitrator, upholds the validity of the claim of privilege on the majority of documents and only a small selection of privileged documents were made public. A substantial volume of documents were released into the public domain without a claim for privilege being made.
June 2003	Contract summary provided to the Auditor-General.
Sept 2003	Documents relating to the Cross City Tunnel tabled in the Legislative Council. Documents that were considered privileged by the RTA sent to an Independent Arbitrator to determine the validity of this claim which was upheld. A substantial volume of documents were released into the public domain without a claim for privilege being made.
3 Dec 2003	Letter from the Minister for Roads (Mr Scully) to the Minister for Infrastructure, Planning and Natural Resources (Mr Knowles) regarding the relocation of the ventilation stack for the Cross City Tunnel expressing 'disappointment and concern at the fact that extracts from the draft Cabinet Minute on this issue have been sighted by members of the Cross City Motorway Consortium, with the consequence that the Government's ability to secure an outcome which best protects the interest of the NSW taxpayers may have been compromised'. This letter was forwarded to ICAC by Mr Andrew Stoner MP on 3 November 2005.
29 Feb 2004	'Cross City Tunnel – Summary of Contract' tabled in Parliament.
21 Dec 2004	Treasurer (Mr Egan) approves the RTA to enter into the Cross City Tunnel Project First Amendment Deed with CCM under s20 of the <i>Public Authorities (Financial Arrangements) Act 1987</i> . This deed included provision that 'in consideration for the CCM's agreement to fund and carry out certain [changes if required by the RTA], CCM may increase the Base Toll to be collected from motorists on the terms set out in the First Amendment Deed'.
23 Dec 2004	The First Amendment Deed entered into by RTA and CCM enabling \$35 million of additional works to be paid for through a higher base toll (increased by \$0.15).
28 Aug 2005	Cross City Tunnel opened.
13 Oct 2005	Papers considered privileged in June 2003 to be reassessed by Sir Laurence Street in view of the public interest in matters concerning the Cross City Tunnel. This was the first time the House had resolved that privileged documents be reassessed by an arbitrator. The documents were tabled in the House in 20 October 2005.
18 Oct 2005	Call for papers relating to the Cross City Tunnel produced since the original call for papers in June 2003. Documents tabled in the House on 18 October 2005.
Nov 2005	Summary of <i>Cross City Tunnel Project Deed</i> made public.

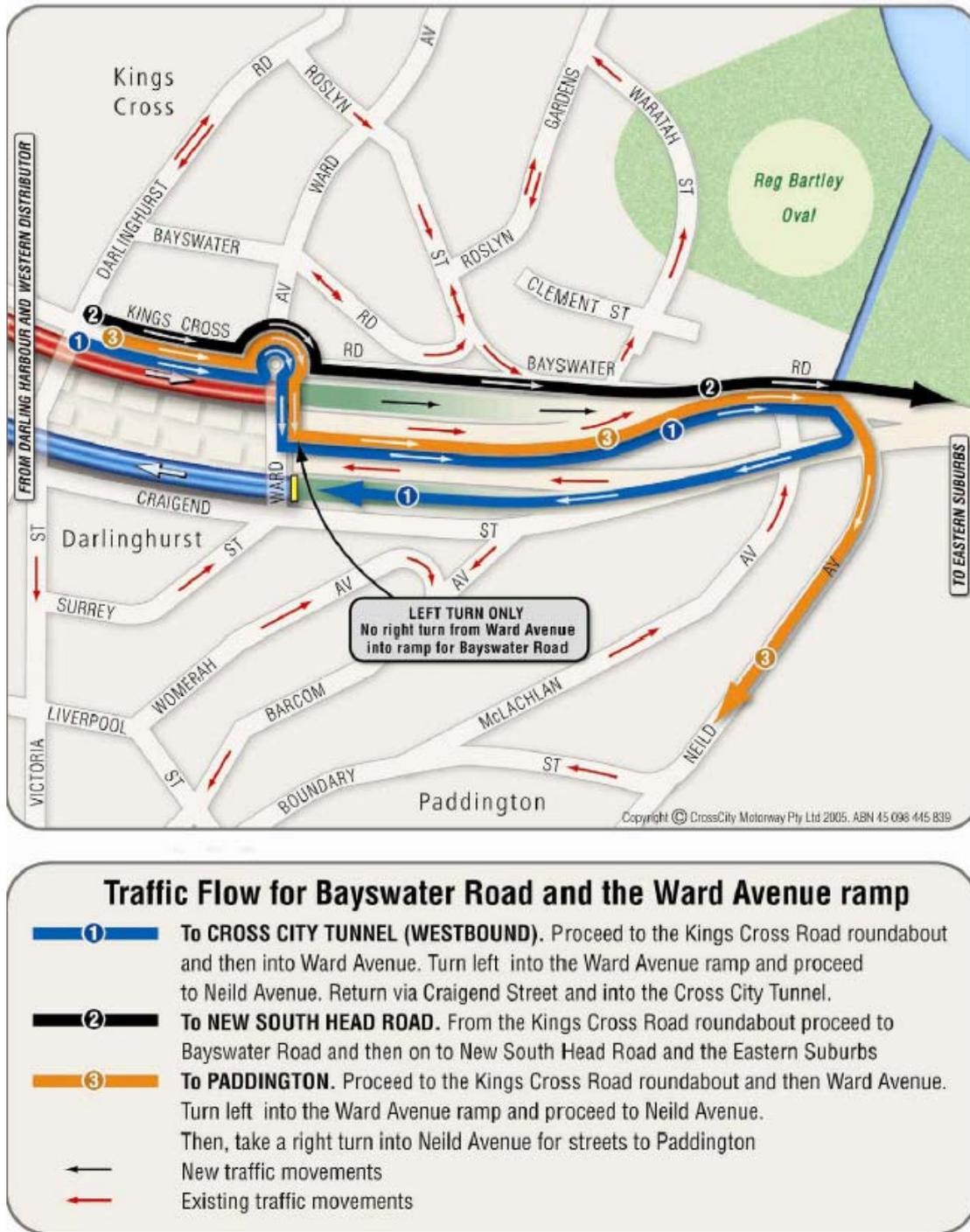
4 Nov 2005	Dispute of the validity of the claim of privilege on documents received on 1 November 2005 from the Minister for Roads, the Cabinet Office and NSW Treasury received by the Clerk of the Legislative Council. According to standing order, the documents were released to Sir Laurence Street for assessment. Determined that material be made public. Documents tabled on 16 November 2005.
9 Feb 2006	Announcement made that Mr Peter Sansom is to be replaced as Chief Executive of CrossCity Motorway by former Brisbane and Wellington ports chief Mr Graham Mulligan.
19 Dec 2035	Cross City Tunnel due to be returned to public ownership.

Figure 2.1 Overview of the Cross City Tunnel



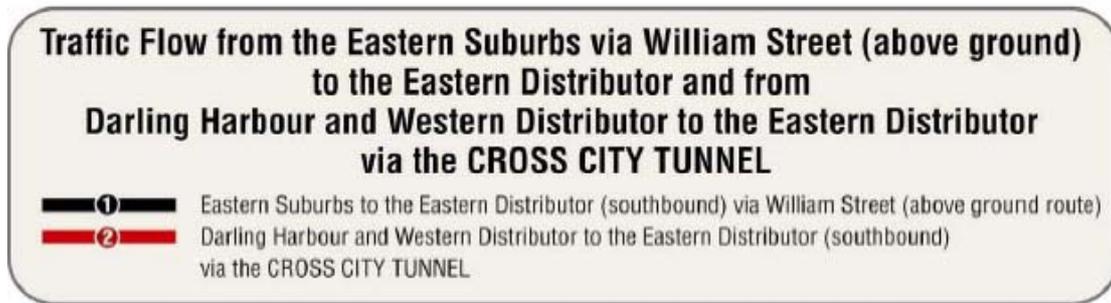
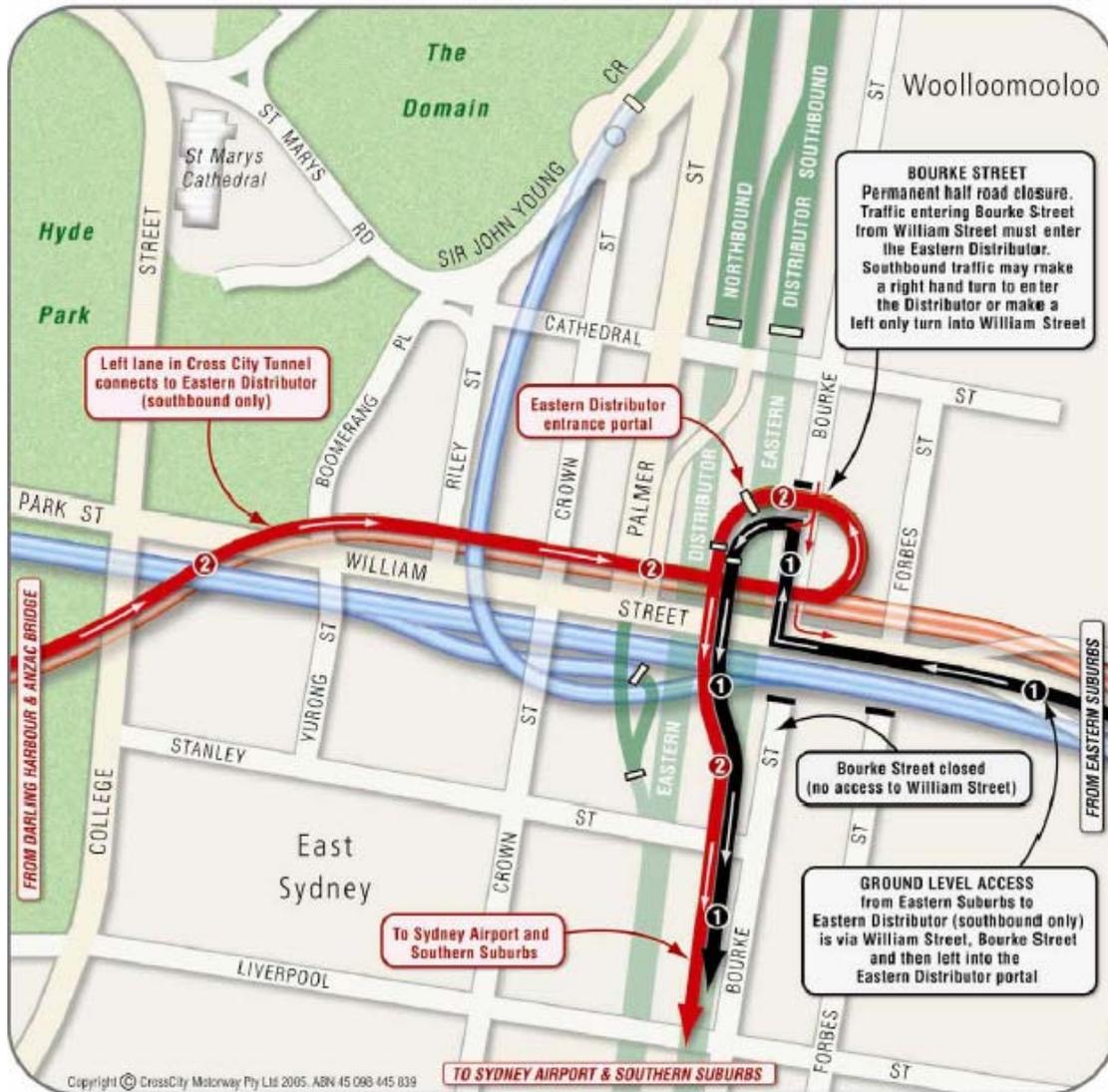
Source: Cross City Tunnel Supplementary Environmental Impact Statement

Figure 2.3 Traffic flow for Bayswater Road and the Ward Avenue ramp.



