

Joint Select Committee on the Cross City Tunnel

First Report

Cross City Tunnel

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.

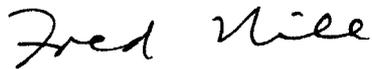
I am concerned that the draft report and details of the final report of this Committee were leaked to the media before the Committee had considered them. The leaking of reports before they have been discussed and adopted can lead to confusion over the Committee's consensual view and does not contribute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

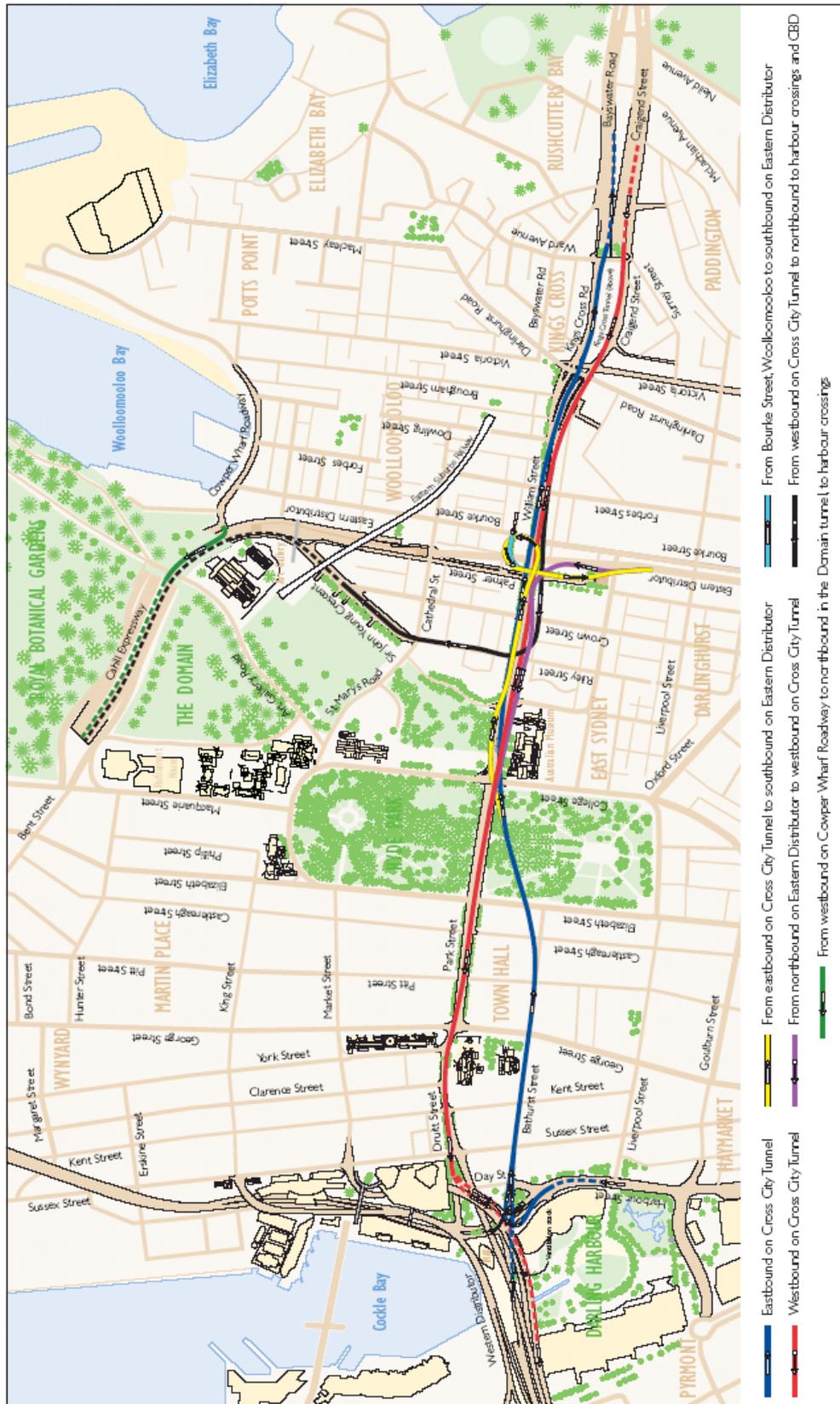
Date	Event
1990	The State Government and City of Sydney Council propose a tunnel under Park Street leading to an underground car park and bus interchange.
1995	City of Sydney Council propose a tunnel from the Western Distributor under Market Street and Hyde Park connecting to William Street near Boomerang 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.

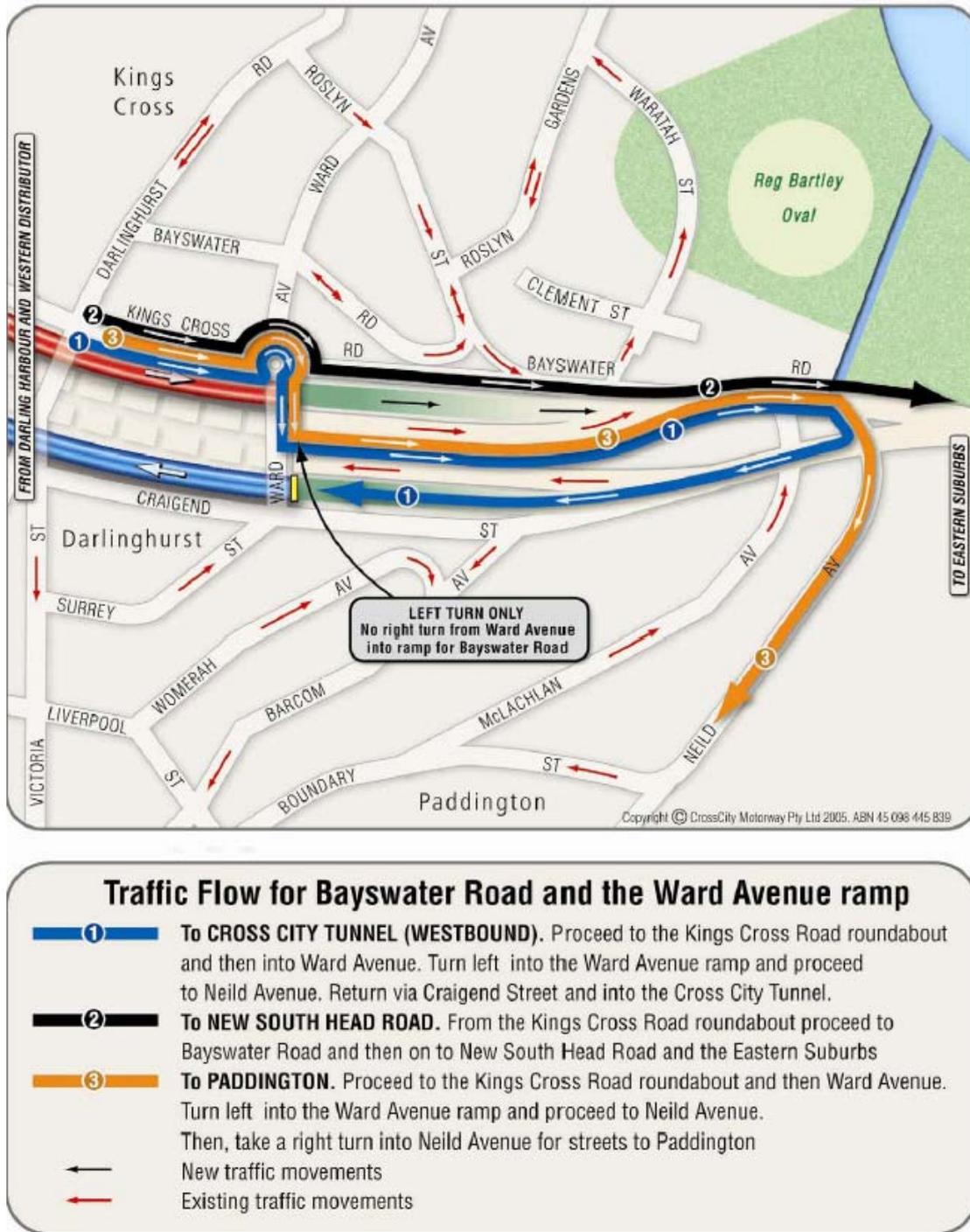
4 Nov 2005	Dispute of the validity of the claim of privilege on documents received on 1 November 2005 from the Minister for Roads, the Cabinet Office and NSW Treasury received by the Clerk of the Legislative Council. According to standing order, the documents were released to Sir Laurence Street for 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



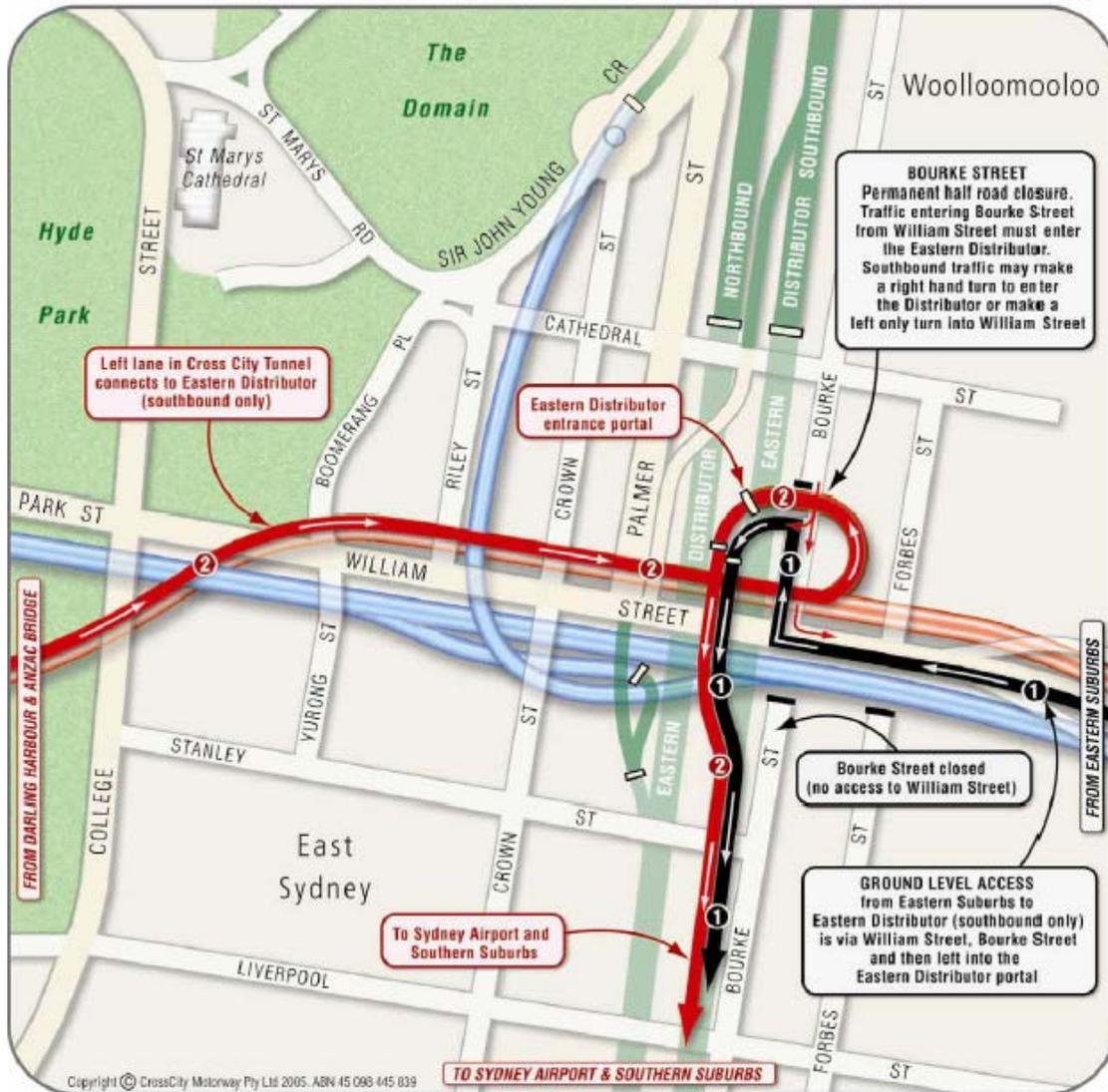
Source: Cross City Tunnel Supplementary Environmental Impact Statement

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

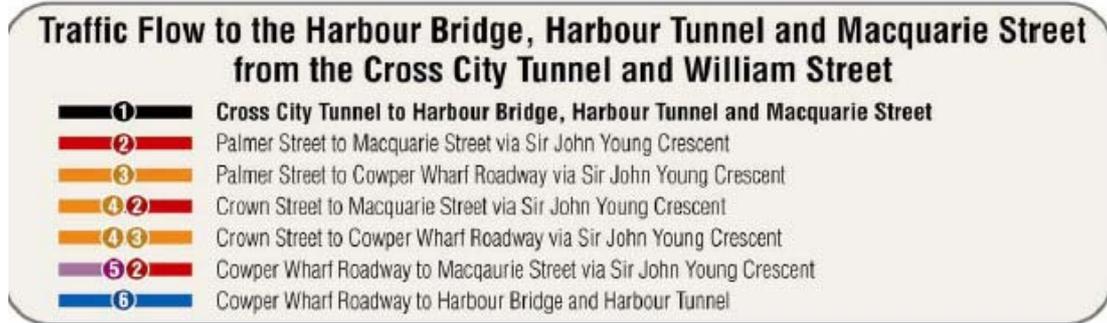
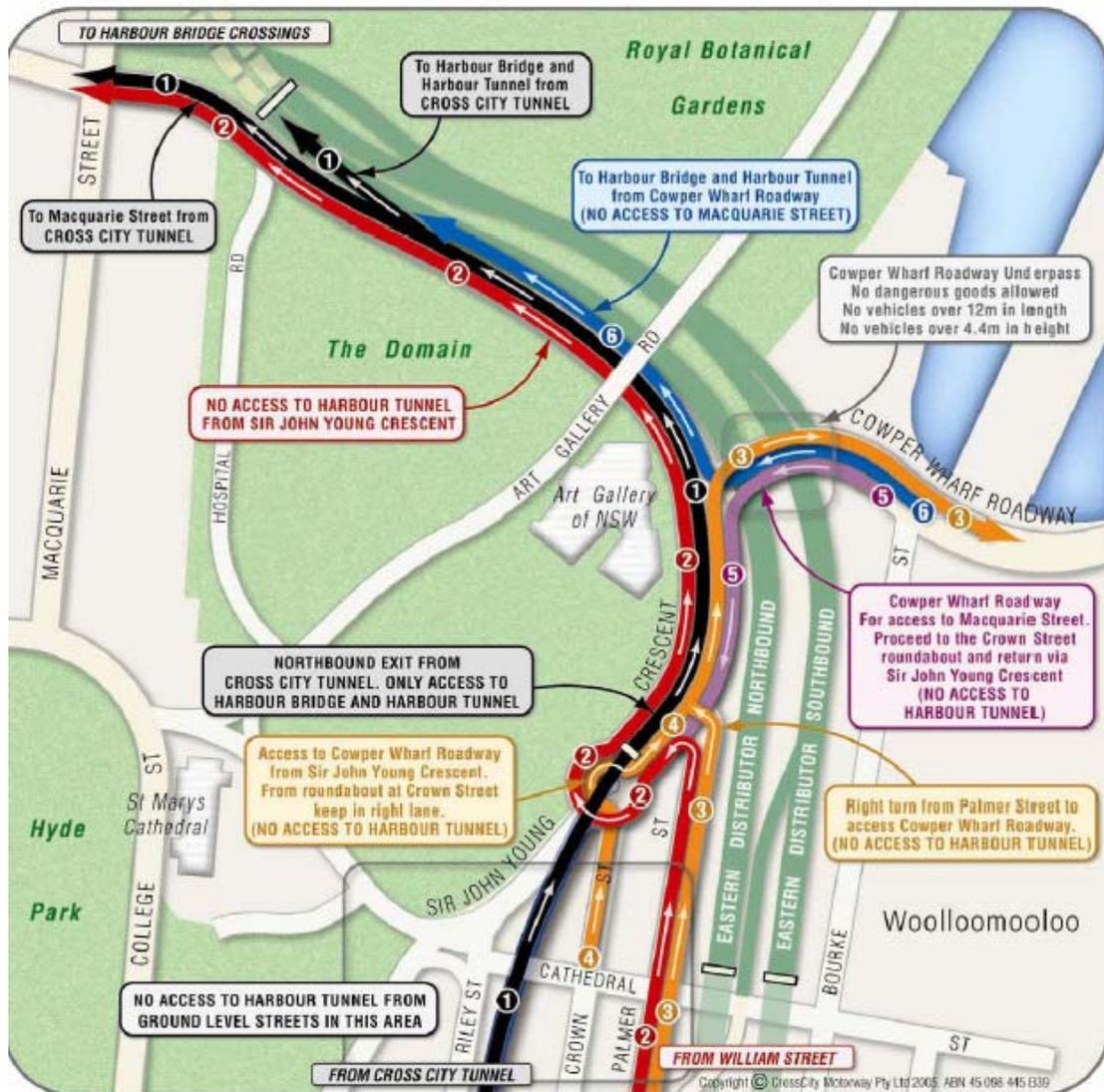