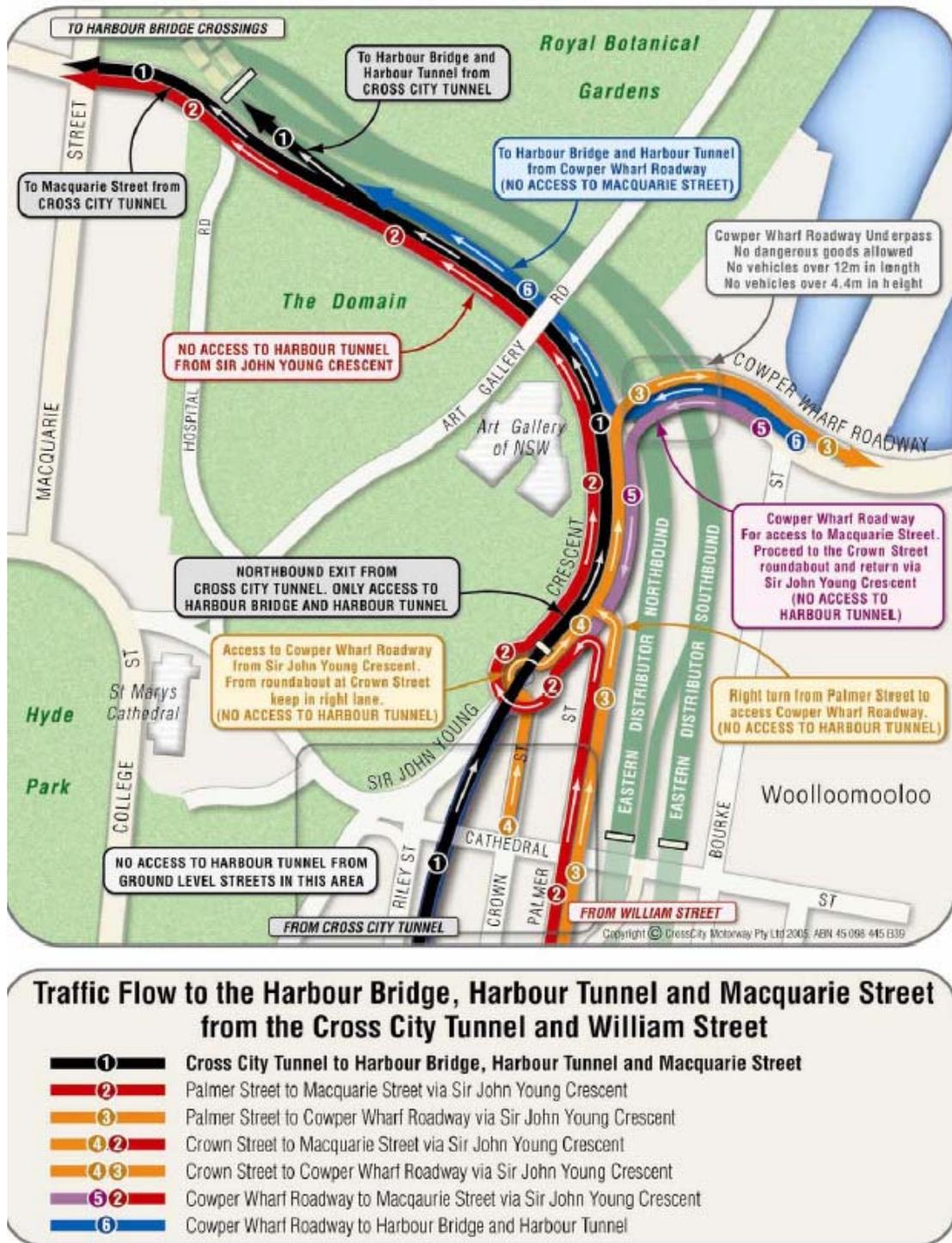
Source: www.rta.nsw.gov.au/newsevents/downloads/2005_05_cct_maps_d11.html

Figure 2.4 East William Street



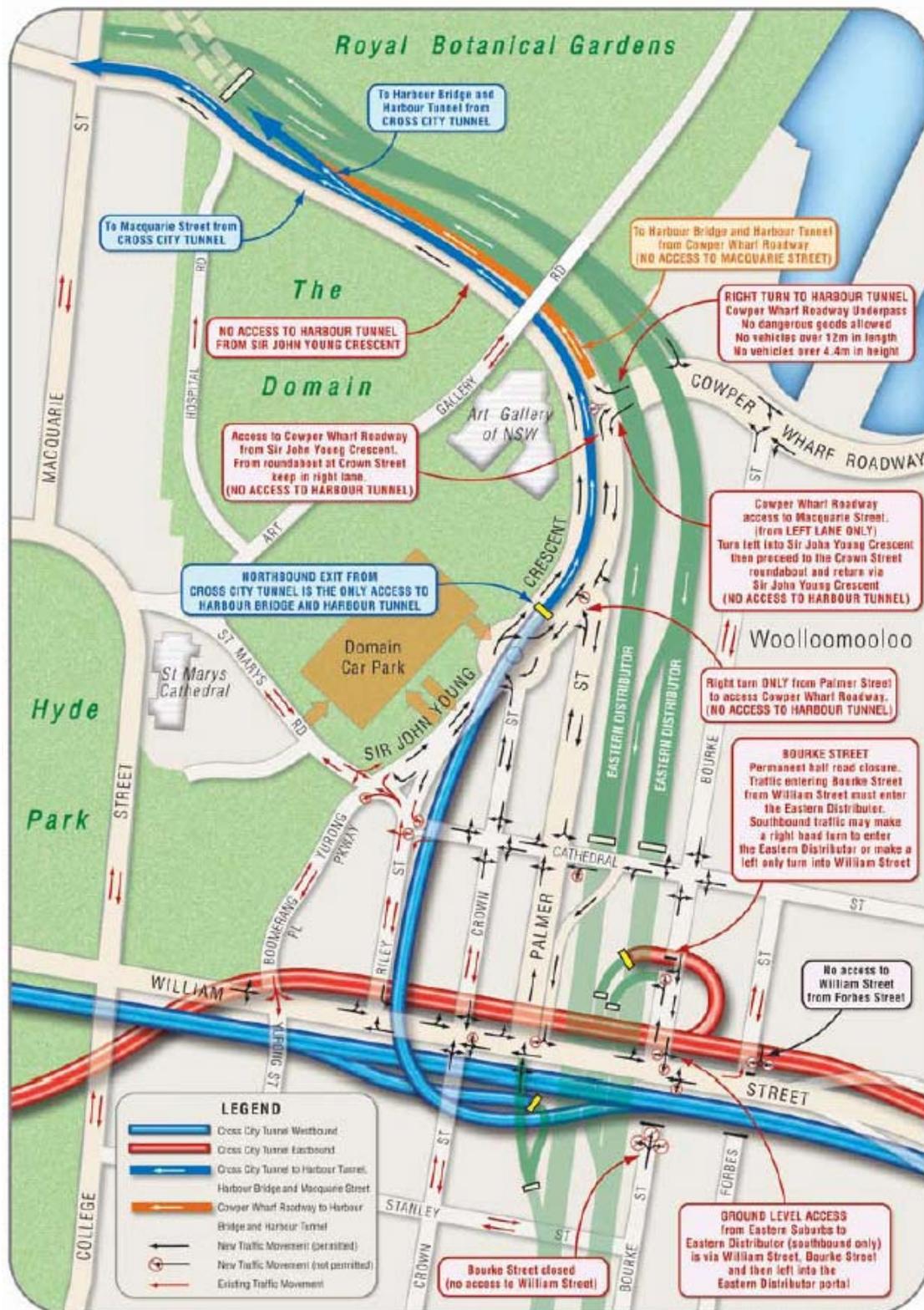
Source: www.rta.nsw.gov.au/newsevents/downloads/2005_05_ct_maps_dl1.html

Figure 2.5 Sir John Young Crescent



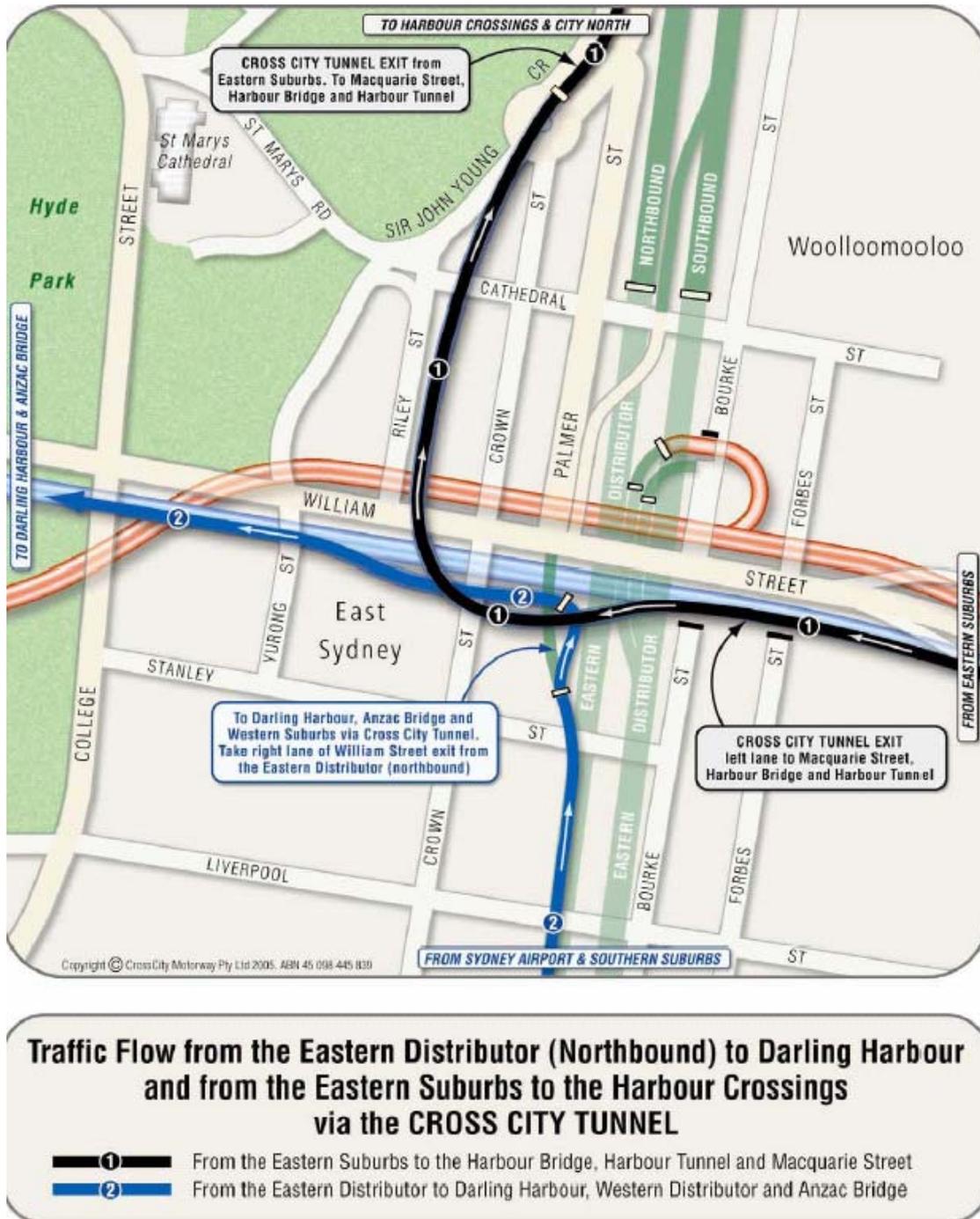
Source: www.rta.nsw.gov.au/newsreleases/downloads/2005_05_ct_maps_d11.html

Figure 2.6 Woolloomooloo



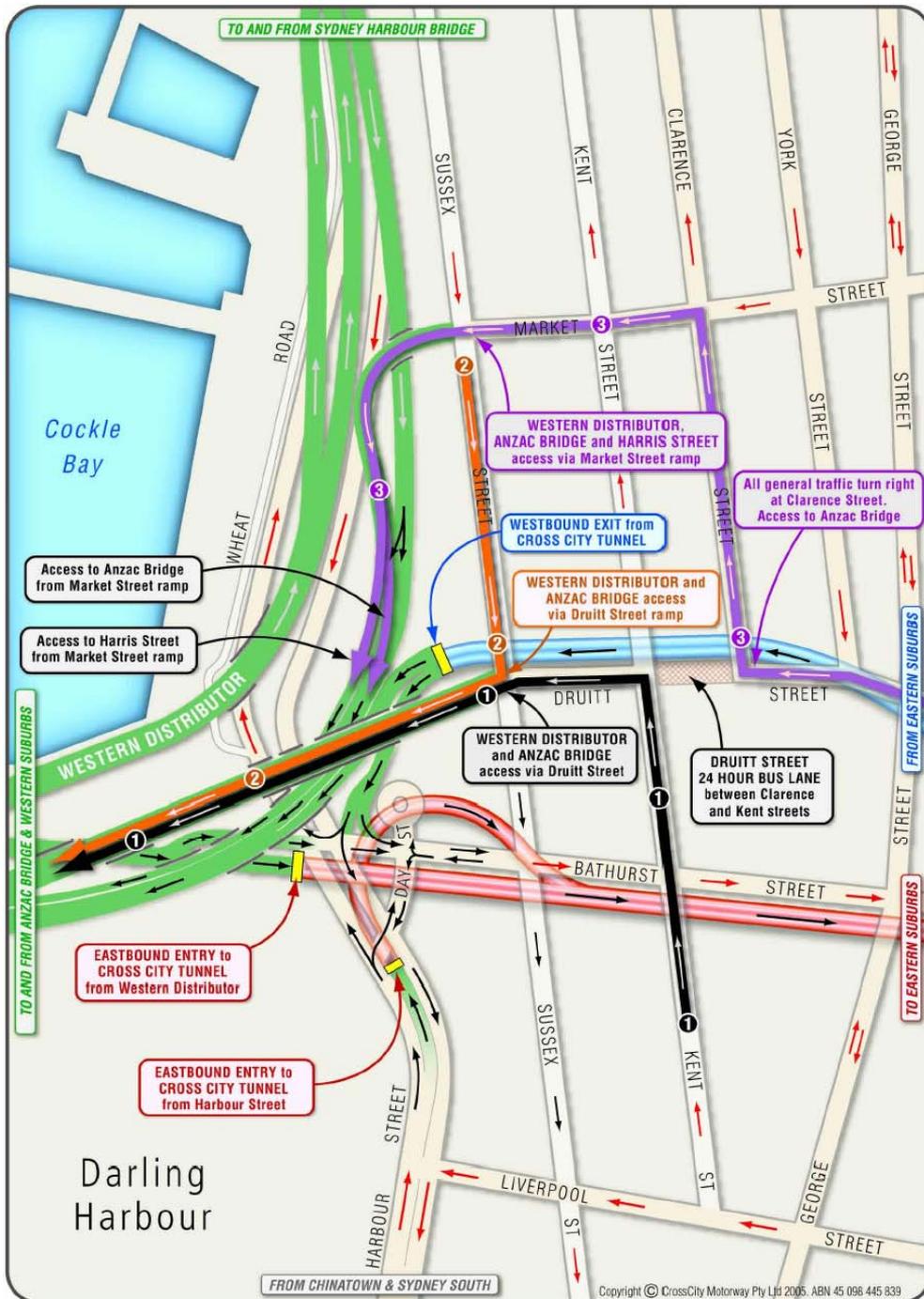
Source: www.rta.nsw.gov.au/newsevents/downloads/2005_05_cct_maps_d11.html

Figure 2.7 Eastern Distributor northbound



Source: www.rta.nsw.gov.au/newsevents/downloads/2005_05_ct_maps_d11.html

Figure 2.8 Anzac Bridge



Traffic Flow to the Western Distributor and Anzac Bridge from Market, DrUITT and Clarence streets

- ①** Kent Street to the Western Distributor and Anzac Bridge
- ②** Sussex Street to the Western Distributor and Anzac Bridge
- ③** Market and Clarence streets to the Western Distributor, Anzac Bridge and Harris Street
- ← New Traffic Movements
- Existing Traffic Movements

Source: www.rta.nsw.gov.au/news/events/downloads/2005_05_cct_maps_d11.html

Chapter 3 Financing the Cross City Tunnel

One of the first decisions made with any major infrastructure project, after the decision to proceed, is the decision on how it should be funded. The Committee's terms of reference require it to examine the role of government agencies in relation to the negotiation of the Cross City Tunnel contract. That role is situated within a broader context of government policy about acceptable levels of public debt and preferred means of funding infrastructure. This chapter will examine the context for the Cross City Tunnel being delivered and financed by a Public Private Partnership rather than by other means such as public revenue or public debt. The negotiation of the contract is examined in Chapter 5.

Options for funding infrastructure projects

- 3.1** Governments have a range of options when considering the funding of large infrastructure projects. Infrastructure can be funded from the relevant agency's budget, the government can borrow money, or the funding can be provided by the private sector as debt or equity through a Public Private Partnership (PPP), or Privately Financed Project (PFP) as they are referred to in NSW.
- 3.2** PPPs have been used for a large number of motorway and other projects in NSW, including the Eastern Distributor, the M2 Motorway and the recently opened M7 Motorway. They have also recently been used for the provision of NSW schools and gaols, and are proposed for a number of future projects including social infrastructure, such as the Bonnyrigg Living Communities housing renewal project.⁵¹
- 3.3** The Cross City Tunnel is a Privately Financed Project (PFP), 'part of the broader spectrum of Public Private Partnerships.'⁵² There is considerable overlap of the two terms, and much of the evidence given to the Committee used the terms interchangeably. PFPs can however be more specifically defined as follows:

PFPs create new infrastructure assets and deliver associated services through private sector financing and controlling ownership. Financing and ownership are features of projects covered by these guidelines, distinguishing them from outsourcing of services to the private sector or infrastructure procured by conventional means such as design and construct.⁵³

⁵¹ Hon Andrew Refshauge, former Minister for Planning, Evidence, 3 February 2006, p14

⁵² NSW Government, *Working with Government: Guidelines for Privately Financed Projects (Working with Government Guidelines)*, November 2001, piii

⁵³ NSW Government, *Working with Government Guidelines*, November 2001, p2

3.4 Guidelines for the government use of PFPs are contained in the NSW Government's November 2001 document *Working with Government: Guidelines for Privately Financed Projects (Working with Government Guidelines)*. The guidelines state that '[a]ll projects will undergo a broader assessment of public interest before they are offered as a PFP.'⁵⁴ Dr Kerry Schott, the Executive Director, Private Projects and Asset Management, NSW Treasury, said in evidence to the Committee:

We have a very clear policy guideline that says, firstly, decide that you want to do this project and you need it for the service delivery of the Government and its strategic aims. We then address whether to fund it ourselves on budget or whether we wish to have it privately financed, either on or off budget. The only reason that we go down the PFP route is that we get better value for money.⁵⁵

3.5 According to Appendix 2 of the *Working with Government Guidelines*, the broader assessment of public interest is conducted by 'Government' and includes such criteria as:

- effectiveness in meeting government objectives
- the impact on key stakeholders
- accountability and transparency
- public access and equity
- consumer rights
- security
- privacy.⁵⁶

3.6 Mr John Pierce, Secretary of the NSW Treasury, elaborated on the public interest evaluation in his evidence to the Committee:

The public interest evaluation is an explicit component of our "Working with Government" guidelines. It covers areas such as: is the project going to be effective in meeting the objectives that the Government has set? Is the project consistent with the agencies' service delivery plans, their long-term infrastructure strategies? Does it basically fit in with what the agency's job is? Does the project allow for consultation with the people who are being affected by it? Are the project processes, and evaluation processes, transparent to allow the community to be informed about the key aspects of the project?⁵⁷

⁵⁴ NSW Government, *Working with Government Guidelines*, November 2001, p57

⁵⁵ Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury, Evidence, 7 December 2005, p16

⁵⁶ NSW Government, *Working with Government Guidelines*, November 2001, p58

⁵⁷ Mr John Pierce, Secretary, NSW Treasury, Evidence, 1 February 2006, p50

The Cross City Tunnel's public interest evaluation

- 3.7 Mr Pierce explained in his evidence to the Committee that the explicit requirements of the *Working with Government Guidelines* were only in operation from November 2001, after the decision to provide the Cross City Tunnel through a PFP had been made:

[T]he procurement process for the cross-city tunnel by that stage had been going on for about 12 months. So the start of the cross-city tunnel project occurred prior to that being an explicit part of our guidelines.⁵⁸

- 3.8 The RTA's view on the project is referred to and discussed in Chapter 6.

- 3.9 Mr Pierce went on to say that while there was no formal evaluation of the public interest against the *Working with Government Guidelines*, the consideration of public interest 'occurs through, essentially, the public consultation processes that occur with the planning process and the EIS'.⁵⁹ Mr Pierce added that:

whilst the formal requirement within our processes for this public interest evaluation to occur was written into our guidelines after this process had started, we would have expected that the normal processes associated with a project of this size and the environmental approval process would have allowed any information relevant to the consideration of the public interest to be made available.⁶⁰

Conclusions

- 3.10 Based on evidence before the Committee, the Committee believes that there was not a sufficiently thorough evaluation of the public interest before the decision was taken to open the project to the private sector.
- 3.11 The Committee believes that the current public interest evaluation criteria contained in the *Working with Government Guidelines* is not clear. It does not specify who in 'Government' has the responsibility for undertaking the evaluation, and does not require the decision to be made public. The Committee believes that, given the widespread public suspicion of PPPs, it is important for Government to establish that the public interest evaluation has been performed and the public interest is served by opening the project to the private sector. The Committee believes that the appropriate Government body to undertake the public interest evaluation should be the Budget Committee of Cabinet.
- 3.12 Refinements to the *Working with Government Guidelines* will provide certainty to the community that future decisions to enter into a PFP have been made with due consideration of the public interest.

⁵⁸ Mr Pierce, Evidence, 1 February 2006, p50

⁵⁹ Mr Pierce, Evidence, 1 February 2006, p50

⁶⁰ Mr Pierce, Evidence, 1 February 2006, p51

Recommendation 1

That the *Working with Government: Guidelines for Privately Financed Projects* be made more prescriptive in relation to the public interest evaluation of projects before the decision to consider them as a Privately Financed Project. Specifically,

- the part of Government responsible for making the decision should be clearly identified
 - the decision, including a summary of the evaluation, should be made public.
-

The decision to ‘go to market’

3.13 The former Treasurer, the Hon Michael Egan, made it clear to the Committee that the option of providing the Cross City Tunnel through public funding was considered and rejected at an early stage:

It certainly was not an option when the project was first being mooted, although around about 1996 or 1997—it might have even been 1998 but I think it was probably 1997—I actually considered and mentioned to a number of people the prospect of us establishing a State-owned tollway company. But the more I examined my own suggestion, the more I realised that it would not remove either the construction risk or the patronage risk from the taxpayer—or the political risk either.⁶¹

3.14 While construction risk and patronage risk are relatively easy to define, the political risk referred to by Mr Egan is less tangible. Political risk may include the risk of an electoral backlash over Government involvement in a large and expensive road infrastructure project that fails to meet its patronage target. In the case of the Cross City Tunnel project, it is clear to the Committee that while there has been a successful transfer of the construction and patronage risk to the private sector, the political risk has arguably remained with the Government. Much of the widespread community anger over the Cross City Tunnel has been directed at the Government. The Committee examines this point further in Chapter 7.

3.15 The former Premier, the Hon Bob Carr, referred to the use of a Public Sector Comparator (PSC) as evidence that the project was better delivered by the private sector:

[T]he Government was open to arguments about whether a publicly funded toll road would offer more advantages to the taxpayer. Our very first decision on the cross-city tunnel was to require a study of this as an option. As a result of that there was emphatic advice from Treasury, based on a public sector comparator, that the public sector could not have delivered the project as the private sector could.⁶²

3.16 In relation to the relative ‘value for money’ represented by the private sector’s proposal over the public sector proposal, Mr Pierce also referred to the use of the PSC:

[G]iven that the outcome of the process was the selection of a private sector proponent, we would have got to that position by comparing the bids with the PSC.

⁶¹ Hon Michael Egan, former NSW Treasurer, Evidence, 6 December 2005, p48

⁶² Hon Bob Carr, former NSW Premier, Evidence, 6 December 2005, p22

That is effectively what we are saying: the private sector proposal gives greater value for money than the public system could deliver on its own, as reflected in the PSC.⁶³

3.17 Private sector proposals are compared against the PSC to determine if they represent ‘value for money’. The PSC is examined in further detail in Chapter 5 on contract negotiation. However, it is important to note that the PSC is not used until after the decision has been made to put the project ‘out to market’.