Traffic Flow from the Eastern Suburbs via William Street (above ground) to the Eastern Distributor and from Darling Harbour and Western Distributor to the Eastern Distributor via the CROSS CITY TUNNEL

- ①** Eastern Suburbs to the Eastern Distributor (southbound) via William Street (above ground route)
- ②** Darling Harbour and Western Distributor to the Eastern Distributor (southbound) via the CROSS CITY TUNNEL

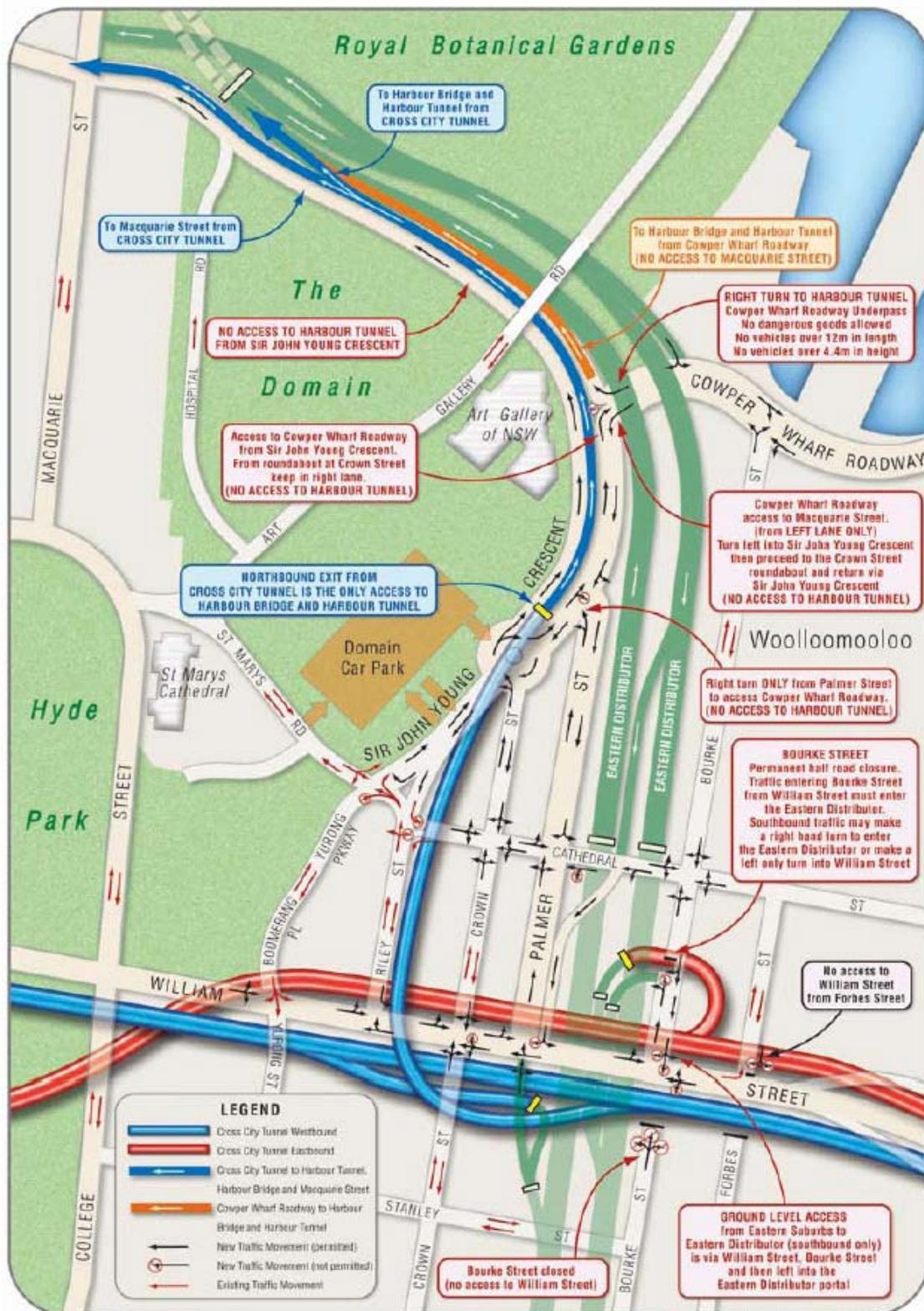
Source: www.rta.nsw.gov.au/newsevents/downloads/2005_05_ct_maps_dl1.html

Figure 2.5 Sir John Young Crescent



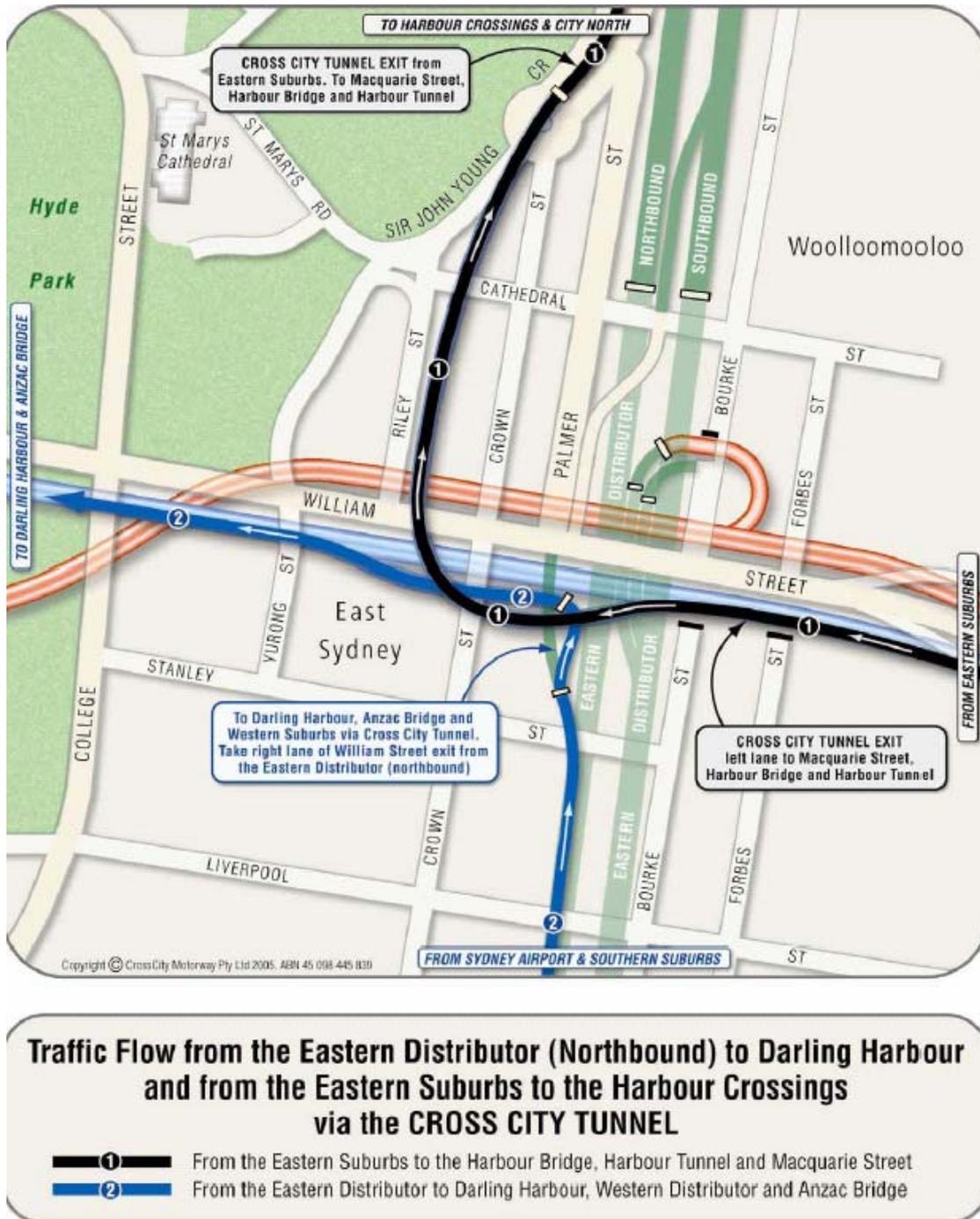
Source: www.rta.nsw.gov.au/newsrevents/downloads/2005_05_ct_maps_d11.html

Figure 2.6 Woolloomooloo



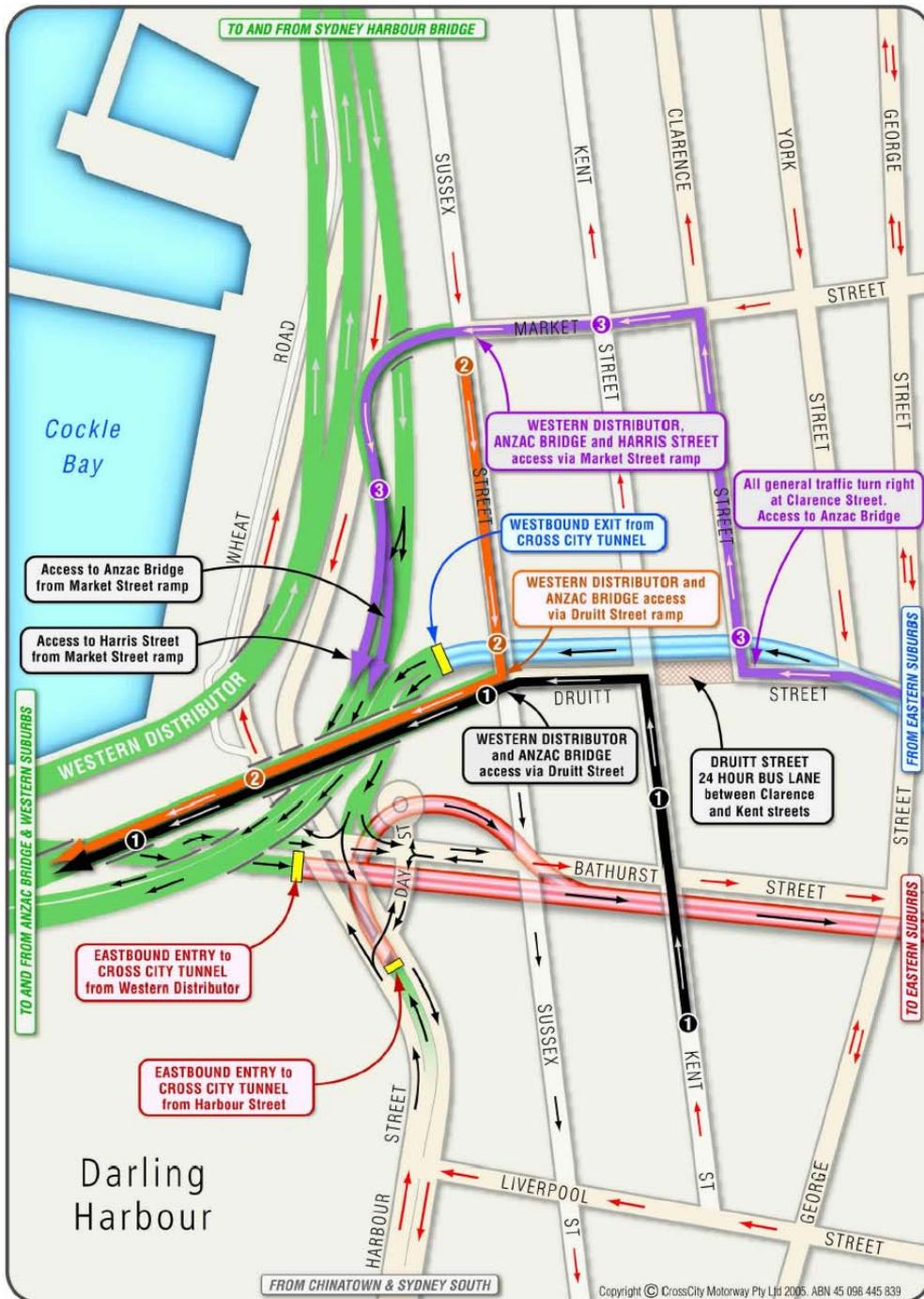
Source: www.rta.nsw.gov.au/newsevents/downloads/2005_05_cct_maps_d11.html

Figure 2.7 Eastern Distributor northbound



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

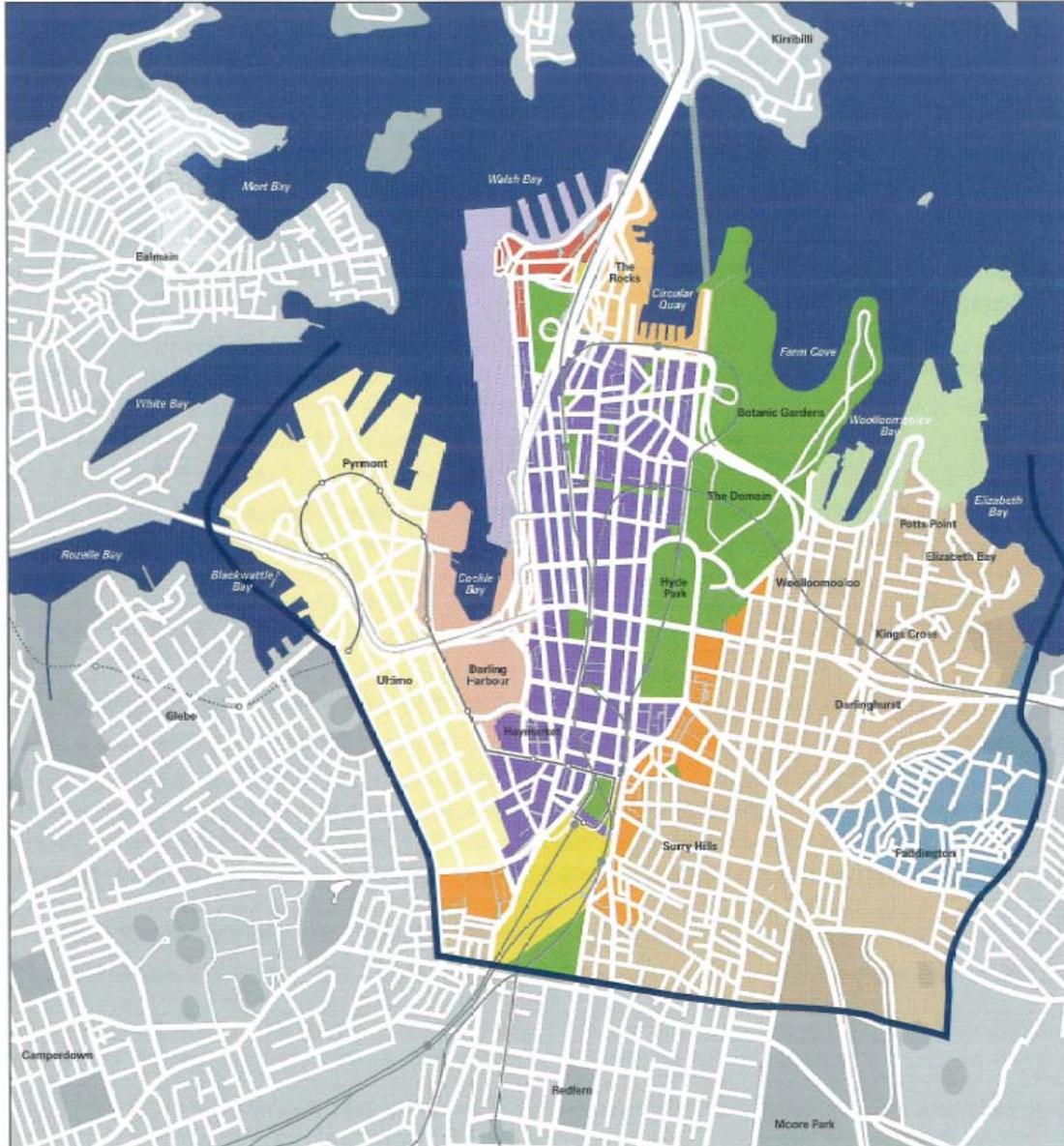
- 4.5 The environmental assessment process provides a key opportunity for the articulation of a project's objectives and how they are hoped to be achieved through the project's delivery. They are central to the assessment of the project's suitability.
- 4.6 It is of some concern to the Committee that 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

Chapter 5 Negotiation of contracts and project tendering methodology

The Committee's terms of reference require it to address the role of government agencies in relation to the negotiation of the contract, and the methodology used by the Roads and Traffic Authority (RTA) for the project tendering and subsequent contract negotiation. The RTA was the principal Government agency involved in the negotiation of the various contracts which form the basis of the project. This chapter examines the processes used by the RTA in the negotiation and tendering process and the involvement of other Government agencies in those processes.

Role of government agencies in the negotiation of the contracts

5.1 The Cross City Tunnel project is complex and has wide ranging impacts in a variety of areas. A large number of government and other organisations were involved to some extent in the planning and development process. There were also multiple occasions during the project when input from the community was sought, which this Report covers in Chapter 6.

The Roads and Traffic Authority

5.2 The RTA is the lead Government agency for the Cross City Tunnel project. The RTA prepared the initial proposal (the 'short tunnel'), detailed in the October 1998 document *Cross City Tunnel, Improving the Heart of Sydney*¹⁴⁴, released by then Minister for Roads the Hon Carl Scully, and then Premier the Hon Bob Carr.

5.3 The tunnel model envisaged in a subsequent document, the *Cross City Tunnel – Environmental Statement*, released in September 1999, included alterations to the Government's original model and incorporated features of Sydney City Council's preferred model.¹⁴⁵ The preparation for the Environmental Impact Statement (EIS) for this model (the 'long tunnel') was coordinated by the RTA. The RTA also conducted the public consultation process associated with this EIS and prepared the 2001 *Cross City Tunnel Representations Report*, summarising comments received during the consultation process, and the 2001 *Cross City Tunnel Preferred Activity Report* detailing the RTA's preferred project option, for the information and consideration of the Department of Planning.

5.4 Following a number of modifications to the initial proposal that arose as a result of the RTA accepting the 'long 80 tunnel' proposal of the CrossCity Motorway Consortium, the RTA was also responsible for preparing the 2002 *Cross City Tunnel Supplementary Environmental Impact Statement*, conducting the associated public consultation process and producing the 2002 *Cross City Tunnel Supplementary Representations Report* and associated 2002 *Cross City Tunnel Preferred Activity Report*.¹⁴⁶

¹⁴⁴ Submission 1, Roads and Traffic Authority (RTA), p11

¹⁴⁵ Submission 1, p11

¹⁴⁶ Submission 1, p4

- 5.5 Simultaneous with the development and planning process for the Cross City Tunnel, the RTA was responsible for identifying consortia interested in financing, designing, constructing, operating and maintaining the tunnel, and selecting a successful proposal. An Evaluation Panel and a Review Panel were established to determine a short list of consortia, with similar panels then used to assess the detailed shortlisted proposals. The RTA then conducted contract negotiations with the successful consortium.¹⁴⁷

The Department of Planning (formerly Department of Urban Affairs and Planning, formerly Department of Infrastructure Planning and Natural Resources)

- 5.6 The Department of Planning issued the requirements for the preparation of the initial EIS, and assessed the information provided by the RTA following their submission of the 2001 *Cross City Tunnel Representations Report* and the 2001 *Cross City Tunnel Preferred Activity Report*.

- 5.7 The Minister for Planning issued the planning approval for the initial project in October 2001, which included 240 Planning Conditions of Approval.

- 5.8 The Department of Planning also assessed the *Cross City Tunnel Supplementary Environmental Impact Statement*, following the submission by the RTA of the 2002 *Cross City Tunnel Supplementary Representations Report* and the 2002 *Cross City Tunnel Preferred Activity Report* for the modified 'long 80 tunnel' project.

- 5.9 The Minister for Planning issued the planning approval for the modified project in December 2002, which included a total of 292 Planning Conditions of Approval, most of which were the same as those for the initial project.¹⁴⁸

Office of Financial Management and Treasury Corporation

- 5.10 The Office of Financial Management of NSW Treasury is 'the arm of NSW Treasury that advises the Treasurer and the NSW Government on state financial management policy and reporting, and on economic conditions and issues.'¹⁴⁹ Treasury Corporation (T-Corp) is 'the central financing authority for the New South Wales public sector'¹⁵⁰.

- 5.11 Treasury and T-Corp advised the RTA on financial issues throughout the project's tender and negotiation process. Representatives from Treasury were on the RTA's Evaluation Panel and Review Panel for consideration of consortia and for consideration of detailed proposals from shortlisted consortia.

¹⁴⁷ Submission 1, p11

¹⁴⁸ While there are a total of 292 Planning Conditions of Approval listed in Schedule 2 of the *Environmental Planning and Assessment Act 1979: Modification of an Approval granted under section 115B of the Environmental Planning and Assessment Act 1979*, 27 of them exist only as numbers, with the substance deleted. This is presumably to avoid confusion when comparing the Planning Conditions of Approval of the 'long tunnel' with those of the modified 'long 80 tunnel'.

¹⁴⁹ Office of Financial Management website www.treasury.nsw.gov.au

¹⁵⁰ Treasury Corporation website, www.tcorp.nsw.gov.au

5.12 Treasury and T-Corp provided advice to the RTA on 'key decisions regarding financial aspects of the transaction during the tender and negotiation processes.'¹⁵¹

5.13 Mr John Pierce, Secretary of Treasury, was more specific in his evidence to the Committee:

We are very involved in the process up to the point of the Government's accepting a preferred proponent, participating in evaluation panels and so on. At the point of a recommendation going to the budget committee—that being the result of the evaluation, recommending that it go ahead as a PFP and identifying the preferred proponent—the responsibility for finalising the contracts and negotiations with the preferred proponent tends to rest with the agency responsible, in this case the RTA.

...

We tend to be very involved up to the decision about the preferred proponent and less involved when it gets down to the nitty gritty legal things.¹⁵²

5.14 The Treasurer issued approval to enter into the project as a joint financing arrangement, as required by the *Public Authorities (Financial Arrangements) Act 1987*. This approval was issued in December 2002, and further approval was issued in December 2004 when the base toll was raised by 15 cents.

Department of Environment and Conservation (includes Environment Protection Authority)

5.15 A submission from the then Environment Protection Authority (EPA) was attached to the requirements for the preparation of the initial EIS, issued by the Director General of the then Department of Urban Affairs and Planning to the RTA.

5.16 The EPA also provided input to the RTA on the initial environmental impact statement, and input to the Department of Planning in relation to the Planning Conditions of Approval issued to the RTA.¹⁵³

5.17 Ms Lisa Corbyn, Director General of the Department of Environment and Conservation (DEC), described the involvement of DEC and the then EPA:

The Department of Environment and Conservation's main role as a regulator is twofold: First, advising the Department of Planning on air quality, noise and water quality issues, on the environmental assessments and on the conditions of consent. Second, issuing the environment protection licence for the construction of the cross-city tunnel.¹⁵⁴

¹⁵¹ Submission 1, p13

¹⁵² Mr John Pierce, Secretary, NSW Treasury, Evidence, 1 February 2006, p53

¹⁵³ Submission 1, p13

¹⁵⁴ Ms Lisa Corbyn, Director General, Department of Environment and Conservation, Evidence, 7 December 2005, p20

Council of the City of Sydney

- 5.18** Sydney City Council prepared and released the *Cross City Tunnel Alternative Scheme* in April 1999, a major feature of which included extending the tunnel under William Street to the Kings Cross Tunnel.
- 5.19** Many of the features of this proposal were incorporated into the RTA's 'long tunnel' proposal, effectively doubling the length of the tunnel. Sydney City Council worked with the RTA during the preparation of the initial 'long tunnel' proposal.
- 5.20** Sydney City Council were also party to the Gateways Agreement with the RTA, which proposed major urban design changes to William Street as part of a broader plan for improving the urban design of major entry roads to the CBD.¹⁵⁵

South Sydney Council

- 5.21** The South Sydney Council no longer exists as an entity, having been incorporated into the Sydney City Council.
- 5.22** South Sydney Council developed a program for the 'Revitalisation of William Street' and was a member of the William Street Project Steering Committee. The William Street Project Steering Committee membership was comprised of representatives from South Sydney Council, Sydney City Council, RTA, the William Street Taskforce, and the Department of Planning, and was established to coordinate efforts and plans aimed at improving the urban amenity of William Street.¹⁵⁶

Ministry of Transport (formerly Department of Transport) and State Transit Authority

- 5.23** The Department of Transport provided input into traffic and public transport arrangements associated with the project.
- 5.24** Mr Jim Glasson, Director General of the Ministry of Transport, in evidence to the Committee said that, while the Ministry had no direct role in the contract negotiation, the Department had two principal roles, being:

[C]ommenting on the environmental impact statements, both the original and the subsequent amended one, and participation within the public transport committee that was formed as part of the project.¹⁵⁷

- 5.25** Mr Roger Wilson, Acting Chief Executive of the State Transit Authority, in evidence to the Committee said that 'State Transit has had a long involvement with the project by participation as a stakeholder in various statutory and consultative planning processes.'¹⁵⁸

¹⁵⁵ Submission 1, p12

¹⁵⁶ Submission 1, p7

¹⁵⁷ Mr Jim Glasson, Ministry of Transport, Evidence, 2 February 2006, p68

¹⁵⁸ Mr Roger Wilson, STA, Evidence, 2 February 2006, p68

Sydney Harbour Foreshore Authority

- 5.26 The Sydney Harbour Foreshore Authority (SHFA) consulted frequently with the RTA in relation to the design of the western end of the project and the location of the ventilation stack.
- 5.27 Dr Rob Lang, Chief Executive of SHFA, in evidence to the Committee said that:

Our role in the project is as an affected landowner as the cross-city tunnel emerges in its western end in part of our lands at Darling Harbour. At all times our engagement with the consortium project, the CCT project, and the RTA was in that context, as an affected landowner. We are not a proponent, designer, planner or advocate, and at all times our efforts were really focused on just two things. The first was minimising disruption to our precinct and attendant businesses during the construction. The second was maximising the quality of the amenity and urban design elements that were approved for the tunnel that lay within the precinct.¹⁵⁹

Department of Health

- 5.28 The Department of Health provided input into the air quality and tunnel ventilation, through working with DEC. NSW Health provide information to DEC on in-tunnel air quality standards.¹⁶⁰

State Contracts Control Board/Department of Public Works and Services

- 5.29 A representative of the State Contracts Control Board was on the RTA's Review panel for the project.

Rail Infrastructure Corporation, State Rail Authority, Energy Australia, Royal Botanic Gardens and Domain Trust

- 5.30 The Rail Infrastructure Corporation, State Rail Authority, Energy Australia, Royal Botanic Gardens and Domain Trust had requirements associated with providing access to land or provision of other consents necessary for the project.

Methodology for tendering and contract negotiation

- 5.31 The RTA were the principal government agency involved in the tendering process and the subsequent contract negotiation with the Cross City Motorway consortium.

¹⁵⁹ Dr Rob Lang, Chief Executive, SHFA, Evidence, 2 February 2006, p80

¹⁶⁰ Ms Corby, Evidence, 7 December 2005, 21

Capacity and skills of the RTA

- 5.32** Mr Les Wielinga, the RTA's Director of Motorways, in evidence to the Committee said that a specialist team was established to conduct the negotiations with the consortia. The team included both in-house skills from RTA, skills from other government departments and specialist skills from the private sector:

For example, we bring in appropriate legal skills. We bring in financial advice from outside as well, other commercial advice if we need it, and we also bring in specialist technical advice... it is a combination of technical, commercial, financial and economic skills ... and the team varies over the life cycle both in development of the project and in the actual tendering and negotiation process.¹⁶¹

- 5.33** Mr Paul Forward, former CEO of the RTA, highlighted the role of the private sector advisors engaged as part of the tendering and negotiation process:

[W]hilst there is a strong team within the RTA and the organisation has a strong history, I would not underestimate the ability of the private sector in terms of our advisors to assist in those commercial negotiations. They are a strong part of the project team. They not only see the RTA's projects but they actually see the full gamut of projects in the commercial sector and are able to bring a very focused commercial mind to these projects.¹⁶²

- 5.34** Many witnesses to the inquiry were complimentary about the abilities of the RTA team. For example the former Treasurer, the Hon Michael Egan, said in evidence to the Committee that:

I believe the RTA, the Treasury, T-Corp and all the others did an absolutely sterling job and I congratulate them for it.¹⁶³

- 5.35** The Hon Nick Greiner, former NSW Premier, was also complimentary about RTA expertise:

I think the RTA is probably the most competent State Government instrumentality in this private infrastructure area. ... In my opinion, both commercially and technically, the RTA is generally very competent.¹⁶⁴

- 5.36** Mr Dennis O'Neill, Chief Executive Officer, Australian Council on Infrastructure Development, also agreed, stating that the RTA offered 'best practice' in the area of PPPs:

The Roads and Traffic Authority is nationally deemed to be highly experienced and probably offering best practice in the area of PPP roads.¹⁶⁵

¹⁶¹ Mr Les Wielinga, Director, Motorways, RTA, Evidence, 6 December 2005, p4

¹⁶² Mr Paul Forward, former Chief Executive, RTA, Evidence, 6 December 2005, p5

¹⁶³ Hon Michael Egan, former NSW Treasurer, Evidence, 6 December 2005, p38

¹⁶⁴ Hon Nick Greiner, former NSW Premier, 7 December 2005, p42

¹⁶⁵ Mr Dennis O'Neill, Chief Executive Officer, Australian Council on Infrastructure Development, Evidence, 3 February 2006, p54

- 5.37 While many witnesses provided complimentary opinions of the RTA's expertise, Professor Tony Blackshield, in evidence to the Committee, expressed some misgivings about the capacity of the RTA and its private sector legal contractors to take into account constitutional principles when considering such PPP contracts:

[T]he perspective that a private firm brings to such matters – even when it is a private firm that has had considerable experience in such matters – is not necessarily primarily directed to the kind of constitutional principles that I am talking about...¹⁶⁶

- 5.38 Mr Bob Sendt, NSW Auditor General, while acknowledging that the 'RTA has built up a body of expertise that is generally delivering better outcomes', commented in evidence to the Committee that:

It is widely recognised that the private sector can afford to pay salaries significantly greater than what is on offer in the public sector. They can get the best experts to sit around the table and government may often be at a disadvantage.¹⁶⁷

- 5.39 Prof Richmond, in evidence to the Committee said that the establishment of the Premier's Department Infrastructure Implementation Group was intended to address this skill deficiency in government agencies without the large project experience of the RTA:

[W]e ... have a hand on the shoulder of the agency to give them the benefit of some of the high-level specialist advice that is available from some people that are in the unit and the consultants that we can bring in, who are people with very extensive experience in the delivery of infrastructure projects.¹⁶⁸

- 5.40 The Committee will consider the issue of the roles of government agencies and their capabilities in relation to contract negotiation for PPPs in its second report.