3.18 The Committee notes the apparent paradox that if the PSC shows that public funded delivery would be better value than private sector proposals, then the private sector proposals will not be selected. However, the stated lack of public funds available (through borrowing or through revenue) means that any publicly funded alternatives would not be able to be implemented until significantly later. This issue is further examined in Chapter 5.

3.19 Mr Egan went on to explain that the motivation for using a PPP to deliver the infrastructure was financial:

Everything has to be paid for and there was always a shortage of public resources for all the demands that are put on the public purse. We will never run out of things to do. So there are many projects that if you want to do them and do them in a particular time frame the only option is to see whether there is an appetite for the private sector to invest their money in the project. That was the experience of the previous Government and it is the experience of governments all around the world.⁶⁴

3.20 Mr Carr confirmed this major motivation:

My simple policy question was one that I proudly put before this committee: this was going to be a privately funded, user pays toll. We were not funding this in any other fashion.⁶⁵

3.21 The Hon Craig Knowles, former Minister for Infrastructure, Natural Resources and Planning, also emphasised the need for strict financial controls on public expenditure:

Unless you believe in fairies at the bottom of the garden you have to have some pretty tight fiscal rules around the management of your budgets.⁶⁶

Alternatives to Privately Financed Projects

3.22 The contention that PFPs often provide better value for money over more conventional forms of infrastructure delivery is not universally accepted. One of the key issues raised in evidence related to alternatives to PFPs. Some of the evidence received by the Committee canvassed specific alternatives to PFPs.

⁶³ Mr Pierce, Evidence, 1 February 2006, p51

⁶⁴ Hon Michael Egan, Evidence, 6 December 2005, p38

⁶⁵ Hon Bob Carr, Evidence, 6 December 2005, p22

⁶⁶ Hon Craig Knowles, former Minister for Infrastructure, Planning and Natural Resources, Evidence, 3 February 2006, p4

Funded through government revenue

- 3.23** Mr Tony Harris, former NSW Auditor General, suggested that the alternatives to funding the Cross City Tunnel through a PFP included funding through general government revenue:

It is clear that the Government had the capacity to fund it without raising revenue from any other sources. Indeed, had the Government merely paid off half the debt that it did since 1995 it could have funded all of the privately owned roads in Sydney.⁶⁷

- 3.24** Mr Harris also raised alternate ways to fund such road infrastructure projects. In evidence he referred to a form of ‘shadow tolls’:

we should try not penalise people who use these investments by tolling them and not tolling alternative roads; we should try to raise the revenue necessary to pay for new road investments from the network users as a whole. That can be done in many ways. It can be done on a mileage charge. Each motor vehicle in New South Wales is annually registered and goes through an annual test. There could be a mileage charge associated with that registration process. It could be done with the assistance of the Commonwealth, by having higher taxation on petroleum products in the inner city areas⁶⁸

- 3.25** The Committee questioned Mr Harris’ assertion that by tolling all roads there would be a cheaper cost to the motorist. In response Mr Harris said:

You will end up with a more efficient cost, a more efficient system. People seem to think – and the argument you are pursuing seems to suggest – that because this road is new it can have a toll on it, but because that road is not new it cannot have a toll. That does not make any economic sense. That old things do not carry a price, but new things do carry a price, does not make any economic sense.⁶⁹

- 3.26** The Infrastructure Implementation Group’s *Review of Future Provision of Motorways in NSW* (IIG Review), release in December 2005, concluded that:

The use of private financing and the associated toll road regime has enabled the provision by the NSW Roads and Traffic Authority and its predecessors of an extensive network of motorways across Sydney. These roads have been provided to the community much earlier than would have been the case if they had been funded by the public sector.⁷⁰

⁶⁷ Mr Tony Harris, former NSW Auditor General, Evidence 1 February 2006, p3

⁶⁸ Mr Harris, Evidence, 1 February 2006, p4

⁶⁹ Mr Harris, Evidence, 1 February 2006, p4

⁷⁰ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p3

3.27 Mr Peter Mills, a retired telecommunications engineer and ‘an interested observer of the transport scene’, stated in his submission that he believes a publicly funded tunnel would achieved the project objectives more effectively than a privately funded project:

It is clear that the Cross City Tunnel is both considerably more expensive, and less effective in its primary objective of reducing road congestion in the CBD, than a simple publicly funded tunnel could have been.⁷¹

Funded through government debt

3.28 Funding through government debt is another alternative, the preferred alternative of the Property Council of Australia. Mr Ken Morrison, Executive Director of the NSW Branch of the Property Council of Australia told the Committee that ‘the Property Council has been a strong and long-term supporter of greater debt funding of infrastructure for the State.’⁷²

3.29 Citing a report commissioned by the Property Council, Mr Morrison added that the consultants that prepared the report, Allen Consulting Group:

found quite strongly that debt funding was the most efficient form of financing infrastructure, with PPPs coming a close second. They also found that there was a \$5 billion capacity in New South Wales to increase our debt levels to fund infrastructure without impacting our credit rating or interest rates.⁷³

3.30 Despite the preference for government debt funding, Mr Morrison concluded that the Property Council:

while thinking that debt funding should be a greater component in a mix, believes that it is entirely appropriate that the cross-city tunnel be delivered through a PPP.⁷⁴

3.31 Mr Harris contended in his submission that ‘government can borrow money more cheaply than the private sector because the spread of government investments reduces the risks of lending to governments.’⁷⁵

3.32 Ms Betty Con Walker, principal of Centennial Consultancy, advised at the public hearings that:

There is nothing wrong with government borrowing to finance infrastructure that will be of benefit to current and future generations.⁷⁶

⁷¹ Submission 22, Mr Peter Mills, cover letter

⁷² Mr Ken Morrison, Executive Director, NSW Property Council of Australia, Evidence, 3 February 2006, p46

⁷³ Mr Morrison, Evidence, 3 February 2006, p46

⁷⁴ Mr Morrison, Evidence, 3 February 2006, p46-7

⁷⁵ Submission 11, Mr Tony Harris, former NSW Auditor General, p3

⁷⁶ Ms Betty Con Walker, Principal, Centennial Consultancy, Evidence, 1 February 2006, p14

3.33 The NRMA's submission similarly questioned the efficiency of private sector financing of road infrastructure:

[P]rivate finance project (PFP) arrangements are a less efficient means of financing road infrastructure relative to public sector funding. ... the Government is better placed to manage the risks inherent in undertaking road infrastructure projects as they control the entire road network, as opposed to just one part of it.⁷⁷

3.34 Mr Egan justified decisions not to borrow to fund the project on the grounds that future needs should be anticipated and prepared for during a time of high economic growth and high revenues:

I suppose you can argue that we should have gone into deficit, but that is only a very short term expedient. All debt has to be repaid, all debt has to be serviced, and to go into debt to have the budget deficits at a time of very high economic growth and very high revenues would, in my view, have been quite reckless. You take advantage of the sun shining to fix the roof. If you do not fix the roof then, you cannot do it when it is raining—pouring—or hailing. You fix the roof when the sun is shining, and I am very proud that we did that. In fact the general government debt of New South Wales is now in actual terms is zero—it is actually negative.⁷⁸

3.35 The former Premier the Hon Nick Greiner concurred, saying that 'the truth is that the government never prices risk':

[W]hy do we not just go and borrow, and everything will be sweet? The truth is that you cannot do that. You cannot do that because the State will quickly lose its credit rating. The implications of New South Wales losing its triple-A credit rating with unbridled debt I think are fairly obvious. The range of alternative needs that need to be funded is so great that it is simply not possible to debt fund all the infrastructure that any government would think is reasonable...⁷⁹

3.36 Dr Schott confirmed that the Government's aversion to debt stems from an expectation of future expenditure need:

We do try to keep debt in the general government sector as low as we can. The reason we do that in Treasury is that the long-term outlook for expenditure demands is huge. You would be aware that the baby booming gap is about to reach the over-65 level, and that is going to put enormous demands on the government budget, particularly in health. But developments in medical technology have also put tremendous demands on our care of the disabled. For that reason we prefer not to borrow because paying back the interest in the general government sector will mean that we have less services delivered in a few years time, when the demands are really going to be extensive.⁸⁰

⁷⁷ Submission 54, NRMA, p4

⁷⁸ Hon Michael Egan, Evidence, 6 December 2005, p40.

⁷⁹ Hon Nick Greiner, Evidence, 7 December 2005, p41

⁸⁰ Dr Schott, Evidence, 7 December 2005 p4

- 3.37** The Committee notes that the debt reduction policy of the Government is enshrined in legislation. The *Fiscal Responsibility Act 2005* (and its predecessor the *General Government Debt Elimination Act 1995*) set fiscal targets for the state that rely on maintaining the level of government debt 'as a proportion of gross state product at or below its level as at 30 June 2005'.⁸¹

The importance of risk to the cost of capital

- 3.38** In evidence to the Committee, Mr Harris argued that the cost of private financing would also be higher than government financing because they are not as well situated to manage the 'traffic risk' as the government sector:

[T]he private sector can least manage the risks inherent in traffic in the city. An economist will entirely agree that that entity best able to manage the risk should carry the risk. The Government, through the RTA, is the entity best able to manage the traffic risk for the tunnel and therefore should carry that risk⁸²

- 3.39** In response to suggestions that the construction of the tunnel could have been funded by public debt, the former Treasurer the Hon Michael Egan said:

People who say that the cost of capital is cheaper for the public sector really don't know what they are talking about. ... When a government is borrowing money the cost of capital, the risk weight of the cost of capital, is actually the same because there is an implicit subsidy from the taxpayer, who bears the risk.⁸³

- 3.40** This position was supported by Dr Kerry Schott, NSW Treasury, in her evidence to the Committee:

The Government can borrow more cheaply in aggregate but the Government's cost of borrowing for a particular project is pretty much the same as the private sector's cost when you allow for the risk. The risk in these sorts of projects is largely the traffic risk, as we are all seeing. The risk of having the cars going through the tunnel would be no better or worse whether it was us or the private sector. So public finance is not cheaper when you take the project risk into account.⁸⁴

- 3.41** The former Chief Executive of the RTA, Mr Paul Forward, commented that the Project Deed explicitly transfers the patronage risk (the risk that the number of users of the road will not meet the estimated levels) to the private sector, leading to a situation where CCM may be required to:

borrow money, additional funds, in order to fund the repayment of interest. ... If it was a government toll road, the Government would in fact bear all of that risk itself. ... If you are fully debt funded and you are not getting your returns to pay off your interest, then the Government in fact is going to have to borrow a lot more money.⁸⁵

⁸¹ *Fiscal Responsibility Act 2005* (NSW), section 6(b)

⁸² Mr Harris, Evidence, 1 February 2006, p8

⁸³ Hon Michael Egan, Evidence, 6 December 2005, p48

⁸⁴ Dr Kerry Schott, Evidence, 7 December 2005 p16-17

⁸⁵ Mr Paul Forward, Evidence, 6 December 2005, p53-54

- 3.42 Implicit in the concept of the transfer of patronage risk is the fact that if CCM are required to borrow money to fund the repayment of interest, they will be unable to raise the toll to increase revenue beyond the toll escalation regime specified in the contract (i.e. the higher of 4% per annum or CPI from September 1998 to December 2011; the higher of 3% or CPI from January 2012 to December 2017 and CPI increases until contract end (December 2035)⁸⁶).

Conclusions

- 3.43 The Government's policy position on avoiding public debt was a major factor in the decision to provide the Cross City Tunnel through a PFP. The Committee recognises that it is appropriate that the Government make policy decisions around levels of expenditure and public borrowing. However, it is also clear to the Committee that, against this policy background, the possibility of providing the Cross City Tunnel through alternatives such as public debt or general government revenue was reduced, and the possible benefits of public control of this major infrastructure asset was therefore not fully taken into account.
- 3.44 The Committee acknowledges the conclusion reached in the IIG *Review* that the use of PFPs to provide infrastructure like the Cross City Tunnel has meant that these have been provided to the community much earlier than would have been the case if they had been funded by the public sector.
- 3.45 The Committee notes that the level of public debt needs to be carefully managed. High levels of public debt may risk the credit rating of the state and reduce the flexibility of the Government to respond effectively to issues, which might arise in the future.
- 3.46 Some of the possible benefits of publicly controlled infrastructure assets include continued public control of the road network, with the flexibility that provides for making decisions to achieve the primary objectives of the project, including the possibility of reversing road changes without exposure to financial liability, or reducing the level of the toll to encourage greater use of the road. The issue of public control over the road network is examined in greater detail in Chapter 7.