Tendering process - methodology

- 5.41 The RTA has maintained that the methodology behind the contract negotiation and project tendering is consistent with that required by the NSW Government under the *Working with Government Guidelines*, a NSW Government policy issued in November 2001.

- 5.42 In evidence to the Committee on 6 December 2005, the Acting Chief Executive of the RTA Mr Mike Hannon, said:

The manner in which [the RTA] implemented the cross-city tunnel project transaction was consistent with best practice standards for public agencies.¹⁶⁹

¹⁶⁶ Professor Tony Blackshield, Emeritus Professor, Macquarie University, Evidence, 2 February 2006, p75

¹⁶⁷ Mr Bob Sendt, NSW Auditor General, Evidence, 2 February 2006, p53

¹⁶⁸ Professor David Richmond, Special Advisor, Infrastructure Implementation Group, Premier's Department, Evidence, 2 February 2006, p59

¹⁶⁹ Mr Mike Hannon, Acting Chief Executive, NSW RTA, Evidence, 6 December 2005, p3

5.43 Dr Kerry Schott, Executive Director for Private Projects and Asset Management, NSW Treasury, in evidence to the Committee outlined succinctly the steps taken by government departments following the *Working with Government Guidelines*:

For privately financed projects, government agencies and departments are required to comply with the Government's "Working with Government" guidelines for privately financed projects. Treasury is responsible for the administration of these guidelines. The guidelines set out a three-stage project consisting of an initial seeking of expressions of interest and short-listing stage followed by a request for detailed proposals. The final stage involves negotiations and execution of contracts with the preferred proponent. Throughout the various tendering phases Treasury is actively involved. Typically for these sorts of project, Treasury is a member of the project steering committee and is represented on the evaluation panel. On the cross-city tunnel project, Treasury was a member of the review panel overseeing the whole process and was represented on the group that assists financial aspects of the tender.¹⁷⁰

5.44 For the first stage of the tendering process, the RTA called for registrations of interest from consortia in September 2000. Registrations of interest were received from 8 consortia.¹⁷¹

5.45 The registrations of interest were evaluated by an assessment panel, membership of which included RTA representatives, a representative of NSW Treasury and a principal of Evans and Peck Management. The assessment panel was assisted by a number of private organisations providing advice: Clayton Utz, legal; Arthur Anderson, financial; Evans and Peck Management, technical; and Corporate Scorecard, financial rating advice.¹⁷²

5.46 The activities of the assessment panel were overseen by a review panel, whose membership included:

- Mr Mike Hannon, then RTA Director Road Network Infrastructure (currently acting Chief Executive of the RTA)
- Mr Graham Read, then RTA corporate counsel (who has since left the RTA)
- Mr Danny Graham, Principal Adviser, Infrastructure, NSW Treasury (currently Director, Private Finance Projects, NSW Treasury)
- Mr Alan Griffin, then Chairperson of State Contracts Control Board
- Mr Rory O'Connor, probity auditor, Deloitte Touche Tohmatsu
- Mr John Tyrill, probity auditor, John Tyrill and Associates.¹⁷³

¹⁷⁰ Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury, Evidence, 7 December 2005, p2

¹⁷¹ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p10

¹⁷² RTA, *Cross City Tunnel Summary of contracts*, June 2003, p10

¹⁷³ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p10

- 5.47** The assessment panel used pre-determined and weighted criteria to evaluate the proposals, including:
- Design and construction capability (weighted at 27%)
 - Financial capacity (weighted at 22%)
 - Project features (including approvals, traffic management, environmental impacts, community liaison, issues management and risk management; weighted at 17%)
 - Project finance (including experience, delivery record and strategy for equity, debt funding, structure and risk allocation; weighted at 12%)
 - Organisation (roles and structures within the consortium, roles and relationships; weighted at 5%)
 - Tollroad management (experience, key personnel and commitment; weighted at 9%)
 - Operation and maintenance (weighted at 8%)¹⁷⁴
- 5.48** The *Cross City Tunnel Summary of Contracts*, from which this information is drawn, did not specify who determined the criteria and allocated weightings.
- 5.49** The shortlisted consortia were the CrossCity Motorway consortium; the E-Tube consortium; and the Sydney City Tunnel Company.¹⁷⁵
- 5.50** In June 2001, the RTA issued a Request for Proposals, following which the three consortia submitted detailed proposals. The Request for Proposals included draft versions of the Project Deed, a *Scope of Works and Technical Criteria* document, an outline RTA Consent Deed, and a *Site Access Schedule*.
- 5.51** The proposals submitted included conforming and non-conforming proposals. The RTA's initial EIS received planning approval on 3 October 2001. The Planning Conditions of Approval were made available to the consortia and the closing date for submissions was extended to 24 October 2001.
- 5.52** Mr Danny Graham, NSW Treasury, explained in evidence to the Committee one of the purposes of providing these tender documents:
- In the tender documents that went to the three bidders the development costs and business consideration fees were identified as potential areas that were available if there was excess revenue over cost in the concession. All bidders had the opportunity to bid on either the development costs or the business consideration fee. One bidder bid on both. Two other bidders did not bid an up-front contribution.¹⁷⁶
- 5.53** The issue of consortia bidding on a 'business consideration fee', and the implications of that process, will be addressed in a later section of this chapter.

¹⁷⁴ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p10

¹⁷⁵ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p10

¹⁷⁶ Mr Danny Graham, Director, Private Finance Projects, NSW Treasury, Evidence, 7 December 2005, p11

5.54 The assessment panel that reviewed the proposals submitted by the shortlisted criteria included:

- Mr Les Wielinga, then General Manager, Private Infrastructure RTA (currently Director Motorways, RTA)
- Mr Garry Humphrey RTA then General Manager, Motorway Services (currently General Manager Infrastructure Projects, RTA)
- Mr Kevin Pugh, then Senior Manager, Corporate Finance, NSW Treasury Corp
- Mr Peter Gemell, Principal, Evans and Peck Management.¹⁷⁷

5.55 The panel was assisted by Clayton Utz, legal advice; Evans and Peck Management, commercial and technical advice; Anderson Consultants, financial advice; Mr Frank Perry, Acting General Manager of the RTA's Economic Services and Support Branch; Mr Peter Bannister, Treasury; and other 'specialist advisers on specific issues' including RTA staff.¹⁷⁸

5.56 As in the first stage of the tendering process, a review panel oversaw the assessment panel. The review panel included:

- Mr Mike Hannon, then RTA Director Road Network Infrastructure (currently Acting Chief Executive, RTA)
- Mr Graham Read, RTA corporate counsel
- Mr Danny Graham, Principal Adviser, Infrastructure, NSW Treasury (currently Director, Private Finance Projects, NSW Treasury)
- Mr Alan Griffin, then Chairperson, State Contracts Control Board
- Mr Brett Skinner, Director Finance, RTA (from January 2002)
- Mr Peter Gifford, probity auditor (PAJI Pty Ltd), assisted by Mr Ed Shestovsky and Mr Phil Armessen from the Department of Public Works.¹⁷⁹

5.57 The assessment process for the tender included:

- A 'comparative value' assessment against the Public Sector Comparator
- A 'non-price assessment' against weighted pre-determined criteria including:
 - Design and construction (30%)
 - Project structure, participants and organisation (25%)
 - Initial project plans (25%)
 - Operation and maintenance (10%)
 - Initial traffic management and safety plans (10%)¹⁸⁰

¹⁷⁷ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p11

¹⁷⁸ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p10

¹⁷⁹ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p11

¹⁸⁰ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p11

5.58 The *Cross City Tunnel Summary of Contracts*, from which this information is drawn, did not specify who determined the criteria and allocated weightings.

5.59 The RTA's assessment and review panels concluded that:

The proposals submitted by the CrossCity Motorway consortium would represent better value for money than the 'public sector comparator' and the proposals submitted by the other two proponents.¹⁸¹

5.60 The preferred proposal was a non-conforming proposal, the 'long 80 tunnel'. The implications of this preference were that a Supplementary EIS had to be completed to obtain approval from the then Minister for Urban Affairs and Planning. Chapter 4 provides detail on the planning implications of this decision.

Implications of a non-conforming preferred proposal

5.61 The critical changes between the original project as reflected by the EIS and the final project as reflected by the Supplementary EIS relate to the nature of the tunnel itself (deeper, faster, longer) and the nature of the road changes in the local area. However, it is evident to the Committee that the community did not fully comprehend the road changes and their potential impacts. This issue is explored further in Chapter 6.

5.62 One of the major changes involved removing access to the Harbour crossings from Sir John Young Crescent and Cowper Wharf Road. These changes were not part of the original project as discussed with the community in the build-up to the EIS. They have a significant negative impact on the lives of residents of the affected community (particularly in those areas bounded by the tunnel's portals to the east and to the west), evidenced by the many submissions received from residents of that area.

5.63 In evidence to the Committee, the Lord Mayor of Sydney, Clover Moore, commented that:

in 2002 it became clear that the project was off track following changes during the tender process that resulted in a revised scheme that was more environmentally damaging and imposed unacceptable impacts on local residents.

...

proposed changes were a result of a \$100 million financial package paid to the State Government with a tenderer benefiting from the changes designed to maximise revenue; replace a previously approved project that required the Government to contribute \$40 million for a more beneficial scheme

...

new traffic conditions were being introduced that were not related to improved amenity, but designed to force drivers into the tunnel or require them to use more convoluted routes.¹⁸²

¹⁸¹ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p12

¹⁸² Ms Clover Moore, Lord Mayor of Sydney, Evidence, 9 December 2005, p23

- 5.64** The RTA, in its submission and during evidence given to the Committee, emphasised that changes to William Street and a number of other streets were assumptions relied upon by all tenderers when preparing their proposals. However, there were clearly additional road changes associated with the Supplementary EIS and the successful project. Some of those changes were reversed during the brief consultation period prior to the Project Deed being entered into. The negotiations between the RTA and CCM to derive a ‘no cost to government’ solution to these changes directly led to a higher toll, examined in a later section of this chapter.
- 5.65** Mr Chris Wilson, a partner with the RTA’s traffic consultants Massey Wilson Twiney, suggested that the CCM proposal incorporated road changes that were not part of the original EIS:

My recollection was some additional road works that were required to be pulled out of their project specification to bring it more in line with the EIS approved scheme. There was a point in negotiation that required input on the effects of pulling those additional works that they wanted to have in those to bring it back to the EIS approved scheme. I evaluated what effect that may have on the traffic forecasts.¹⁸³

- 5.66** However, the Committee notes that the only change sought by CCM concerned limiting vehicle movements at Cowper Wharf Rd. That change was publicly exhibited as part of the SEIS, but was not approved by the RTA, as published in the Preferred Activity Report.

Conclusions

- 5.67** The Committee has seen no evidence to suggest that the RTA conducted the tendering process and the contract negotiations in anything other than a professional manner. Comments from a wide range of witnesses have indicated to the Committee that the RTA has an excellent reputation for the development and delivery of major PPP projects.
- 5.68** The Committee notes that the probity auditor appointed to oversee the tender process advised the RTA that the evaluation process had been planned and conducted with ‘the highest level of probity applied to all aspects.’¹⁸⁴
- 5.69** It is clear, however, that the RTA conducted their negotiations against the background of a very strong imperative from the Government to deliver the project at ‘no cost to Government’, which is likely to have resulted in the selection of the ‘long 80 tunnel’ over the original scheme. The Committee accepts that the resulting tunnel is technologically superior and the different construction technique resulted in less impact on the local area, but it is not convinced that the proposal was ‘better’ when considered in light of the primary objectives of the project.

¹⁸³ Mr Chris Wilson, Director, Massey Wilson Twiney, Evidence, 9 December 2005, p2

¹⁸⁴ RTA, *Cross City Tunnel: Summary of contracts*, June 2003, p12

The function of the Public Sector Comparator in the tender process

- 5.70** The *Working with Government Guidelines* state that a Public Sector Comparator (PSC) is ‘a model of the costs (and in some cases, revenues) associated with a proposal under a government financed method of delivery.’¹⁸⁵ The guidelines continue with the direction that the PSC ‘will be developed for all proposals to assist the Government determine whether a private finance arrangement offers superior value for money over traditional methods of government delivery.’¹⁸⁶
- 5.71** ‘Traditional methods of government delivery’ can include elements of private sector provision – the PSC might incorporate the contracting out of the development and construction elements of the project while retaining the operation and maintenance elements, for example.¹⁸⁷
- 5.72** In the case of the Cross City Tunnel, Mr Danny Graham, Director, Private Projects for the NSW Treasury, explained, in evidence to the Committee, that:
- The PSC was a joint development between the RTA and Treasury, primarily because this was the first time we had actually approached it using a commercial policy framework. What we were doing there was developing a fully project-financed model as though it was a Government delivered project through a government corporation, so we worked with RTA. Treasury worked on the finance attributes—the debt equity structures, the rates of return expected, et cetera—and the RTA worked on the technical aspects—the engineering construction costs, the ongoing operations and maintenance costs—and we used the RTA's estimate of traffic flow for the toll revenue equation.¹⁸⁸
- 5.73** Once developed, the PSC is compared against private proposals for specific projects. In the case of the Cross City Tunnel, the PSC was compared against the various proposals put forward by the three short-listed consortia.
- 5.74** Professor Bob Walker, Professor of Accounting at the University of Sydney, in his evidence to the Committee, highlighted a possible limitation of the PSC in that it focuses on the financial aspects of a project. Professor Walker said:

Cost benefit analysis should look at the wider impact of a particular project on the community as a whole. The cost benefit analysis was not reflected, as I recall, in the contract summary and the material published in relation to the public sector comparator was largely confined to a few lines in a footnote on page 11 of the contract summary. I think that is unsatisfactory in the interests of public sector accountability.¹⁸⁹

¹⁸⁵ NSW Government, *Working with Government: Guidelines for Privately Financed Projects*, November 2001, p45

¹⁸⁶ NSW Government, *Working with Government Guidelines*, November 2001, p45

¹⁸⁷ NSW Government, *Working with Government Guidelines*, November 2001, p45

¹⁸⁸ Mr Graham, Evidence, 7 December 2005, p12

¹⁸⁹ Professor Bob Walker, Professor of Accounting, Evidence, 1 February 2006, p15

- 5.75** The PSC was prepared on the basis of the requirements of the original EIS and the Minister's Planning Conditions of Approval. When the RTA's Evaluation Panel selected the non-conforming 'long 80 tunnel' as its preferred proponent, it had to modify the PSC and the proposals of other consortia to provide a comparison of similar projects.
- 5.76** The RTA's *Cross City Tunnel Pre-Signing Report* stated that:

The Evaluation Panel has concluded that the proposed financial transaction with CCM represents value for money and continues to represent better value for money when compared with the Public Sector Comparator and the Reserve Proponent [Sydney City Tunnel Company – the tenderers of the proposal rated second]. In each case, the necessary adjustments were made to ensure the consistency and relevance of the comparisons.¹⁹⁰

Conclusions

- 5.77** Despite seeing a number of documents relating to the comparison of the private sector proposals with the PSC, the Committee remains unclear about the way in which the comparison was conducted.
- 5.78** The *Working with Government Guidelines* refer to 'qualitative considerations' that are taken into account in the comparison with private sector proposals, including 'any wider net benefits or costs that a private finance arrangement may entail'. A specific example provided, pertinent to the Cross City Tunnel, is 'earlier or more flexible provision of important infrastructure services.'¹⁹¹
- 5.79** The Committee is not aware of any analysis of the comparison conducted in the case of the Cross City Tunnel leading to the decision that the CCM 'long 80 tunnel' proposal represented better value than the PSC.
- 5.80** The Committee has reservations about the process employed by the RTA in comparing the preferred proposal with the Public Sector Comparator. We accept the principle that allowing non-conforming proposals increases the potential to maximise innovative approaches from the private sector. However, the Committee is concerned 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.
- 5.81** The Committee will further investigate the issue of the PSC in the second stage of its Inquiry.
- 5.82** In addition to the time and expense associated with completing a new Supplementary EIS, the proposal which was approved by Government (through the Budget Committee on Cabinet) has been substantially altered, without the Government re-assessing it to ensure it continues to meet its primary objectives. This issue is discussed in Chapter 4.

¹⁹⁰ RTA, *Cross City Tunnel Pre-Signing Report*, undated, p19

¹⁹¹ NSW Government, *Working with Government Guidelines*, November 2001, p46

Recommendation 6

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.

Estimates of traffic flows

5.83 Since the Cross City Tunnel opened on 28 August 2005, there has been considerable media and community interest in the low volume of traffic using the tunnel.

5.84 Traffic consultants Masson Wilson Twiney Pty Ltd, provided all the traffic figures for the RTA. The Environmental Impact Statement for the 'long tunnel' forecast traffic figures using the tunnel daily of 69,600 in 2006 and 77,600 in 2016.¹⁹² These figures were revised in the Supplementary EIS, with the figures for the 'long tunnel' recalculated at 86,300 for 2016. Traffic forecasts for the 'long 80 tunnel' were 101,700 for 2016.¹⁹³

5.85 The CrossCity Motorway's traffic estimates, calculated by Hyder Consulting, were higher, with a figure of 'up to 90,000' by 2006 cited in CCM's submission to the Committee.¹⁹⁴

5.86 By way of explanation of the difference in traffic estimates, Mr Wilson, Director of Masson Wilson Twiney Pty Ltd, said in evidence to the Committee:

There is a time lag between when I prepared the forecast and when the consortia prepared the forecast. They do have the opportunity of updating some of their land use information and because they may take optimistic views of how road networks are developed and the like, that is where the differences come in. ... within the realms of modelling, you could say that one is as good as the other.¹⁹⁵

5.87 Mr Les Wielinga, Director Motorways for the RTA said in evidence to the Committee that:

The feature of all the traffic projections was that in around 2016 they were very similar, but with different assumptions about how it would go between the starting time and the 2016 projection.¹⁹⁶

¹⁹² RTA, *The Cross City Tunnel Environmental Impact Statement*, August 2000, Summary, p16

¹⁹³ RTA, *The Cross City Tunnel Supplementary Environmental Impact Statement*, August 2002, p4.6

¹⁹⁴ Submission 38, CrossCity Motorway Pty Ltd, p2

¹⁹⁵ Mr Wilson, Evidence, 9 December 2005, p6

¹⁹⁶ Mr Wielinga, Evidence, 6 December 2006, p12

5.88 Mr Peter Sansom, then Chief Executive Officer of CCM, in evidence to the Committee, gave details of traffic figures for the tunnel for Friday 2 September 2005 and Friday 2 December 2005:

We started at 20,000 vehicles a day on the Friday of the first week and last Friday we had 31,000 vehicles through.¹⁹⁷

5.89 The Committee heard evidence from Mr Chris Wilson that ‘one of the complications we have at the moment is that we are going into the Christmas holiday period and the numbers are all over the place at the moment.’¹⁹⁸

5.90 Mr Sansom estimated the figures for the day in which he was giving evidence to the Committee (6 December 2005):

I will stab that somewhere between 27,000 28,000 will be today's figures. I will indicate to you that next Friday's figures will be somewhere between 31,000 and 32,000.¹⁹⁹

5.91 At the more recent February hearings of the Committee, Mr Sansom provided updated figures for the week beginning January 30 2006:

On Monday there were 26,380 vehicles through the cross-city tunnel. On Tuesday this week there were 27,388 vehicles. On Wednesday there were 29,292 vehicles. On Thursday there were 29,550 vehicles, and I expect today there would be somewhere between 30,000 and 31,000 vehicles through the cross-city tunnel.²⁰⁰

5.92 The Committee notes that the figures estimated for a Friday in February 2006 were in fact less than those estimated for a Friday in December 2005, which suggests a flat ramp in the ramp-up period.

5.93 It is unclear the extent to which the traffic volumes through the tunnel were influenced by community boycotting of the tunnel, called for by community groups, radio personalities and political groups. The Committee notes that the Woollahra Council were unsuccessful in passing a resolution to encourage residents of Woollahra to boycott the tunnel on Monday 13 February.

5.94 In his evidence to the Committee, Mr Garry Bowditch, Project Director with Infrastructure Partnerships Australia referred to a Standard & Poor’s study into traffic modelling on ‘104 international toll roads, bridges and tunnels’:

The study has confirmed the existence of overforecasting asset use—or what is commonly referred to in the industry as optimism bias...On average, across all toll

¹⁹⁷ Mr Peter Sansom, former Chief Executive Officer, CCM, Evidence 6 December 2005, p77

¹⁹⁸ Mr Wilson, Evidence, 9 December 2005, p4

¹⁹⁹ Mr Sansom, Evidence 6 December 2005, p79

²⁰⁰ Mr Sansom, Evidence, 3 February 2006, p65

roads, bridges and tunnels, forecasts overestimate traffic in the first year by 20 to 30 per cent.²⁰¹

- 5.95** One of the elements of the PSC, used to compare the cost of providing the infrastructure through the public sector with that of the private consortia's proposals, is revenue, determined through traffic estimates. The PSC for the Cross City Tunnel relied on estimates of traffic flow produced by traffic analysts Masson Wilson Twiney Pty Ltd.
- 5.96** The consortia provided their own traffic estimates. There was considerable difference between the estimates provided in the EIS and Supplementary EIS by the RTA, and those relied on by the successful consortium CCM in their proposal. One of the consequences of the higher figure estimated by CCM was that they would earn greater revenue more quickly and therefore had the potential to offer a Business Consideration Fee to the RTA as part of their proposal. This was one reason for the proposal being considered better value for money than the PSC.
- 5.97** As many witnesses have pointed out, if the tunnel fails to deliver the anticipated volume of traffic then the loss of revenue is the complete responsibility of the consortium. The Hon Nick Greiner, in evidence to the Committee, stated this point very clearly:

There was substantial risk transfer in this process. The company of which I am chairman [Bilfinger Berger Australia], and a sister company, took a construction risk and, unfortunately, we had a fatality, various things went wrong, and we made far from a satisfactory profit—essentially no profit. We took that construction risk and that is the way it works. Of course, the private sector has taken the patronage risk and, as we all hear and read every day, it may well be seen not to have got it right, at least not in the short term. Whatever happens, the private sector has taken the patronage risk, so the public has a piece of infrastructure and whether it is used sufficiently or not, that risk is taken by the providers of the equity and, indeed, by the providers of debt.²⁰²

- 5.98** The former Premier, the Hon Bob Carr, in evidence to the Committee, put it even more directly:

the risk is borne entirely by the private sector.²⁰³

- 5.99** In evidence to the Committee, two witnesses claimed that the capacity of the Cross City Tunnel was not sufficient to allow for the projected traffic estimates of either CCM or the RTA. Dr John Goldberg commented:

Basically it boils down to this: you cannot stuff enough cars onto a roadway, paying tolls, to produce the revenue necessary to pay the expenses and the dividends to investors.²⁰⁴

²⁰¹ Mr Garry Bowditch, Project Director, Infrastructure Partnerships Australia, Evidence, 3 February 2006, p48

²⁰² Hon Nick Greiner, Evidence, 7 December 2005, p41

²⁰³ Hon Bob Carr, former Premier, Evidence, 6 December 2005, p36

²⁰⁴ Dr John Goldberg, Evidence, 9 December 2005, p21

- 5.100** Ms Michelle Zeibots, in a detailed presentation to the Committee drawing on her experience as a doctoral student at the University of Technology Sydney's Institute for Sustainable Futures, where she specialises in before and after studies of urban motorway development and the emergence of induced traffic growth, told the Committee of her concern that:

some of the traffic volume estimates that have been put forward by the consortium appear to be above what we would classify as the ceiling capacity for the road.²⁰⁵

- 5.101** Mr Chris Ford, Director Traffic and Transport, RTA, in response to the suggestion that the ceiling capacity of the tunnel was less than the traffic estimates, discussed in evidence to the Committee, the use of expansion factors in calculating ceiling capacity:

In the evidence that was tendered yesterday, an expansion factor derived from the Sydney Harbour Bridge was applied to the lane capacities to return the ceiling capacity for the cross-city tunnel. An assumption in determination of the expansion factor was that, in fact, there were nine traffic lanes on the Sydney Harbour Bridge; in fact, there were only eight traffic lanes at the time the analysis was undertaken. The expansion factor, using the same analysis, was increased from 10 to 11.5 and, using the same calculations, would generate a ceiling capacity of 90,000 rather than the 80,000 quoted yesterday. At the very least I have some issues with the calculations.²⁰⁶

- 5.102** The Committee recognises that creating traffic projections for major projects is complex. The accuracy of such projections relies on assumptions made by traffic experts. Different experts may generate different assumptions and therefore different projections for the same projects.

- 5.103** The difficulties in accurately forecasting traffic volumes was demonstrated by Ms Zeibots revising the estimates she provided to the Committee the day after giving evidence.

- 5.104** The report of the independent auditor, Ernst & Young, confirmed that the calculations used in determining the Base Case Financial Model were methodologically correct and consistent, however the report does not examine the figures and assumptions used:

Our audit did not extend to a validation of the assumptions. The assumptions are the responsibility of a variety of parties. We have evaluated the tax and accounting assumptions for consistency with accounting standards, tax regulations and the Ernst & Young tax and accounting opinions. We have not otherwise assessed the reasonableness of my assumptions. We have agreed certain assumptions that were sourced from the Project Documents (only to the extent set out in Section 3.4) to those documents - however, no validation procedures beyond this have been conducted.²⁰⁷

Conclusions

- 5.105** While the Committee accepts that the patronage risk for the CCT has been transferred to CCM in the case of the Cross City Tunnel, and that therefore there is no direct and financial impact on the Government if the tunnel fails to meet its estimated traffic levels.

²⁰⁵ Ms Michelle Zeibots, Transport Planner, Evidence, 1 December 2005, p81

²⁰⁶ Mr Chris Ford, Director Traffic and Transport, RTA, Evidence, 2 February 2006, p24

²⁰⁷ Ernst and Young, *Financial Model Audit Report*, 19 December 2002, p4

- 5.106** The Committee has heard conflicting evidence on whether or not the Cross City Tunnel has the capacity to provide for the traffic volumes estimated by the RTA and all other consortia. The Committee is concerned that the estimated flow of the successful proposal varied so significantly from the RTA's estimates. It is incumbent on the RTA to interrogate optimistic claims given the obvious impacts on factors such as toll pricing and surrounding traffic conditions.

Recommendation 7

That the NSW Roads and Traffic Authority request that CrossCity Motorway place daily and monthly Cross City Tunnel traffic use figures on their website.

Business Consideration Fee

- 5.107** The Business Consideration Fee (BCF) is the term given to the payment by CCM to the RTA at the time the parties entered into the Project Deed.
- 5.108** A BCF of \$96.86 million was paid by CCM to the RTA²⁰⁸. An undated RTA update on 'negotiations and options concerning the Business Consideration Fee'²⁰⁹ describes the BCF as being 'intended to cover RTA costs associated with the Project and also for the ongoing right to operate the Tollway during the Term.'²¹⁰
- 5.109** In evidence to the Committee, Mr Wielinga described the BCF as being intended 'to cover RTA costs associated with delivering the project'.²¹¹
- 5.110** The former Treasurer, the Hon Michael Egan, in evidence to the Committee, described the intent of the BCF more generally:
- [W]hen the private sector undertakes one of these massive projects, there are also of course ancillary expenses which the government is up for. I think it is important, if we are not going to keep fleecing the public purse, that the public authorities that are responsible for these ancillary infrastructure and services should be recouping for their expenditure.²¹²
- 5.111** The Committee notes that there has been a shift in the way in which the BCF has been characterised, and that the emphasis during the hearings and in the submissions received has been on the BCF being for cost recovery, not as a fee to grant an 'ongoing right to operate the Tollway'.²¹³

²⁰⁸ RTA, Answers to questions taken on notice, 13 February 2006, p8

²⁰⁹ RTA, *Roads and Traffic Authority: Cross City Tunnel*, undated brief, p1

²¹⁰ RTA, *Roads and Traffic Authority: Cross City Tunnel*, undated brief p1

²¹¹ Mr Wielinga, Evidence, 6 December 2005, p55

²¹² Hon Michael Egan, Evidence, 6 December 2005, p43

²¹³ RTA, *Roads and Traffic Authority: Cross City Tunnel*, undated brief p1

- 5.112** The Hon Bob Carr, in his evidence to the Committee, suggested that the term ‘business consideration fee’ did not accurately describe the fee’s intent:

It is wrongly called a business consideration. I think that is falling nomenclature. The principle is this. The RTA should see that with future roads projects, unlike the M2, there is a full recouping of its expenses from the private consortium. That is an absolutely valid principle. The Government does that now.²¹⁴

- 5.113** Mr Danny Graham, Director of Private Finance Projects, NSW Treasury, in evidence to the Committee stated:

In the tender documents that went to the three bidders the development costs and business consideration fees were identified as potential areas that were available if there was excess revenue over cost in the concession.²¹⁵

- 5.114** This evidence, and the shift in definition of the ‘business consideration fee’, suggests to the Committee that there was an intention, at least in the initial stage of the tendering process, that this be a fee over and above the costs associated with the project.

- 5.115** Mr Sendt, NSW Auditor General, indicated in evidence to the Committee, that detailed examination of what constituted the Business Consideration Fee was a part of the performance audit his office is conducting into the Cross City Tunnel:

That payment has been described in various terms. It has been described as compensation for expenditure made; it has been described as a business consideration and I think maybe other terms were used. What we are trying to do is get to the nub of what that was designed to represent.²¹⁶

We will be looking to see what made up the \$96 million and whether it was for cost incurred or whether it was at the other extreme, effectively the consortium paid to win the job.²¹⁷

- 5.116** The quantum of the Business Consideration Fee changed over the course of the contract negotiations between CCM and the RTA. The original figure provided to the RTA as part of the consortium’s proposals following the original EIS (the ‘long tunnel’) was \$100.1 million. This figure changed following the acceptance by the RTA of the consortium’s ‘long 80 tunnel’, which did not conform to the original EIS and required a Supplementary EIS. As a consequence of the differing Minister’s Planning Conditions of Approval, and later requirements imposed by more stringent air quality standards (the construction of a third tunnel for ventilation purposes, valued at \$37 million) and through community consultation (improvements to the Eastern portal ‘lid’ and re-instatement of a right hand turn from Cowper Wharf Road to the harbour crossings), CCM reduced the amount of the BCF they proposed to pay the RTA.