'No cost to government' policy

- 3.47 The previous sections examined the context within which the decision to provide the Cross City Tunnel as a PFP was made. Government policy to minimise government debt has been cited as a major factor in the decision to fund the infrastructure in this way.
- 3.48 The Government consistently maintained that the project would be delivered at no net cost to government. The Hon Michael Egan, in evidence to the Committee, commented that 'this project has not cost the taxpayer a single cent and, as I see it, it never, ever will'.⁸⁷

⁸⁶ RTA, *Finalisation Report*, Undated, p3 of cover brief

⁸⁷ Hon Michael Egan, Evidence, 6 December 2005, p38

3.49 The Committee notes that while Mr Egan's comment may be true for taxpayer's collectively, those taxpayers that use the Cross City Tunnel are paying for the project directly, and are also paying for other elements of the project such as urban amenity improvements on William Street. This issue is discussed later in this chapter.

3.50 In his evidence to the Committee, the Hon Bob Carr said:

The key commitment I made - I was persuaded to make, in co-operation with my colleagues – was that this would be a privately funded toll road based on the user-pays principle.⁸⁸

...

We made a key policy decision that, unlike the M2, there would be no public money going into this.⁸⁹

3.51 In March 2002, in a letter to the then Minister of Roads, the then Treasurer wrote that 'a key objective of the project has been its development at no net cost to Government' and added that:

It is not certain at this time that the project can achieve a 'no net cost to Government' outcome. If the project cannot proceed without a Government contribution, any such contribution would need to be funded out of RTA's existing forward capital program.⁹⁰

3.52 The consequences of the RTA funding a contribution to the Cross City Tunnel project from its existing forward capital program were described by Mr Carr:

[I]f they had not recouped those costs that would have meant \$100 million coming out of the roads budget. In this period 2002-03 this is what we were funding, and I am quoting from the 2002 budget announcements: we were funding \$63 million in that budget towards the fast tracking of a \$323 million upgrade of Windsor Road/Old Windsor Road, making it a four lane road progressing 12 separate projects along the route. That was perhaps the biggest single project we were undertaking that year, apart from the Pacific Highway, and that would have been squeezed.⁹¹

3.53 These comments reflect the importance of the 'no cost to government' policy to the RTA. The policy clearly influenced the nature of the Project Deed entered into, and the eventual cost borne by the tunnel user. These implications of the 'no cost to government' policy will be examined in Chapter 5.

⁸⁸ Hon Bob Carr, Evidence, 6 December 2005, p32

⁸⁹ Hon Bob Carr, Evidence, 6 December 2005, p22

⁹⁰ Submission 1, p3

⁹¹ Hon Bob Carr, Evidence, 6 December 2005, p34

- 3.54** A number of witnesses and submissions received by the Committee were critical of the ‘no cost to Government’ policy. The Government itself, on 8 December 2005, accepted the recommendation of the IIG *Review of Future Provision of Motorways* to ‘abandon’ the policy, accepting the conclusion of the IIG *Review* that:

While supportive of the use of PPPs where appropriate for motorway projects, the Review considers that in the case of the CCT and probably in future projects the RTA financing formula (fix the toll and term in advance and use the project to fund major public domain enhancements like the William Street enhancements) has been and will be difficult to sustain. This is particularly the case while a policy of “no cost to government” is applied to such projects and the RTA seeks recovery of all of its costs, as was the case with CCT. In these circumstances the capacity of Government to negotiate more flexible outcomes is constrained, particularly if Government seeks (as it should) to maintain control of associated road network impacts of projects and to work cooperatively with communities on local road and public domain impacts.⁹²

- 3.55** The Cross City Tunnel project is much more than simply a tunnel under the CBD. The Committee notes that both the IIG *Review* and the former Auditor General, Mr Tony Harris, have been critical of the packaging of the Cross City Tunnel project in such a way that key benefits of the project are not for the tunnel users, but for a range of other parties while the costs are borne by tunnel users. The IIG *Review* stated that:

The achievement of broader public domain improvements and/or associated public transport or road environment provisions is often an important aspect of motorway projects. In the CCT [Cross City Tunnel] case, it was perhaps an overriding concern.⁹³

- 3.56** Mr Harris, in critiquing the imposition of all costs associated with the Cross City Tunnel project on the tunnel users stated that:

Most of the benefits that come from the cross-city tunnel have nothing to do with motorists. They have a lot to do with the environment, they have a lot to do with pedestrians, and they have a lot to do with the amenity of the city, but nothing to do with motorists.⁹⁴

- 3.57** The Committee agrees that there are considerable potential and actual benefits arising from the construction of the Cross City Tunnel and the associated surface works that are not of immediate benefit to tunnel users. The Committee also acknowledges that there are equity issues arising from the RTA’s pursuit of a ‘no net cost to government’ policy, which has contributed to higher than anticipated toll charges. There is nothing to suggest that tunnel users who pay the toll are not also able to benefit from some or all of the actual and anticipated additional benefits of the project. However, the Committee believes that the transfer of all costs ultimately onto the tunnel user, with the impact that appears to be having on tunnel use, will hinder the key objectives of the project. This issue is also addressed in Chapter 5.

⁹² IIG *Review*, December 2005, p4

⁹³ IIG *Review*, December 2005, p26

⁹⁴ Mr Harris, Evidence, Wednesday 1 February 2006, p 3

3.58 The recommendation that public domain improvements should not have been funded from the Tunnel was also supported by Mr Dennis O'Neill, Chief Executive Officer of the Australian Council on Infrastructure Development:

More than these other PPP toll roads that have been developed in the Sydney region, the conception of the cross-city tunnel contains a fair degree of public benefit. That is, the benefit is not only to the individual motor vehicle users who may transit the tunnel. ... We have heard about the changes to the amenity of William Street and the businesses around that area. When addressing the commercial model for these projects, governments seem to be captured by a simplistic view of user pays. The user in this particular case has been narrowly defined as the motorist. I am often a public transport user in the CBD and I am getting better north-south transit times as a result of the operation of the cross-city tunnel. However, I am not charged any more for my bus ticket when I do that.⁹⁵

3.59 Mr O'Neill recommended 'more sophisticated revenue capture mechanisms' to be used when 'a community good can be slated home to other categories of beneficiaries'. Instead of a simplistic user-pays model applying to users narrowly defined, 'we need a beneficiaries-pays approach.'⁹⁶

3.60 While Mr O'Neill did not provide specific examples of more sophisticated revenue capture mechanisms, Mr Ken Morrison, NSW Executive Director of the Property Council of Australia suggested that:

[T]he other option is that the Government acts as the proxy for those beneficiaries and looks at covering some of those public-good costs, particularly when one is talking about reduced congestion and the beneficiaries of that being hard to capture.⁹⁷

3.61 Mr Peter Mills, in his submission to the Inquiry, was critical of the implications for control of the transport network of tollways:

While the objective of "no cost to government" is admirable in isolation, it has compromised good transport outcomes when applied to tollways. The Cross City Tunnel is the most recent example of a number of Sydney tollways that have, to varying degrees, put financial viability ahead of the broader community interest.⁹⁸

3.62 Mr Mills contended that the disincentive effect of a toll on potential users must be offset by making the project more attractive to the user:

Project length and travel speed are the two main parameters used by tollway providers to increase user attractiveness.⁹⁹

⁹⁵ Mr Dennis O'Neill, Chief Executive Officer, Australian Council on Infrastructure Development, Evidence, 3 February 2006, p51

⁹⁶ Mr O'Neill, Evidence, 3 February 2006, p51

⁹⁷ Mr Morrison, Evidence, 3 February 2006, p51

⁹⁸ Submission 22, Mr Peter Mills, p1

⁹⁹ Submission 22, p1

- 3.63** Mr Mills adds, however, that modifying these parameters leads to increased cost and therefore increased tolls, making the balance difficult.¹⁰⁰ The changes to the originally approved project to make it the 'long 80 tunnel' combine both of the parameters that Mr Mills mentions in his submission. The 'long 80 tunnel' allowed the consortium to predict sufficient revenue to provide an up-front payment to the RTA – the Business Consideration Fee, considered in more detail in Chapter 6. This made the project very desirable to the RTA in a 'no cost to government' policy setting.
- 3.64** As noted on page 9 of the RTA Finalisation Report, there were six options for the project. Four offered an up front payment and two required a payment from the Government. Two of the proposals were for the 'long 80 tunnel' and four were not.
- 3.65** In his submission to the Committee, Mr Flash Langley commented on the changes to the project between the EIS and the Supplementary EIS, noting that:
- the analysis did not review the financial or other burdens of the changes, and was driven with how to trade off the significantly increased costs of the revised proposal. It was the economic analysis on the RTA –CCM relationship that dominated; not community costs.¹⁰¹
- 3.66** Mr Mike Hannon, Acting Chief Executive of the RTA, did not concur:
- Clearly, the up-front fee that they were prepared to pay and the project that they were proposing to deliver was the best bid, so it was the recommendation that obviously took on board the amount of money, but it also happened to be a project which we were satisfied could be delivered.¹⁰²
- 3.67** The Hon Nick Greiner, in discussing the range of criteria that might be used in determining the successful PPP proponent in the tendering process, commented that:
- I think the front-end payment was arguably the wrong criterion. The Government and the RTA chose the front-end payment and they could have chosen the lowest toll, as the Victorian government did in relation to a recent toll road.¹⁰³

Conclusion

- 3.68** The emphasis on the 'no cost to government' policy has directly resulted in tolls higher than originally anticipated to be paid by the road using community. While the project has resulted in no net cost to government, it has certainly resulted in significant cost to the community, through higher than anticipated tolls and added inconvenience for the users of local roads in the area between the East and West tunnel portals, leading to considerable frustration and anger and potentially leading to a political cost to government.

¹⁰⁰ Submission 22, p1

¹⁰¹ Submission 3, Mr Flash Langley, p3

¹⁰² Mr Mike Hannon, Acting Chief Executive, RTA, Evidence 6 December 2005, p54

¹⁰³ Hon Nick Greiner, Evidence, 7 December 2005, p43

Chapter 4 Planning approval

An essential element of any major infrastructure project is the environmental planning approval process, which provides not only the main opportunity for community and stakeholder consultation and input, but also links the project objectives with the parameters, and establishes the conditions of approval that must be met if the project is to proceed.

Key issues

4.1 Evidence before the Committee has raised the following issues relating to the planning approval for the Cross City Tunnel:

- adequacy of the *Working with Government: Guidelines for Privately Financed Projects*¹⁰⁴ (*Working with Government Guidelines*) in terms of clarity regarding the timing and interrelationship between the environmental planning and assessment process, contract negotiation and government decision making processes
- adequacy of environmental assessment and approval processes for major infrastructure projects
- significant alterations to the project that occurred after the period of public consultation had concluded, including application of a higher toll escalation formula and decision to construct a ventilation tunnel
- final planning approval for the project occurred just six days prior to finalisation of the contract deed for the project, leaving little room to properly consider and cost the impact of the revised approval conditions.

4.2 The following section outlines the statutory environmental planning assessment and approval process that, until recent changes to the *Environmental Planning and Assessment Act 1979 (EP&A Act)*¹⁰⁵, applied to public infrastructure projects under Part 5 of the *EP&A Act*. Chapter 2 of this Report includes a list and brief description of relevant documents that are referred to throughout this chapter.

Planning process

4.3 The following tables provide the key milestones in the environmental planning and assessment process for the Cross City Tunnel project under Part 5 of the *EP&A Act*.

¹⁰⁴ NSW Government, *Working with Government Guidelines for Privately Financed Projects*, November 2001, www.treasury.nsw.gov.au

¹⁰⁵ The *EP&A Act* was amended in 2005; major infrastructure projects will now generally be assessed under Part 3A of the *EP&A Act*.