²¹⁴ Hon Bob Carr, Evidence, 6 December 2005, p32

²¹⁵ Mr Graham, Evidence, 7 December 2005, p11

²¹⁶ Mr Sendt, Evidence, 2 February 2006, p52

²¹⁷ Mr Sendt, Evidence, 2 February 2006, p56

- 5.117** Due to the ‘no cost to government’ policy, the RTA entered into negotiations with CCM to increase the BCF, allowing an increased toll escalation regime to enable CCM to recover the BCF. The impact of this and subsequent negotiations on the toll is covered later in this chapter.

Conclusion

- 5.118** Following a request from the Committee, the RTA provided a detailed line-by-line breakdown of the BCF. The breakdown indicates that the BCF has been used to meet costs arising from the project, such as work on utility networks affected by the tunnel and cost recovery for project preparation costs.²¹⁸
- 5.119** If the BCF did include a component for the ‘right to operate the Tollway’, then the Committee is concerned that this represents an unnecessary imposition on the road users, as the toll will necessarily be increased to recoup the cost of the fee. The Committee believes this approach would make the fee an alternative source of revenue for the Government, revenue which is provided inequitably by the road user.

Recommendation 8

That any policy of charging private consortia a fee for a ‘right to operate’ a piece of infrastructure be expressly discontinued.

Setting the toll level

- 5.120** While the RTA set the initial toll level in documents (including the EIS) provided to tenderers for the project, the toll level has been subject to variations as the scope of the project changed over time. The process by which the RTA set the initial toll was explained in the *IIG Review*:

[T]he RTA determines in advance of going to tender what the toll for a toll road will be, on the basis of benefit-cost analysis which grosses up the benefits for the expected number of road users, and includes this benchmark in Requests for Tender – and in EIS documentation.²¹⁹

- 5.121** The toll level was initially set at \$2.50 for all vehicles (at March 1999 prices), subject to quarterly increases linked to the Consumer Price Index.²²⁰ Westbound vehicles leaving the Tunnel at the Sir John Young Crescent exit were to pay a lesser amount - \$1.10, also linked to CPI. These tolls were announced by then Premier, the Hon Bob Carr, in September 1999.
- 5.122** The first variation to the toll was the move to allow differential pricing for heavy vehicles, charged at double the rate of ordinary vehicles - \$5.00 one way, \$2.20 for heavy vehicles exiting at Sir John Young Crescent. Tolls for heavy vehicles were also linked to CPI increases.

²¹⁸ RTA, Answer to question taken on notice, 6 December 2005, p2

²¹⁹ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p24

²²⁰ RTA, *Cross City Tunnel Summary of contracts*, June 2003, p4

5.123 This variation in the toll was included in the Supplementary Environmental Impact Statement, prepared by the RTA following the acceptance of the 'long 80 tunnel' proposal.

5.124 The RTA's *Pre-Signing Report* explains the context for the next variation in the toll level:

In the period since the nomination of CCM as preferred Proponent a number of changes to the Project scope and terms of the Project Deed have been required. The most significant of these changes have resulted from more stringent standards imposed by PlanningNSW following the issue of requirements for a Supplementary Environmental Impact Statement in May 2002. In addition the project has been subject to additional costs arising from the need to preserve road network flexibility, changes to the international insurance market, additional requirements imposed by Government infrastructure owners and other matters²²¹

5.125 The *Pre-Signing Report* continues:

To maintain the financial transaction on the basis that there is no cost to Government going forward a financial package has been negotiated with CCM whereby CCM has agreed to finance these additional costs by the application of a toll escalation regime which entitles CCM to minimum defined annual increases in tolls ²²²

5.126 The RTA's *Finalisation Report* detailed the extent of the agreed toll escalation:

The [toll escalation] regime provides for a minimum 4% toll escalation from September 1998 to December 2011 and a minimum 3% escalation from January 2012 to December 2017. No minimum escalation is provided for after December 2017.²²³

5.127 The final increase in the toll occurred following the signing by the RTA and CCM of the First Amendment Deed. By late 2004, it was evident to the RTA that the project costs likely to be incurred by the RTA would exceed the value of the development and administration costs estimated at the time of execution of the *Cross City Tunnel Project Deed* which were to be financed by the Business Consideration Fee.²²⁴

5.128 In exchange for \$35 million of works to be performed by CCM, the RTA agreed to allow an increase to the base toll of \$0.15, bringing the base toll to \$2.65 for cars and \$5.30 for heavy vehicles, subject to the existing toll escalation regime of 4% to December 2011, and 3% from January 2012 to December 2017.²²⁵

5.129 The then Treasurer, who approved the increase under the *PAFA Act*, in evidence to the Committee, was sanguine about the impact of the increase:

[T]he agreement which the RTA and the consortium came up with was that the money that the RTA would have to outlay on the 240 planning conditions, which turned out to be more costly than they expected, including the additional lane on the

²²¹ RTA, *Pre-signing Report*, Undated, p16

²²² RTA, *Pre-signing Report*, Undated, p17

²²³ RTA, *Finalisation Report*, Undated, p3 of cover brief

²²⁴ RTA, *Cross City Tunnel: Summary of First Amending Deed*, November 2005, Section 1.2.1

²²⁵ RTA, *Cross City Tunnel: Summary of First Amending Deed*, November 2005, Section 2.2.2

ANZAC Bridge, I said—or Carl Scully first raised it with me. He said, "This is something which the users of the tollway should pay. Therefore I propose that we negotiate with the consortium. They will undertake these works on our behalf and we will enable them to lift the toll by 15¢." It is not great amount of money. It is the cost of a third of a cigarette or about five per cent of a schooner of beer.²²⁶

5.130 The Committee notes that the Ernst & Young advice to the RTA in December 2004 states that the 15¢ increase would result in a change in toll revenue from \$5,500,430,000 to \$5,808,600,000 over the course of the project term. This is an increase of \$308,199,000.²²⁷

5.131 Information about the toll increases has not been widely available to the community. References to toll increases have not mentioned that the increases were greater than CPI, in fact even in evidence to this Committee CCM only referred to CPI increases. Mr Peter Sansom, the then Chief Executive of CCM, explained in evidence to the Committee, the level of the current toll without reference to the higher-than-CPI rate of escalation:

The \$2.50 base toll was the toll in 1999 dollars and that was increased with one amendment deed to be essentially \$3.56 if you include the impact of CPI.²²⁸

5.132 Mr Skinner, Director Finance of the RTA, in evidence to the Committee, explained the level of the toll as follows:

A point of clarification: in terms of where the toll would be now, the \$3.56 that is currently being offered is in line with the base arrangement of 1999 dollars. In fact, if you allow for the CPI base on that arrangement I think a \$3.56 maximum toll is probably still better value than what it could have been if you adjusted it for CPI.²²⁹

5.133 In evidence provided to the Committee in February 2006, Mr Skinner clarified his statements, adding that when reflecting on the value of the toll he was not referring only to CPI but also to the increasing value of weekly earnings:

The statements I made at the previous hearing reflected the potential value of the toll at \$3.56 at the moment. The tolling regime that is actually in place, which was stress tested against the other proponents, allowed for a floor of 1 per cent per quarter, which is the 4 per cent you are referring to, or the higher of the CPI. My comments about the value were more along the lines of what \$3.56 would be worth in today's affordability, I suppose. I suppose it is something that I was contemplating more along the lines of average weekly earnings, if you like, which actually increased significantly between 1999 to 2006. Really, what I was trying to indicate was that the \$3.56 at the moment, compared to the \$2.65 back in 1999, is better value than what it would be in regard to maybe a comparison with the average weekly earning, which has increased much higher than CPI.²³⁰

²²⁶ Hon Michael Egan, Evidence, 6 December 2005, p50

²²⁷ Advice contained in letter to Mr Gary Humphrey, RTA, from Ernst & Young, December 2004

²²⁸ Mr Sansom, Evidence, 6 December 2005, p74

²²⁹ Mr Brett Skinner, Director Finance, RTA, Evidence, 6 December 2005, p14

²³⁰ Mr Skinner, Evidence, 2 February 2006, p42

5.134 The IIG *Review* commented that:

the RTA may have overestimated the (early) perceived value to its users.²³¹

5.135 This conclusion led to a specific recommendation in the IIG *Review*, which the Committee endorses:

RTA project assessment should include value for money (i.e. the toll) for the user as a specific and appropriately weighted evaluation criterion.²³²

Calculation of toll escalation

5.136 A number of Committee members raised issues about the calculation of the toll and the toll escalation formula. At the time of this report, the issues had not been resolved with the RTA, and are still being investigated.

Impact of toll increases

5.137 As the scope of the project changed over time, so the cost of the project increased. The original toll level of \$2.50 each way increased by the rate of inflation (Consumer Price Index) every quarter from 1999 through to the contract period end (2035) was modified through negotiation between the RTA and CCM in order to allow CCM to recoup the extra project costs through the tolls.

5.138 This approach has resulted in higher tolls than were initially envisaged. The allowable minimum rate of escalation of the toll was increased above the CPI level to ensure that CCM could provide the RTA with the Business Consideration Fee, to cover the extra costs that arose from the Supplementary Environmental Impact Statement.

5.139 Mrs Margaret Hamilton, member of the Central Community Liaison Group, in evidence to the Committee, noted the impact of the tolls as she saw it:

It is not the tunnels that people object to; it is the high tolls. People would much rather travel with no traffic lights swiftly to their destinations, but are being caught in the traffic because they see the tolls as too high. ... [T]he solution is not to re-open the rat run but to encourage cars to avoid city streets by making tolls fairer.²³³

5.140 Ms Lucy Robertson, private citizen, in a submission to the Committee, concurred:

[L]ike many other Sydneysiders, I feel the cost of the toll on the CCT is excessive. ... At the moment, I refuse to use the CCT because the cost of the toll vastly outweighs any benefit it has to me.²³⁴

²³¹ IIG *Review*, December 2005, p24

²³² IIG *Review*, December 2005, p9

²³³ Mrs Margaret Hamilton, Evidence, 3 February 2006, p37

²³⁴ Submission 44, Ms Lucy Robertson, p1

- 5.141** Surveys conducted by the NRMA on the toll levels indicated that this was a popular perception:

78% felt the \$3.56 toll indexed to increase 4 times a year was unfair.²³⁵

- 5.142** Mr Garry Bowditch, Project Director of Infrastructure Partnerships Australia, in evidence to the Committee, characterised the resistance to the toll as identifying a need for CrossCity Motorway to try to find the right ‘value proposition to attract and sustain patronage’:

In terms of the value proposition, it can come in terms of marketing of the value of the tunnel to its customers, how to attract patronage, the interface between both permanent, that is tag, and casual users, and how those casual users can be enticed into the tunnel in a way that is not intrusive to them.²³⁶

- 5.143** Mr Paul Forward, former Chief Executive of the RTA, in evidence to the Committee, commented that toll levels had to be considered in the context of time savings:

The issue of the toll is very much about people's ability to pay and the value that they seek from that toll. One needs to take it back and look at the time savings. If people are going to save 20 minutes, then they make a judgment as to whether that 20 minutes or 15 minutes is worth paying the toll for. What we have noticed on other road projects is that, over time, people start to consider that decision in a fairly rational way and make their choice. So whilst it is a maximum toll, it is the toll that was felt could be set in reflection of the time savings the people would acquire through using the tunnel.²³⁷

- 5.144** Mr Sansom, former Chief Executive of CCM, in evidence to the Committee, believed the toll represented good value:

We believe the cross-city tunnel's toll price presents good value in terms of savings, less wear and tear on motor vehicles and savings in petrol.²³⁸

- 5.145** Mr Hannon, Acting Chief Executive of the RTA, in evidence to the Committee, commented that:

It should be remembered though that this is the cap toll so it is completely at the discretion of the consortium what level they set.²³⁹

- 5.146** Given that the increased escalation of the toll was set to allow the CCM to recoup the BCF, and by implication maintain their desired level of profitability, it is unlikely that the consortium would reduce the level of the toll. CCM have, however, foregone one of their permitted increases under the toll escalation regime:

²³⁵ NRMA Motoring and Services 2005, *Motorists say Cross City Tunnel fees “unfair” – NRMA Survey*, NRMA media release 1 September 2005

²³⁶ Mr Bowditch, Evidence, 3 February 2006, p50

²³⁷ Mr Forward, Evidence, 6 December 2005, p53

²³⁸ Mr Sansom, Evidence, 3 February 2006, p64

²³⁹ Mr Hannon, Evidence, 6 December, p4

We have the right to increase the toll every quarter and we have elected to have a moratorium on any future increases until at least 1 July next year. So currently it is less than what it should be.²⁴⁰

5.147 However, evidence was provided to the Committee from Mr Chris Wilson about the effect of a reduction in the toll: preliminary analysis has indicated that should the toll for the main tunnel be decreased to \$2.90 for cars, the resultant additional traffic would likely result in a revenue-neutral outcome.²⁴¹

Conclusions

5.148 There appears to have been little consideration by the RTA of the impact on the community of the higher toll, and the negative implications for road users of the changes to the road networks that resulted from the construction of the tunnel.

5.149 The CCM website provides detail on the quantum of the toll, but does not explain how the amount was arrived at other than to say ‘the toll was set by the RTA’.²⁴² It would be in the public interest for CCM to provide a clearer understanding of how the toll level is calculated. The lack of openness about the level of the toll and the way in which it is calculated only increases public suspicion of toll roads.

5.150 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.

Recommendation 9

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.
-

5.151 One of the consequences of adopting the ‘long 80 tunnel’, when combined with the effect of the Government’s ‘no cost to government’ policy, is that, through the subsequent negotiation process, the tolls have increased to a level that may act as a disincentive to potential users. It is possible that the toll, even if it had remained at the level set in the EIS, would still be a disincentive. This indicates that the RTA and CCM over-estimated the value motorists would place on the tunnel’s benefits.

²⁴⁰ Mr Sansom, Evidence, 6 December 2005, p85

²⁴¹ Tabled document, RTA, *Review of Post Opening Traffic Demand for Cross City Tunnel*, December 2005, p1

²⁴² CrossCity Motorway website ‘Frequently Asked Questions’: www.crosscity.com.au

- 5.152** The insistence on a ‘user-pays’ tunnel with ‘no cost to government’ may have undermined the ability of the project to meet its primary objectives of reducing congestion in central Sydney. A limitation of using a PPP to deliver the infrastructure is that there is no government controlled flexibility to modify the toll to meet those primary objectives – in fact, the only alternatives available to the Government to increase tunnel use (apart from buying back the tunnel, or employing ‘shadow tolls’) is to apply greater restrictions to the surface roads in an attempt to further encourage motorists to use the tunnel.
- 5.153** The Committee acknowledges that projects of this nature have a ‘ramp-up’ phase that can last years before the traffic volumes reach their estimated levels, as has been demonstrated in the case of previous toll roads. Despite the current stagnation in traffic volume, it is highly likely that patronage will increase over time, and the extent of that increase cannot be determined at this stage.
- 5.154** The lack of traffic in the tunnel is to a large extent a result of the high toll. The transfer of the patronage risk for the tunnel to the private sector, while understandable in its intention to avoid the risk of a revenue shortfall, implies that the only important risk is that of financial exposure. The cost of failing to meet the primary objectives of the project is the continuing traffic congestion in the CBD. If the government had retained the patronage risk, it would also have retained control over toll pricing and could have made the adjustments to the toll recommended by its own traffic consultants (the traffic consultants, in a report to the RTA, recommended lowering the toll to \$2.90 to increase patronage²⁴³) in order to encourage use of the tunnel.
- 5.155** While the IIG *Review* addresses many of the issues raised in this First Report, the Committee believes that the operation of two of the recommendations of the IIG *Review* - to abandon the ‘no cost to government’ policy, and to retain control over the road network - will lead to this kind of PPP road project being more expensive for Government in future. The MAE clauses contained in the Cross City Tunnel Project Deed provide a level of certainty to the private sector, who account for the consequent lower levels of risk. If full control of the road network is kept by Government then the pricing to cover the increased risk for the private sector will be reflected in higher PPP costs. One consequence of this may be an increase in the strength and popularity of arguments asserting that the traffic risk is best borne by the Government, with future large road projects operating as limited PPPs, leaving the operation of the road to the Government.