Cross City Tunnel project – initial EIS

State Government development under Part 5 of the <i>EP&A Act 1979</i> ¹⁰⁶	Cross City Tunnel project Initial EIS process	Timeline
Proponent and other Determining Authority determine if ‘review of environmental factors’ or an EIS is required following a preliminary assessment – if likely to significantly affect the environment	Decision taken by RTA to prepare EIS	1999
Planning Focus Meeting with proponent, DUAP and other approval authorities		
DUAP issues Director General’s Requirements	DG of Planning issues requirements for the preparation of the initial EIS by letter to RTA (including EPA requirements)	22 July 1999
Proponent prepared EIS	RTA contracted PPK Environment & Infrastructure to prepare the EIS	
DUAP and approval authorities pre-lodgement review		
Proponent advertises and exhibits EIS for a minimum of 30 days, inviting representations	RTA released <i>Cross City Tunnel - EIS</i> for public comment	2 August – 6 October 2000
Proponent considers issues in submissions and if appropriate develops mitigation strategies		
Proponent prepares Representation Report and makes submission to Minister for approval	<i>Cross City Tunnel Representations Report</i> and <i>Preferred Activity Report</i> submitted by the RTA to DUAP	14 May 2001
Proponent prepares Preferred Activity Report and makes public	RTA places <i>Preferred Activity Report</i> on public display	19 May 2001 – 18 June 2001
DUAP prepares Assessment Report – if approval to be recommended DUAP consults with determining authorities and other parties in finalising recommended integrated approval conditions		
DUAP makes recommendations to Minister. Minister must consult with Minister for the Proponent	<i>Proposed Cross City Tunnel: Director General’s Report</i> , as required under s115C of <i>Environmental Planning and Assessment Act</i> .	September 2001
Minister makes determination under Div 4 Part 5 of the <i>EP&A Act</i>	Planning approval (with 240 conditions) granted	3 October 2001

¹⁰⁶ Outline of the environmental planning and assessment process under Part 5 of the EP&A Act adapted from NSW Audit Office, *Performance Audit Report: Department of Urban Affairs and Planning: Environmental Impact Assessment of Major Projects in NSW*, 2001, p16

Cross City Tunnel project – supplementary EIS

State Government development under Part 5 of the <i>EP&A Act 1979</i>	Cross City Tunnel project Supplementary EIS process	Timeline
Proponent and other Determining Authority determine if 'review of environmental factors' or a supplementary EIS is required following a preliminary assessment – if likely to significantly affect the environment	RTA opted for Supplementary EIS (SEIS) after consultation with PlanningNSW, EPA and legal advice	March 2002
Planning Focus Meeting with proponent, PlanningNSW and other approval authorities		
PlanningNSW issues Director General's Requirements for the SEIS	DG of PlanningNSW issues requirements for the preparation of the SEIS by letter to RTA (including EPA requirements)	June 2002
Proponent prepared SEIS	RTA contracted PPK Environment & Infrastructure to prepare the SEIS	
PlanningNSW and approval authorities pre-lodgement review		
Proponent advertises and exhibits SEIS for a minimum of 30 days, inviting representations	RTA released <i>Cross City Tunnel - SEIS</i> for public comment	1 August to 31 August 2002
Proponent considers issues in submissions and if appropriate develops mitigation strategies		
Proponent prepares Supplementary Representation Report and makes submission to Minister for approval	<i>Cross City Tunnel Supplementary Representations Report</i> and <i>Supplementary Preferred Activity Report</i> submitted by the RTA to PlanningNSW	4 November 2002
Proponent prepares Supplementary Preferred Activity Report and makes public	RTA places <i>Supplementary Preferred Activity Report</i> on public display	late November 2002
PlanningNSW prepares Assessment Report – if approval to be recommended PlanningNSW consults with determining authorities and other parties in finalising recommended integrated approval conditions		
PlanningNSW makes recommendations to Minister. Minister must consult with Minister for the Proponent	<i>Cross City Tunnel: Proposed Modifications to Approved Project Director General's Report</i> , as required under s115C of <i>Environmental Planning and Assessment Act</i> .	December 2002
Minister makes determination under Div 4 Part 5 of the EP&A Act	Planning approval (with 292 conditions) granted	12 December 2002

4.4 As illustrated in the two tables above, the planning process was very complex and occurred over a considerable period of time (beginning in early 1999 and continuing until the end of 2002).

Objectives of the Cross City Tunnel project

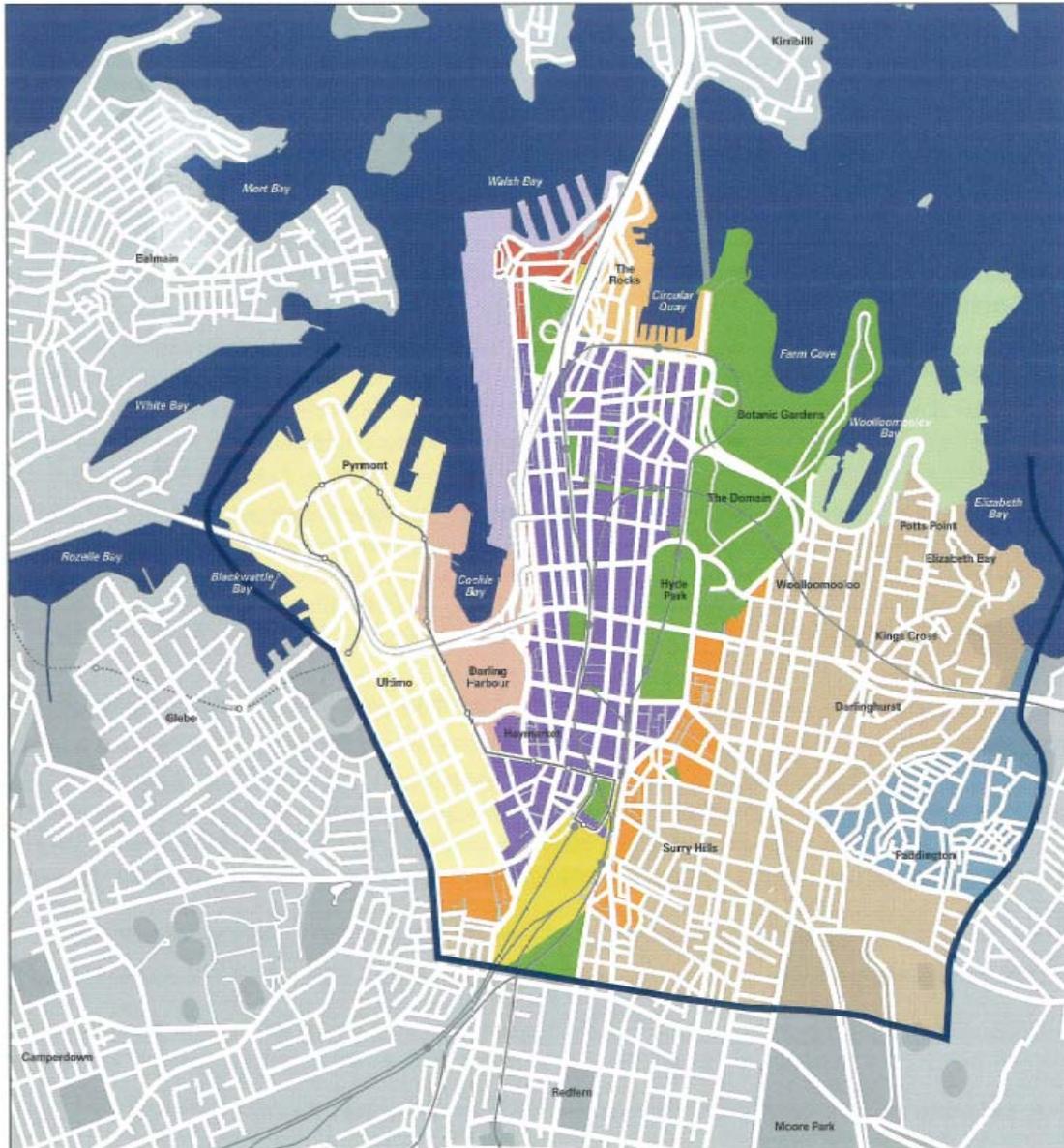
- 4.5 The environmental assessment process provides a key opportunity for the articulation of a project's objectives and how they are hoped to be achieved through the project's delivery. They are central to the assessment of the project's suitability.
- 4.6 It is of some concern to the Committee that the Cross City Tunnel project changed substantially, with the selection of the 'long 80 tunnel' option, without significant enhancement of the project's primary objectives. Of greater concern has been that the pursuit of one of the project's secondary objectives, minimisation of the financial cost to government, may have been at the expense of the primary objectives.

Primary objectives

- 4.7 The primary objectives of the Cross City Tunnel project mirror those outlined in *Action for Transport 2010*, and focus on improvements to Central Sydney. These were to:
- improve the environmental quality of public spaces within Central Sydney
 - improve ease of access and reliability of travel within Central Sydney
 - improve the reliability and efficiency of travel between areas east and west of Central Sydney.¹⁰⁷
- 4.8 These primary objectives have been restated in evidence to the Committee from government agencies, the former Premier and ministers, and by the then Chief Executive Officer of the CrossCity Motorway consortium.¹⁰⁸

¹⁰⁷ RTA, *The Cross City Tunnel Environmental Impact Statement, Volume 1*, August 2000, p3.14

¹⁰⁸ Submission 1, RTA, p1-2; Mr M Hannon, Acting Chief Executive, RTA, Evidence 6 December 2005, p1; Hon B Carr, former NSW Premier, Evidence, 6 December 2005, pp23-4; Mr P Sansom, Chief Executive Officer and Managing Director, CrossCity Motorway, Evidence, 6 December 2005, p76

Figure 4.1 Boundaries of Central Sydney

Source: *Cross City Tunnel Environmental Impact Statement*

Secondary objectives

4.9 The initial EIS also includes a list of secondary objectives of the project. The secondary objectives were to:

- identify and enhance the potential beneficial effects and to identify and manage potential adverse environmental impacts by:
 - conserving biological diversity and ecological integrity
 - eliminating the threat of serious or irreversible environmental damage

- improving air quality and reducing greenhouse gas emissions
- minimising use of energy and non-renewable resources.
- in relation to economic and financial outcomes:
 - to achieve acceptable economic and financial outcomes, namely:
 - ◆ that economic benefits exceed economic costs
 - ◆ minimisation of the financial cost to government.¹⁰⁹

4.10 As indicated in Chapter 2, *The Cross City Tunnel Environmental Impact Statement*, referred to as the ‘initial EIS’ to differentiate it from the ‘supplementary EIS’, was placed on public exhibition on 2 August 2000, for a period of approximately two months.¹¹⁰

Initial environmental assessment process

4.11 The initial EIS states that:

[t]hroughout the course of the development and assessment of the proposal, the primary and secondary objectives were open to change and refinement. This iterative approach permitted government authorities in the planning, provision or management of transport infrastructure to contribute to the refinement of the objectives.¹¹¹

4.12 In the initial EIS, key areas that have since emerged as concerns for the community were assessed in terms of their contribution to achieving the primary objectives of the project. These include toll levels, traffic levels and traffic management measures.

4.13 These are discussed in further detail in relation to the contract negotiations and public consultation in Chapters 5 and 6, respectively. The Committee thinks it is important to note, however, that these aspects of the Cross City Tunnel project were linked quite clearly to achieving the primary objectives of the project in the initial EIS.

Conclusion

4.14 The Committee believes that the Cross City Tunnel project that was approved following the initial environmental planning and assessment provided a better balance between the primary objectives and toll levels, traffic management and traffic levels. Moreover, from evidence presented in Chapter 6 (Community Involvement) it appears that the initially approved Cross City Tunnel was generally accepted by the community.

4.15 The Committee is concerned that the secondary objective of ‘minimisation of the financial cost to government’, which the Committee understands effectively meant ‘no cost to government’, was the overriding concern at the time of the preparation and assessment of the supplementary EIS. This appears to have had an adverse impact on both the primary objectives of the project, and on the acceptance of the Cross City Tunnel by the community.