²⁴³ Tabled document, RTA, *Review of Post Opening Traffic Demand for Cross City Tunnel*, December 2005, p1

Chapter 6 Community involvement

The terms of reference for the Inquiry require the Committee to examine the extent to which community consultation processes determined the substance of the Cross City Tunnel contract. In this chapter the Committee examines the effectiveness of the consultation and the impact of the consultation on the project. The Committee also examines the more general issue of communication with the community by Government, the Roads and Traffic Authority (RTA) and the CrossCity Motorway (CCM).

Opportunities for community input into the project

- 6.1** Opportunities for community consultation to contribute to changes in the Project Deed between the RTA and CCM for the construction of the ‘long 80 tunnel’ are by definition limited to the consultation phases up to the point at which the Project Deed was entered on 18 December 2002.²⁴⁴
- 6.2** It is important to note, however, that as a consequence of Planning Conditions of Approval 11 issued by the then Minister for Infrastructure, Planning and Natural Resources, a number of Community Liaison Groups were to be established.²⁴⁵
- 6.3** The RTA was required to:
- (c) allow the Groups to make comments and recommendations about the implementation of the development and environmental management plans, monitor compliance with conditions of this approval and other matters relevant to the operation of the development during the term of the consent;
 - ...
 - (e) ensure that the Groups have access to the necessary plans and information for such purposes;
 - (f) consider the recommendations and comments of the Groups and provide a response to the Groups and Director-General²⁴⁶
- 6.4** These Community Liaison Groups did not have any direct input into the substance of the Project Deed, however they had an impact on the tunnel as it was eventually constructed, and on the changes to the surface streets. Accordingly, the Committee will briefly examine the role of these groups in a later section of this chapter.
- 6.5** As Chapter 2 demonstrates, the Cross City Tunnel project has a long history. There have been opportunities for public comment on the project, both during the project’s initial conceptual

²⁴⁴ RTA, *Cross City Tunnel Project Deed*, December 2002, p1

²⁴⁵ *EP&A Act: Modification of an Approval granted under section 115B of the Environmental Planning and Assessment Act 1979*, December 2002, Schedule 2, Condition 11

²⁴⁶ *EP&A Act: Modification of an Approval granted under section 115B of the Environmental Planning and Assessment Act 1979*, December 2002, Schedule 2, Condition 11

phase through to the more detailed Environmental Impact Statement (EIS) and Supplementary Environmental Impact Statement (SEIS) phase, the planning elements of which are discussed in Chapter 4.

- 6.6** The two EIS processes provided the best opportunity for community consultation in relation to the Cross City Tunnel project as a whole. The EIS and Supplementary EIS provided extensive detail on all aspects of the proposed project. The RTA, as proponent for the project, collated all feedback (representations) received from the public during the exhibition periods and provided it to the Department of Urban Affairs and Planning (as it was in 2000) and the Department of Planning (as it was in 2002) in Representations Reports. The Representations Reports summarised the feedback received, and were accompanied by the representations themselves. The RTA also provided Preferred Activity Reports to the Department of Planning which outlined the modifications to the EIS and Supplementary EIS which they made as a result of the representations and ‘further technical studies’.²⁴⁷
- 6.7** The then Department of Urban Affairs and Planning (2000) and Department of Planning (2002) reviewed both the representations themselves and the RTA’s Representations Reports, and Preferred Activity Reports. The Director General prepared publicly available reports to the Minister for each of the EIS and Supplementary EIS Representations Reports and Preferred Activity Reports, providing an analysis of both the issues raised by the community, and the summary of those issues by the RTA.
- 6.8** The Committee believes that the Planning process provided a good opportunity for public comment, and the review of the RTA’s analysis of those issues it identified from the community representations by the Department of Planning was a valuable process for ensuring accuracy and transparency.

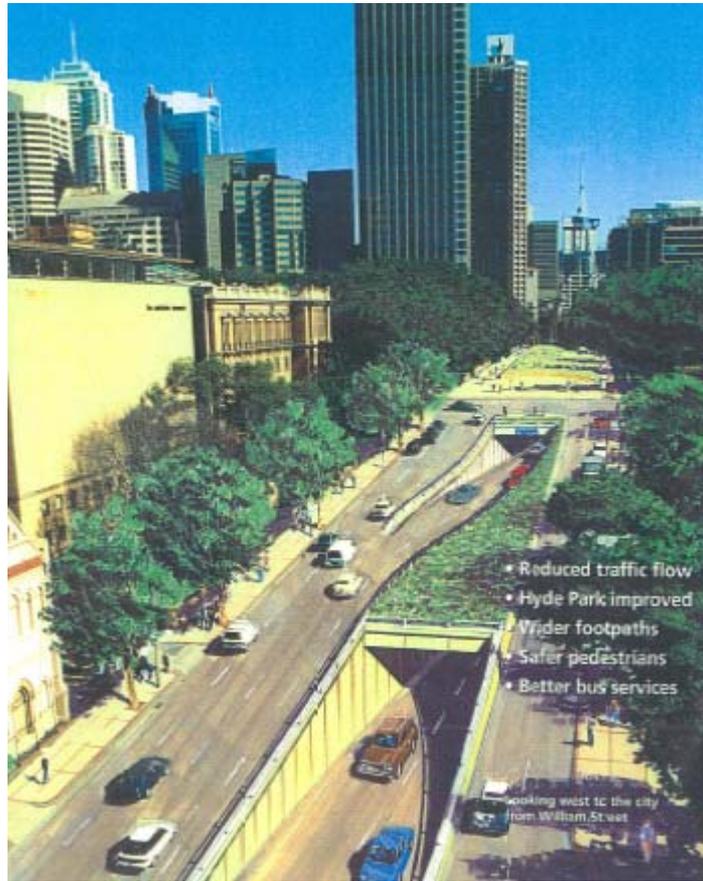
Consultation before the Cross City Tunnel project was approved

- 6.9** In October 1998, the ‘short tunnel’ concept was outlined in *The Cross City Tunnel: Improving the heart of Sydney* brochure. The concept was displayed in the Skygarden Arcade in Pitt Street Mall, and a three-month period for comment was provided. 7,800 people visited the display.²⁴⁸ Figure 6.1 displays the cover of the brochure, with an artist’s representation of the completed tunnel.

²⁴⁷ *Cross City Tunnel Proposed Modifications to Approved Project: Director General’s Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, Director General Department of Infrastructure, Planning and Natural Resources, 2002, p iii

²⁴⁸ Submission 1, RTA, p16

Figure 6.1 The 'short tunnel' emerging from Hyde Park



Source: Submission 1, RTA, Appendix 2

- 6.10** In September 1999, a brochure titled *Cross City Tunnel environmental assessment* was distributed by the RTA. This brochure incorporated many of the changes suggested by the Sydney City Council's *Cross City Tunnel Alternative Scheme*, most importantly involving an extension of the tunnel from the 'short tunnel' eastern exit at College Street near the Australian Museum, to the 'long tunnel' eastern exit at Kings Cross Tunnel. 22,000 copies of the brochure were distributed, with an enclosed reply paid comment form. A toll free information line, community discussion sessions and a display at Customs House, Circular Quay were part of the communication process.²⁴⁹
- 6.11** The RTA has stressed that the changes that constituted the 'long tunnel' were a consequence of feedback received from the original 'short tunnel' proposal. Mr Mike Hannon, Acting Chief Executive, in evidence to the Committee stated:

[T]here was an enormous amount of reaction to a report which was produced by the Roads and Traffic Authority back in 1998, which at that point in time had the tunnel finishing near the intersection of College and William streets. ... numerous groups came together to complain that what we were doing was effectively discharging a huge amount of traffic at that point at the corner of College Street and William Street. ... At the time there were enormous protests around the streets, and they [Sydney City

²⁴⁹ Submission 1, p16

Council] said that Sydney deserves a better cross-city tunnel and their argument was that we should not finish the tunnel at College Street as indicated. They indicated that the tunnel should extend all the way through to Kings Cross and they argued that this would have given the opportunity to allow William Street to be upgraded by the city as a special boulevard. They talked about allowing access for buses and the like and basically making that boulevard a significant feature of the city—basically a gateway to the city.

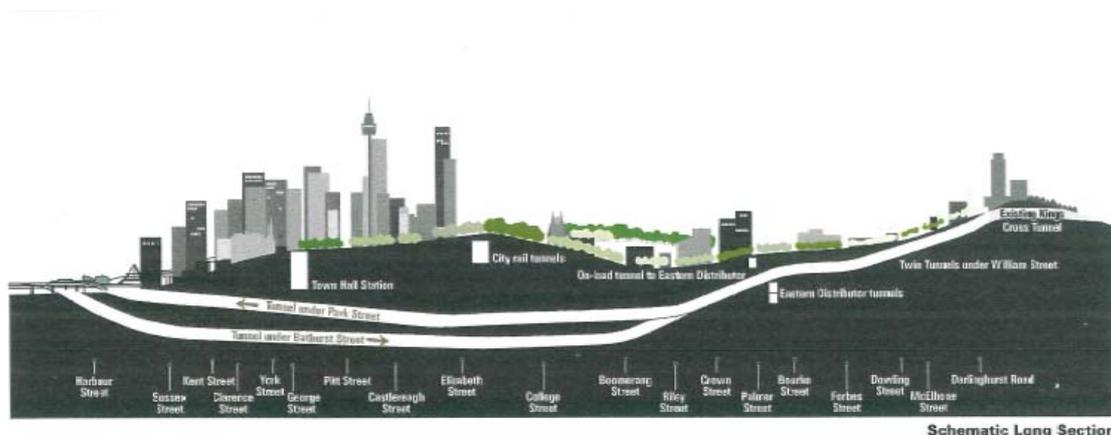
They actually produced a report in 1999, submitted that to government and sought comment. As I said, there was an enormous amount of consultation with the Chamber of Commerce, the task force, the William Street committees and the like. At the end of the day, while the Government put out the report in 1998 suggesting that it be a short tunnel, the decision was made at that point in time to make it a longer tunnel. But the objectives I talked about in my opening address was very much about improving the environmental quality of public spaces within central Sydney, improving ease of access and reliability of travel within Sydney. An important one was doing a lot of things for the bus and basically the public transport lobby as well.²⁵⁰

6.12 Ms Clover Moore, Lord Mayor of the Sydney City Council, in evidence to the Committee confirmed that the Council had been vocal in calling for a long tunnel:

Since the mid 1990s ... the City of Sydney has advocated for the construction of the cross-city tunnel. The city has clearly articulated its aims in supporting the tunnel, the removal of traffic from surface streets to improve travel times through the central area and to allow the reallocation of road space in the CBD for public transport, pedestrians and cyclists.²⁵¹

6.13 The initial EIS for the Cross City Tunnel (the ‘long tunnel’) was on public display from 2 August to 6 October 2000. The EIS was advertised in the media and exhibited at 17 locations and on the RTA website.²⁵² Figure 6.2 shows a diagrammatic representation of this tunnel.

Figure 6.2 The ‘long tunnel’



Source: *The Cross City Tunnel Environmental Impact Statement*

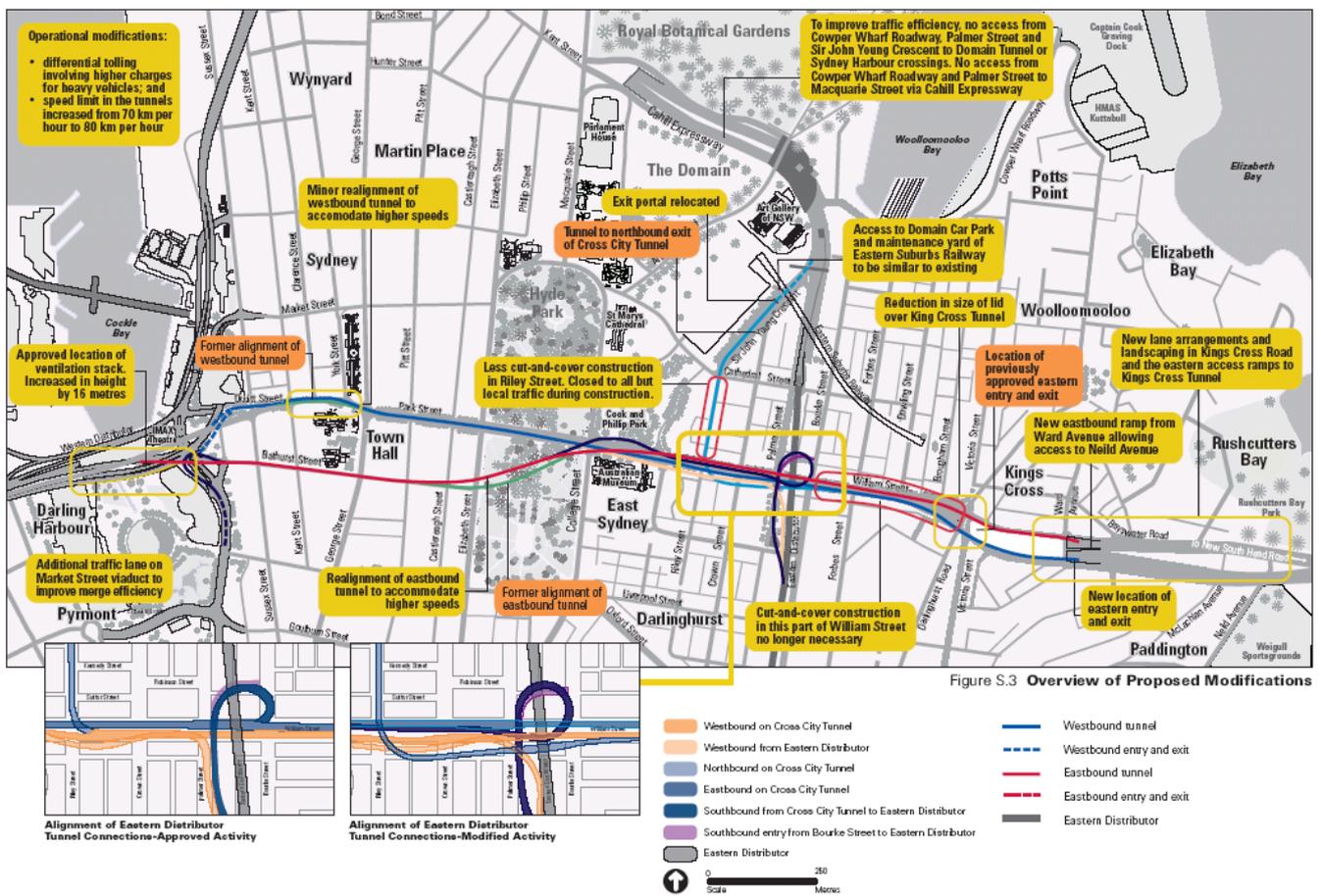
²⁵⁰ Mr Mike Hannon, Acting Chief Executive, RTA, Evidence, 6 December 2005, pp5-6

²⁵¹ Ms Clover Moore, Lord Mayor, Sydney City Council, Evidence, 9 December 2005, p23

²⁵² Submission 1, p16

- 6.14 The *Cross City Tunnel Representations Report*, summarised the 196 representations received during the public consultation period and included the *Cross City Tunnel Preferred Activity Report*. The Preferred Activity Report incorporated 20 modifications to the project as it was represented in the EIS, a direct result of the public consultation.
- 6.15 Following the selection of the CrossCity Tunnel Consortium’s proposal, which did not conform to the EIS, the RTA prepared a Supplementary EIS for the Cross City Tunnel (the ‘long 80 tunnel’), which was on public display from 1 August to 31 August 2002.²⁵³
- 6.16 The Supplementary EIS was displayed at 19 locations and on the RTA website, with a toll-free information line available. 5000 brochures were distributed. The map at Figure 6.3 shows the ‘long 80 tunnel’, as described in the SEIS.