¹⁰⁹ RTA, *The Cross City Tunnel Environmental Impact Statement, Volume 1*, August 2000, p3.15

¹¹⁰ Submission 1, p11

¹¹¹ RTA, *The Cross City Tunnel Environmental Impact Statement, Volume 1*, August 2000, p3.15

4.16 Subsequent alterations to tolls, traffic levels and traffic management measures were made both during and following the supplementary environmental assessment process. These changes appear to have occurred without the depth of analysis or assessment that was undertaken for the initial EIS.

Supplementary environmental assessment process

4.17 The *Cross City Tunnel Supplementary Environmental Impact Statement* (SEIS) was developed following approval by the Government of the non-conforming bid submitted by CrossCity Motorway.

4.18 The objectives stated in the SEIS were:

- to enhance the environmental and transport-related benefits
- to reduce the construction impacts
- to maintain acceptable economic and financial outcomes.¹¹²

4.19 The Director General's Report produced by the Department of Planning prior to the Minister's approval of the project indicates that, with the imposition of additional conditions of approval, the 'long 80 tunnel' model would result in 'similar strategic and environmental and transport benefits'¹¹³ compared to the original 'long' model approved in 2001.

4.20 However, the report also states that:

While the Department notes that the modifications would result in slight overall reductions to traffic volumes of CBD surface streets, some streets would experience significant increases.¹¹⁴

4.21 The SEIS states that the 'long 80 tunnel' model 'would generate substantially more operating revenue,'¹¹⁵ (through the higher speed and the increased length of the tunnel attracting more users, and therefore greater potential traffic volumes), with the likelihood that it would be constructed with no cost to Government.

4.22 The Committee acknowledges that the selection of the 'long 80 tunnel' model for the construction of the tunnel has resulted in a sophisticated and technically superior tunnel, and that the construction impacts of this tunnel were fewer than those that would have occurred with the original proposal.

¹¹² RTA, *The Cross City Tunnel: Supplementary Environmental Impact Statement, Volume 1*, July 2002, pS4

¹¹³ Department of Planning, *Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, December 2002, p36

¹¹⁴ Department of Planning, *Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, December 2002, p36

¹¹⁵ RTA, *The Cross City Tunnel Supplementary Environmental Impact Statement, Volume 1*, July 2002, p2-3

- 4.23** Elsewhere in this report, the policy of ‘no net cost to Government’ and its impact on the Cross City Tunnel project in terms of contract negotiations have been examined. It is important to point out at this point that the ‘no net cost to Government’ policy has implications for planning and environmental outcomes of major projects.
- 4.24** The Committee understands that a view has formed in the community, and in the current Government, that the ‘no net cost to government’ imperative has adversely impacted on the Cross City Tunnel project’s primary objectives. The Committee is concerned that this appears to be borne out by examination of the SEIS, where substantive changes were made to tolls, traffic levels and traffic management measures without adequate analysis of the impact on the primary goals of the project.
- 4.25** The initial EIS is explicit in stating that the toll level is important not only in terms of financial viability of the project, but also in terms of the strategic objectives of removing cars from the city centre without encouraging mode shift (away from public transport) or inducing traffic (that is, encouraging trips that would otherwise not be undertaken were the tunnel not available, or available at a higher price). The supplementary EIS does not re-examine this issue in any detail, despite the change to differential tolling for heavy vehicles.

Conclusions

- 4.26** While agreeing that competition and innovation are desirable aspects of private sector participation in the provision of public infrastructure, the Committee agrees that toll levels should be based on a range of considerations including financial objectives, strategic transport objectives and government policies on the reduction or management of vehicle movements. It would be preferable for the community to comment on toll levels proposed prior to the environmental planning and approval process occurring and prior to contract negotiations where toll levels would be set. These factors suggest that consideration of toll levels in the EIS process should remain.
- 4.27** It is unclear at this stage whether the government policy of generally requiring EIS process before going to tender will remain following the recent changes to relevant legislation, the establishment of the Infrastructure Implementation Group and the review of the *Working with Government: Guidelines for Privately Financed Projects*. If it does not, then alternative measures should be in place to ensure that consultation and sensitivity testing be central factors in the setting of toll levels.

Recommendation 2

That toll levels for future toll roads should not be assessed only in terms of what the private sector offers during tender processes and contract negotiations. Mechanisms must be in place to ensure that appropriate environmental and planning consideration is given, in particular, to the impact of tolls and tolling regimes on mode shift, traffic inducement, and value for money for the motorist.

Relationship between planning assessment, contract negotiation and government decision making processes

4.28 The Committee inquired whether the alignment of planning and assessment processes with internal government approval processes and overarching government policy imperatives impacted on the Cross City Tunnel project. Professor David Richmond, Special Advisor, Infrastructure Implementation Group, stated that:

Because the RTA was working to an imperative of no cost to government it was very difficult to have a wider consideration of some of the other policy objectives in the project as it progressed. Whilst that may or may not have been an issue at the time, certainly in retrospect it would have been better if there had been some more discussion about some of the issues that are now the subject of this report and the subject of your inquiries. Our view is that if we make sure that there is an appropriate linkage between what is happening in the *Environmental Planning and Assessment Act* processes and the Government is actually seeing the impact of likely planning conditions, you will get more sensible trade-offs between things like how much will be the toll, how much will the Government put into the project. That recommendation has been adopted. The Minister for Planning needs to stand outside those processes, but he is the one who needs to be able to say, "These are the kinds of planning conditions." The Government then says, "How are we going to respond to that? Maybe we need to change the project. Maybe we need to put some more money in or do something different." That opportunity would be there in the processes that we have talked about and that is where it should lie. It should be a Cabinet decision about those sorts of issues.¹¹⁶

4.29 The Infrastructure Implementation Group's *Review of Motorways* recommends a strengthening of the relationship between the environmental planning assessment and approval process and government decision making, in the broader context of improved alignment of projects with strategic plans.

4.30 The IIG *Review* recommends, based on a review of the Cross City Tunnel project, that 'basic technical and environmental standards applied to the project should not be varied without Cabinet approval' and further that "Treasury should ensure the RTA has met all conditions of Cabinet approval, including value for money overall and for the user prior to execution of the contract and the Treasurer signing off under the *PAFA Act*."¹¹⁷

4.31 The Committee is in general agreement with the recommendations relating to this in the IIG *Review*. The Committee notes that changes to the *EP&A Act* that were made in 2005, and will examine their future impact on the planning and development of major road infrastructure in the second report.

¹¹⁶ Professor D Richmond, Special Advisor, Infrastructure Implementation Group, NSW Premier's Department, Evidence, Thursday 2 February 2006, p66

¹¹⁷ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p18

The environmental planning process and government guidelines for PFPs

4.32 The key reference document for government agencies entering into privately funded projects (PFPs), is the *Working with Government: Guidelines for Privately Financed Projects, (Working with Government Guidelines)* issued in November 2001. The Committee was informed that:

[g]uidelines had existed since 1987 for privately financed projects. A version was reissued in 1995 following a major review of the Public Accounts Committee [PAC] where they made certain recommendations concerning the conduct of privately financed projects. The *Working with Government Guidelines* was a major policy initiative introduced and promulgated in the year 2001. So there was an overlap in the conduct of the cross-city tunnel project between the 1995 guidance material and the 2001 Working with Government policy document.¹¹⁸

4.33 The aim of the *Working with Government Guidelines* is to:

provide a consistent, efficient, transparent and accountable set of processes and procedures need to select, assess and implement Privately Financed Projects (PFPs).¹¹⁹

4.34 While the Committee understands that the Cross City Tunnel project commenced prior to the publication of the *Working with Government Guidelines*, the selection of a preferred bidder, the supplementary environmental planning and assessment process, and contract negotiations, occurred after the Guidelines were adopted by the Government. Agencies involved in the Cross City Tunnel project, primarily the RTA and NSW Treasury, have stated that the project followed the Guidelines,¹²⁰ except for at the very preliminary stages.¹²¹

4.35 The *Working with Government Guidelines* state that:

The requirements of the *EP&A Act* necessitate careful consideration because they may impact on value for money in PFPs. The timing of private sector involvement in the environmental planning and assessment process is important.¹²²

4.36 According to the *Working with Government Guidelines*, it is preferable for agencies to gain planning approval for a project prior to a call for detailed proposals from the private sector: ‘any variations to the project proposed by a private party must then be approved under the *EP&A Act* before implementation.’¹²³ An alternative, though less desirable scenario, ‘where maximum scope for innovation is required,’¹²⁴ entails full environmental planning and

¹¹⁸ Mr Danny Graham, Director, Private Projects, NSW Treasury, Evidence, Wednesday 7 December 2005, p3

¹¹⁹ NSW Government, *Working with Government Guidelines*, November 2001, p1

¹²⁰ Submission 1, p1; Mr M Hannon, Evidence, Tuesday 6 December 2005, p1; Dr K Schott, Executive Director, Private Project and Asset Branch, NSW Treasury, Evidence, Wednesday, 7 December 2005, p2

¹²¹ Mr John Pierce, Secretary, NSW Treasury, Evidence, Wednesday, 1 February 2006, p50

¹²² NSW Government, *Working with Government Guidelines*, November 2001, p17

¹²³ NSW Government, *Working with Government Guidelines*, November 2001, p17

¹²⁴ NSW Government, *Working with Government Guidelines*, November 2001, p18

assessment occurring subsequent to finalisation of contractual agreement with the private sector participant.

4.37 Based on evidence presented to the Committee, it is clear that the procedure followed for the Cross City Tunnel project did not fall neatly into either of these scenarios, as the issue of non-conforming bids is not contemplated in the *Working with Government Guidelines*. The RTA indicated to the Committee that:

When you have a look at the flow chart of how the tender process and the planning approval process unfolded, one of the things that will strike you is that the actual planning approval was completed before the detailed proposals submitted for the project from the contract.¹²⁵

4.38 Despite this, non-conforming bids are a normal part of Government procurement processes. Prof Richmond, in his evidence before the Committee, pointed out the benefits of non conforming bids:

one of the opportunities—as I think has been shown in a number of situations—for innovation occurs when you provide the private sector with the opportunity to come up with alternatives. In this case there were some clear benefits to the project from the longer tunnel. I would not see the fact that the project changed as a result of an assessment by the private sector as necessarily a bad thing.¹²⁶

4.39 Mr Danny Graham, Director, Private Projects, NSW Treasury, stated that:

learning from both the M2 and Eastern Distributor roads, one of the biggest issues confronting those two projects was the environmental approval process. Coming out of those two projects we insisted that environmental approval conditions be obtained before bids are submitted. That was the case in the Cross City Tunnel. The development approval conditions were available to all bidders and were priced into their bids, so we were not going to face a situation where, after you have the preferred proponent bids in, you get the final development approval conditions.¹²⁷

4.40 The Committee accepts that, in accordance with the *Working with Government Guidelines*, the original EIS process was completed prior to the selection of a preferred bidder. However, the Committee notes that the subsequent selection of a non-conforming bid has raised the following additional issues:

- The *Working with Government Guidelines* do not address *whether* non-conforming bids can be called for, particularly following extensive environmental and planning consultation and approval for an agency-preferred project, nor *how* non-conforming bids should be treated.
- Selection of the bid resulted in the need to undertake a supplementary environmental planning assessment process, which attracted many more representations from the community (over 1,000 in the one month display period, in comparison with 196 for

¹²⁵ Mr L Wielinga, Evidence, Tuesday 6 December 2005, pp15-16

¹²⁶ Prof Richmond, Evidence, 2 February 2006, pp65-66

¹²⁷ Mr Graham, Director, Evidence, Wednesday, 7 December 2005, p5

the initial EIS two month display period), changed substantially the Conditions of Approval for the project, and added to the cost of the project.

- The negotiation of the contract for the Cross City Tunnel project occurred concurrent to the finalisation of the supplementary environmental assessment process, with a number of impacts – first, the final cost of the project could not be determined until costing for additional conditions of approval were established, and some of these costings were not available until after the finalisation of the Project Deed, leading to the need for a variation to the contract, the First Amendment Deed, and subsequently, to the 15c increase in the base toll. Second, the RTA and Treasury had 6 days between the Planning Approval (12 December 2002) and the signing of the Project Deed (18 December 2002), during which the Treasurer's approval under the *Public Authorities (Financial Arrangements) Act 1987 (PAFA Act)* had to be obtained (16 December 2002).

4.41 The *Working with Government Guidelines* state that:

When giving approval for the agency to finalise contract negotiations with the preferred proponent, the BCC [Budget Committee of Cabinet] will need to be assured that it is unlikely that any new issues will be raised that may materially alter the respective positions of the Government and the preferred bidder.

Agencies must remain aware of any potential new issues, particularly relating to other government aspects such as environmental and planning approvals and taxation treatment. ...

If there are any significant variations from the detailed proposal approved by the BCC, the negotiated agreement should be referred back to them for consideration and, if favourable, final endorsement. The preferred bidder should not be made public until the BCC has endorsed the final contract.¹²⁸

4.42 The Budget Committee of Cabinet approval for the preferred tenderer, and for the non-conforming 'long-80 tunnel' option, occurred in February 2002,¹²⁹ prior to the supplementary environmental planning and assessment and approval, granted in December 2002. The Budget Committee of Cabinet were not given the opportunity to review the proposal following the final planning approval, or prior to the RTA entering into the project deed with CrossCity Motorway ten months later, contrary to the *Working with Government Guidelines*.¹³⁰

4.43 The Committee notes with concern that the environmental planning and assessment processes for the Lane Cove Tunnel and M7 road tollway projects were finalised in advance of selection of a preferred proponent, and, in both cases, approximately 12 months prior to finalisation of contractual arrangements.¹³¹

¹²⁸ NSW Government, *Working with Government Guidelines*, November 2001, p26

¹²⁹ Submission 1, p11

¹³⁰ NSW Government, *Working with Government Guidelines*, November 2001, Table 3.1, p16

¹³¹ For information on these projects see the RTA website, www.rta.nsw.gov.au

4.44 The Committee's concern was shared by Professor Richmond, who said during his evidence that:

any changes need to be carefully considered. What we have tried to suggest, and the Government has accepted this view, is that when you do get those kinds of changes it is really appropriate that it comes back to the Government's core deliberating and decision-making body, the Cabinet, to look at it more broadly. Not just to say, "We get a better project and it does not cost any money", but to actually say, "What are the other implications? What does it do to the road system?"¹³²

Conclusion

4.45 The Committee considers that insufficient detail in the *Working with Government Guidelines* and the general nature of the document that arises from its appeal to a range of audiences, limits its effectiveness for agencies. In evidence before the Committee the Auditor General commented that, 'Certainly one of the areas of concern we had was that the *Working with Government Guidelines* document was serving many purposes.'¹³³

4.46 The Committee believes that a separate, more detailed, policy on privately financed projects should be developed solely for government agencies. The policy should provide clear and unequivocal processes and procedures to be adhered to by agencies entering into privately financed projects, and provide avenues for escalation of issues where these may require variation from the standard processes and procedures.

4.47 The Committee understands that the *Working with Government Guidelines* are currently under review. The Committee wishes to ensure that concerns emerging from assessments of the Cross City Tunnel and other projects are addressed as part of this review, and that the information available to agencies is authoritative, consistent and current.

4.48 The Committee considers that the Government needs to clarify priorities, in particular, whether there is to be a priority placed on flexibility to ensure maximum innovation or whether greater certainty is required at the outset, in entering into privately financed projects and provide approvals at appropriate stages and ensure that agencies are clear about which priority prevails.

4.49 The *Working with Government Guidelines* are not mandatory and this meant that the RTA did not refer the revised 'long 80 tunnel' project to the Budget Committee of Cabinet.

¹³² Professor Richmond, Evidence, Thursday 2 February 2006, p66

¹³³ Mr Robert Sendt, NSW Auditor General, Evidence, Thursday 2 February 2006, p51

Recommendation 3

That the review of the *Working with Government: Guidelines for Privately Financed Projects* consider specific issues raised in relation to the Cross City Tunnel project, including:

- process to be followed where both conforming and non-conforming bids are to be considered by agencies contemplating the use of privately financed projects
- clearer guidance on the role of the environmental planning and assessment process and its relationship to other processes and procedures required in entering into privately financed projects.

Recommendation 4

That a separate, more detailed, policy on privately financed projects be developed to guide government agencies. This will be further considered in the Committee's second report.

Recommendation 5

That both the *Working with Government: Guidelines for Privately Financed Projects* and the detailed policy on privately financed projects include review mechanisms to ensure that changes to relevant government policy, changes to key agencies and structures, and significant issues arising out of project reviews of privately financed projects can be incorporated in an efficient and timely manner.

Strategic Planning**Strategic planning for Sydney's future transport needs**

4.50 The Committee heard evidence in relation to providing for Sydney's future transport needs. The Hon Nick Greiner, in response to a question about the strategic planning in relation to rail commented that:

You might say the overall public sector has not had an adequate vision. I think that is a fair comment.¹³⁴

4.51 Mr Greiner's view is supported by reference to the proposed projects listed in Action for Transport 2010, a considerable number of which will not have been completed within the projected timeframes, and of those that have, the majority are user-pays privately financed toll roads, including the Cross City Tunnel.¹³⁵ The balance of projects that will not be completed on time are publicly funded public transport infrastructure projects.

¹³⁴ Hon Nick Greiner, former NSW Premier, Evidence, 7 December 2005, p49

¹³⁵ P Twiney & J Rudd, *Transport Planning for Congestion in Sydney*, conference paper presented at the Australian Institute of Traffic Planning and Management 2005 National Conference, 27-29 July 2005, www.aitpm.org.au/conference_2005/proceeding_index.htm (accessed 11 January 2006)

4.52 The Committee finds the evident lack of strategic planning is a serious shortcoming. It is noted that the first recommendation of the IIG *Review* includes the requirement that the Government ‘determines that the relevant project ... should be included in the State Infrastructure Strategy consistent with government priorities.’¹³⁶

4.53 The Hon Craig Knowles, former Minister for Planning and former Minister for Infrastructure, Planning and Natural Resources, made the following remarks in relation to strategic transport and infrastructure planning:

Ultimately, strategic planning should, in my view, rest with the lead agencies but always bringing in the external knowledge of those organisations that make up, if you like, the family of strategic planning institutions, the academic institutions, all of those sorts of organisations ... The plan is an iterative process. It will change. It will change as the dynamics and demographics of our city change, and so it should.¹³⁷

4.54 The Committee recognises the iterative nature of strategic planning and the importance of both community and stakeholder input, as well as leadership. The Committee recognises in addition that the Government has implemented substantial change in relation to strategic infrastructure and planning with the long awaited Metropolitan Strategy, the reintroduction of a unit within Premier’s Department to deal with strategic infrastructure issues, changes to existing legislation and the introduction of new legislation to better enable Government to manage and plan for the future.

4.55 The Committee supports the Government’s recently stated commitment to ensuring that strategic planning and infrastructure are now being given high priority and in particular notes the Premier’s statement that:

A State Infrastructure Strategy, with a 10 year horizon revised annually, is being prepared – and will be publicly released later this year. This Strategy aligns with the Government’s priorities for infrastructure expenditure within the broader metropolitan and regional strategies...¹³⁸

Planning and assessment of individual projects within a strategic framework

4.56 The Committee considers that there should be greater facility for the consideration of strategic planning in the planning and assessment of individual projects.

4.57 Presently, as Mr Sam Haddad, Director General, Department of Planning, explained:

If there is a proponent who is proposing to undertake a particular activity, we are duly bound by law to assess that particular proposal and to give a recommendation to government on that particular proposal. ... we are bound to provide advice to that specific proposed activity that is before us.¹³⁹

¹³⁶ IIG *Review*, December 2005, p7

¹³⁷ Hon Craig Knowles, Evidence, Friday 3 February 2006, p4

¹³⁸ Hon Morris Iemma, Premier, answer to written questions from the Committee, 13 February 2006, p2

¹³⁹ Mr Sam Haddad, Director General, Department of Planning, Evidence, Wednesday 7 December 2005, p30

4.58 The RTA's initial EIS for the Cross City Tunnel project contains both a list of strategic objectives and consideration of strategic alternatives to construction of the Cross City Tunnel and associated surface works. These alternatives included:

- minimal intervention ('do nothing approach')
- demand management
- public transport
- other road infrastructure.¹⁴⁰

4.59 The Director General's Report on the initial EIS states that:

A number of strategic options were identified to broadly achieve the objectives of the proposal. The strategic options were minimal intervention, management of travel demand, public transport and road-based infrastructure. The preferred option is to provide additional road-based infrastructure, which would be supplemented by improving provision of public transport, implementing demand management measures and implementing local area traffic management. The Cross City Tunnel was selected as the preferred option for satisfying the identified primary and secondary objectives. Substantial environmental and travel efficiency benefits would result from the implementation of the option and because the option could be constructed at no cost to the Government, the benefits would be realised within the medium term.¹⁴¹

4.60 The Committee notes that the RTA, as the proponent of the project, was required to consider in its EIS strategic alternatives that fall outside its area of expertise. There are two key issues of importance here:

- in undertaking an EIS, an agency has already made a considerable commitment to a project, and may not therefore be in the best position to determine priorities or viable alternatives outside their area of expertise and authority
- when the Department of Planning assesses the proponent's project proposal it must make that assessment on the basis of that project – it cannot recommend that a different manner of meeting the stated objectives would be more appropriate.

4.61 These considerations and decisions are properly a matter of government policy, and should be part of an overall strategy. This should be done at the level of the Executive, and should be done as part of an overall strategy.

4.62 The RTA, as the roads authority, is not best placed to consider the overall transport needs of the city, and may indeed be in conflict with other transport agencies. The Department of Planning, under the *EP&A* legislation (as it was then), was required to consider items before it on an ad hoc basis. The Committee is of the view that this adds needless expense to the cost of preparation of an EIS, and that energies in this direction would be better placed within a strategic planning body capable and resourced to assess proposals. It should not be the responsibility of proponent agencies to consider alternative options outside the scope of their expertise or authority.

¹⁴⁰ RTA, *The Cross City Tunnel Environmental Impact Statement, Volume 1*, August 2000, p4.1

¹⁴¹ Department of Urban Affairs and Planning, *Proposed Cross City Tunnel, Kings Cross to Darling Harbour: Director-General's Report*, September 2001, p6

- 4.63 This view is reflected to some degree in the Director General's Report for the initial EIS, which states:

The Department considers that for the CCT [Cross City Tunnel] to achieve significant and noticeable long-term improvements for traffic, public transport, pedestrians and cyclists, it cannot rely on the infrastructure alone nor in isolation. A highly cohesive and pro-active co-ordination of all key transport decision makers in the CBD including the Sydney and South Sydney Councils, STA [State Transit Authority], Sydney Buses, DoT [Department of Transport] and the RTA is required for this project to obtain its stated benefits. That is, for this project to substantially (rather than incrementally) meet its objectives, and that of State Government strategic policy, there must be a strong commitment to the achievement of substantial accompanying public transport, pedestrian and cyclist initiatives and for these to be implemented as an integrated part of the project.¹⁴²

- 4.64 The Director-General's Report further states:

However as indicated in the [Planning] Department's EIS *Guideline for the Preparation of an EIS for Roads and Related Facilities*, it is not the role of a project EIS to undertake a strategic environmental assessment of transport plans or policies. The assessment must therefore focus on the merits of the proposal as submitted for approval by the RTA.¹⁴³

Conclusion

- 4.65 While the agencies that gave evidence to the inquiry indicated that they followed Government policy in the consideration, planning and assessment of the Cross City Tunnel, the Committee considers that not enough attention was given to strategic planning. This is despite a number of attempts to provide a strategic framework.
- 4.66 The Committee believes that the deficiencies in strategic planning need to be urgently addressed.

Further investigation

- 4.67 In its final report, the Committee will examine in further detail the vital role of strategic planning in ensuring that major infrastructure projects are delivered not just on the basis that they are amenable to delivery through PFP, but that decision is based on strategic planning decisions.

¹⁴² Department of Urban Affairs and Planning, *Proposed Cross City Tunnel, Kings Cross to Darling Harbour: Director-General's Report*, September 2001, p23

¹⁴³ Department of Urban Affairs and Planning, *Proposed Cross City Tunnel, Kings Cross to Darling Harbour: Director-General's Report*, September 2001, p26