Figure 6.3 The ‘long 80 tunnel’



Source: *Cross City Tunnel Supplementary Environmental Impact Statement*

6.17 The RTA received 1,012 representations which were summarised in the *Cross City Tunnel Representations Report for the Supplementary Environmental Impact Statement*.²⁵⁴ The large number of submissions received in relation to the ‘long 80 tunnel’ indicates the level of awareness of that there was concern in the community about the differences this option represented over the ‘long tunnel’.

6.18 Ms Clover Moore expressed this view in her evidence to the Committee:

A critical turning point occurred for the cross-city tunnel project when the original approved project was abandoned in favour of a revised project proposed by the preferred tenderer. The \$100 million incentive paid to the Government by the Cross City Motorway consortium for a more environmentally damaging project replaced a previously approved project that required the Government to contribute \$40 million for a more beneficial outcome. That was the key point in this whole project.²⁵⁵

6.19 The representations received by the RTA from the community, which included one from Sydney City Council, covered a broad range of issues. The report of the Director General of the then Department of Planning to the Minister for Planning commented that, although at least half of all representations supported the proposal in principle, there were many issues of concern:

The Proponent received 1012 representations to the Supplementary EIS. Whilst more than 50% of the representations supported the proposal in principle, many objected to specific elements such as stack emissions, traffic impacts, noise and the eastern portal locations. A primary concern was impacts on local neighbourhoods due to increased traffic and noise and air pollution.²⁵⁶

6.20 The Director General’s report provided an analysis of the key issues raised and the way in which they were categorised and identified in the RTA’s Supplementary Representations Report:

Generally, the issues discussed in the Supplementary Representations Report under each category were similar to those identified by the Department in its independent review of representations. Some issues were categorised differently resulting in varying numbers of representations cited²⁵⁷

6.21 The Director General’s report noted the impact of the proposal on amenity of local streets and pedestrian spaces:

²⁵⁴ *Cross City Tunnel Proposed Modifications to Approved Project: Director General’s Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, Director General Department of Infrastructure, Planning and Natural Resources, 2002, p iii

²⁵⁵ Ms Moore, Evidence, 9 December 2005, p25

²⁵⁶ Director General, Department of Infrastructure, Planning and Natural Resources, 2002. *Cross City Tunnel Proposed Modifications to Approved Project: Director General’s Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, p iii

²⁵⁷ Director General, Department of Infrastructure, Planning and Natural Resources, 2002. *Cross City Tunnel Proposed Modifications to Approved Project: Director General’s Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, p14

Six hundred and sixty-one representations considered that the modified proposal would have a negative effect on local neighbourhoods due to increased traffic and associated noise, pollution and visual impacts.²⁵⁸

6.22 A full list of the road changes proposed in the SEIS that differ from those in the EIS is attached at Appendix 4. This Appendix also includes details of road changes not in the SEIS, recommended in the RTA's Preferred Activity Report and approved by the Minister.

6.23 Ms Moore pointed out that a number of the road changes in the SEIS were not part of the original proposal (as described in the EIS for the 'long tunnel') and had not undergone 'proper analysis and public consultation' prior to being included in the SEIS.²⁵⁹ The opportunity for consultation in relation to these specific changes was therefore limited to the exhibition period for the SEIS – a statutory one month period in August 2002.

6.24 The list of proposed road changes is extensive. Ms Moore provided one example of a change with significant repercussions:

[T]he loss of northbound access from Crown Street and Palmer Street via Sir John Young Crescent to the Sydney Harbour Bridge and the harbour tunnel.²⁶⁰

6.25 Mr Peter Sansom, former Chief Executive of CCM, in discussing road changes associated with the 'long 80 tunnel' in evidence to the Committee commented that:

The long 80 proposal, selected by the RTA as the preferred option, involved some consequential road changes. These included the widening of Bayswater Road, obviously, and also some adjustments to the Market Street viaduct to improve the traffic flows. The only other change in our long 80 proposal related to a right-hand turn from Cowper Wharf Road into the Domain area and then the Harbour Bridge crossings. We proposed that that right-hand turn be banned.²⁶¹

6.26 Mr Sansom went on to explain that as a result of the community representations the requested Cowper Wharf Road change 'has been taken away so the right hand turn [is] permissible.'²⁶²

6.27 A number of other changes occurred as a result of the public representations, including:

- alterations to traffic arrangements in Woolloomooloo;
- alterations to the Sir John Young Crescent tunnel exit;
- provision of a land bridge over the eastern portal.²⁶³

²⁵⁸ Director General, Department of Infrastructure, Planning and Natural Resources, 2002. *Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, p13

²⁵⁹ Ms Moore, Evidence, 9 December 2005, p25

²⁶⁰ Ms Moore, Evidence, 9 December 2005, p25

²⁶¹ Mr Peter Sansom, former Chief Executive, CCM, Evidence, 3 February 2006, p66

²⁶² Mr Peter Sansom, former Chief Executive, CCM, Evidence, 3 February 2006, p66

²⁶³ Director General Department of Infrastructure, Planning and Natural Resources, 2002. *Cross City Tunnel Proposed Modifications to Approved Project: Director General's Report Prepared under Section 115C of the Environmental Planning and Assessment Act 1979*, pp1-2

6.28 A full list of all road changes is included in Appendix 4.

6.29 Figure 6.4 shows the land bridge over the eastern portal of the Cross City Tunnel.

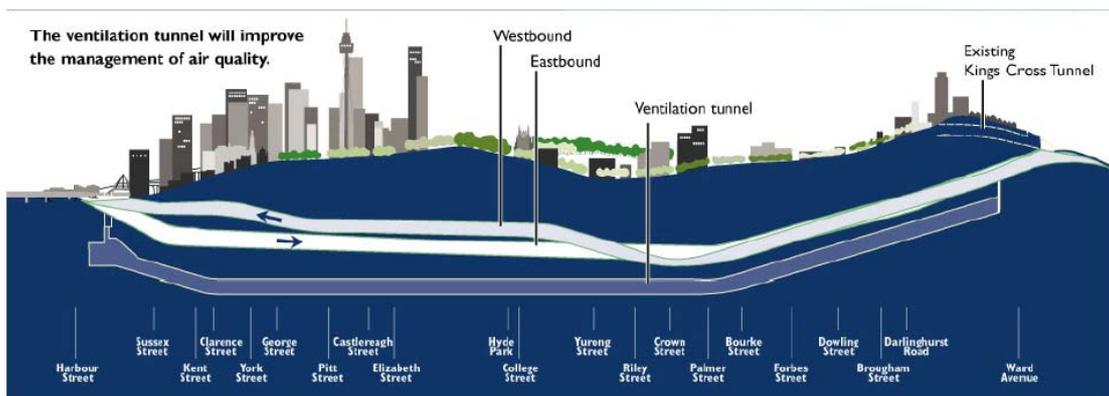
Figure 6.4 Land bridge



Source: Cross City Tunnel Preferred Activity Report for the Supplementary Environmental Impact Statement

6.30 A number of other modifications which did not arise from representations but from other agencies were suggested by the RTA in the Preferred Activity Report, and were approved. The most substantial of these was the ventilation duct, a separate tunnel built to ensure the CCT could meet stricter air quality standards.²⁶⁴ Figure 6.5 shows a diagrammatic representation of the final tunnel, with ventilation duct.

Figure 6.5 The 'long 80 tunnel' with the ventilation tunnel.



Source: www.rta.nsw.gov.au

²⁶⁴ RTA, Cross City Tunnel Preferred Activity Report for the Supplementary Environmental Impact Statement, November 2002, p7-3

Conclusions

- 6.31** Evidence presented to the Committee has indicated that the Cross City Tunnel has suffered from a poor public relations campaign. The community, by the time the tunnel opened, were not convinced that the benefits of the tunnel matched the toll pricing.
- 6.32** It is also clear that the community did not fully understand the implications of the opening of the tunnel, a situation exacerbated by the significant road changes proposed in the Supplementary EIS. These changes produced a very different scenario from that proposed in the initial EIS. The relatively short period of time available for the affected community to digest the changes has also contributed to the anger and sense of frustration expressed in submissions to, and by witnesses before, the Committee.
- 6.33** A continuity of consultation and information throughout all stages of the project may have minimised the hostile reaction to the tunnel on opening.
- 6.34** The Committee endorses the IIG *Review* recommendations relating to consultation, in particular the need for a seamless process of consultation throughout all phases of the project.

Consultation during project construction with Community Liaison Groups

- 6.35** A number of community consultation groups were established by Baulderstone Hornibrook Bilfinger Berger Joint Venture to satisfy the conditions of approval for the project.²⁶⁵ The Kings Cross CLG, the Central CLG (initially two separate CLGs, the South Sydney CLG and the Sir John Young Crescent CLG), and the Darling Harbour CLG were established.
- 6.36** The Charter and Procedures document of the Community Liaison Groups states that:
- The role of the CLGs is advisory, issues and suggestions raised by members will be considered by the project team in making decisions. ... The CLGs are not decision making bodies and it is not a requirement that consensus be reached amongst members on issues discussed.²⁶⁶
- 6.37** One of the explicit selection criteria for applicants was a '[w]illingness to accept the approved status of the project and to contribute constructively within the constraints of the project's conditions of approval.'²⁶⁷
- 6.38** CLG members were selected by a panel, convened by an 'independent community relations specialist'.²⁶⁸
- 6.39** The Air Quality Community Consultative Committee (AQCCC) was also established, to 'provide a forum for the RTA and affected stakeholders to discuss and share information about air quality and associated issues'.²⁶⁹

²⁶⁵ Minister for Infrastructure, Planning and Natural Resources, Planning Approval Condition 11

²⁶⁶ Cross City Tunnel *Charter and Procedures*, Cross City Tunnel, Community Liaison Group, February 2003, p3

²⁶⁷ Cross City Tunnel *Charter and Procedures*, Cross City Tunnel, Community Liaison Group, February 2003, p5

²⁶⁸ Cross City Tunnel *Charter and Procedures*, Cross City Tunnel, Community Liaison Group, February 2003, p5

²⁶⁹ *Terms of Reference and Protocol*, Air Quality Community Consultative Committee, p3

- 6.40** The Committee acknowledges the commitment and concern for the local area shown by members of the CLGs. It is also acknowledged that the selection criteria requiring an acceptance of the ‘approved status of the project’ is only reasonable given the project and its parameters had been approved and the role of the CLGs was to make comments and recommendations about the implementation of development and environmental plans and monitor compliance with the conditions of planning approval.

Local Community Consultation

- 6.41** The Committee heard extensive and conflicting evidence about the extent and effectiveness of community consultation in relation to the Cross City Tunnel. The frustration expressed by Ms Suzanne O’Connor, a member of one of the Community Liaison Groups established by Baulderstone Hornibrook Bilfinger Berger Joint Venture to satisfy the Planning Conditions of Approval Number 11, is common to many of the submissions and much of the evidence received by the Committee:

No one from any of the organisations on the committee seemed to be able to produce guidelines or definitions of the phrase community consultation.²⁷⁰

- 6.42** Mrs Margaret Hamilton, member of the Central CLG, in evidence to the Committee, while complimentary of Baulderstone Hornibrook Bilfinger Berger (the construction joint venture) was not as complimentary of the RTA, saying ‘the RTA has patently not had any respect for local residents.’²⁷¹

- 6.43** Ms Catherine Lyons, a long time resident of Potts Point, commented in her submission to the Committee that she felt that ‘CCT did everything to conceal and nothing to inform or consult. ... I feel “they” just told us (eventually) how it was going to be.’²⁷²

- 6.44** Mr Barrie Shepherd, also a resident of Potts Point, in his submission to the Committee, agreed with this position:

My impression is that the process that actually took place was one of no consultation and tantamount to a deliberate misinformation programme by way of a “no information” policy from these important players. It is particularly worrying that RTA and City of Sydney Council, represented by the Mayor, who is also the communities local Member, appear to have deliberately kept public consultation to a minimum by not publishing, in an easily available forum, real information about the plans for road closures and changes associated with the CCT. These organisations should have had their responsibilities for public accountability highest in their culture.²⁷³

²⁷⁰ Submission 35, Ms Suzanne O’Connor, former member of Kings Cross CLG, p2

²⁷¹ Mrs Margaret Hamilton, Evidence, 3 February 2006, p37

²⁷² Submission 31, Ms Catherine Lyons, p1

²⁷³ Submission 32, Mr Barrie Shepherd, p1

- 6.45** Darlinghurst resident Dr Norman Thomson stated in his submission that he perceived the lack of consultation on street changes by the City of Sydney and the RTA to be ‘amazing’:

It is totally inappropriate to make such changes without community input before they can take place.²⁷⁴

- 6.46** This feeling was not limited to private citizens. Woollahra Council were critical of the level and effectiveness of public consultation on the project:

Council considers that the public consultation process for the Cross City Tunnel project was not conducted meaningfully. Public comments/views were either ignored or were brushed aside and decisions were made without due consideration of the public’s viewpoint ... the views of Council, which is a representative for the whole Municipality of Woollahra, were also ignored or brushed aside²⁷⁵

- 6.47** The NRMA also contended that there were serious flaws with the community consultation process, with Mr Peter Steele, Deputy CEO, stating that the NRMA:

[R]ecommend that the NSW Government: Comprehensively review its current processes for undertaking community consultation and communication in relation to the design, construction and operation of road infrastructure in NSW.²⁷⁶

- 6.48** Ms Elizabeth George was particularly critical of the consultation process in relation to the specific road changes in her submission to the Committee on behalf of the Cross City Tunnel Action Group:

Although the outline of some of the specific detail was known to some of the community, the full extent of the proposed traffic changes were carefully concealed and the people of the eastern suburbs were unaware of the extent of the road closures/narrowing that were to occur in an attempt to “force” them to use the CCT, and the implications that this would have for their travel to and from the city. William Street is now a traffic nightmare.²⁷⁷

- 6.49** The lack of awareness of the community of the complexity of the project and the implications of the associated road changes was confirmed by Ms Wanda Jaworski, who in her submission on behalf of the 2011 Residents Association said:

[A]t all stages public authorities and elected representatives failed to reveal the full scope of road closures and traffic restrictions associated with the project, especially after the 2002 revisions.²⁷⁸

- 6.50** The format of the information provided was seen to contribute to the difficulty for the community to be involved in the consultation process. In a submission from Action City East

²⁷⁴ Submission 42, Dr Norman Thomson, p2

²⁷⁵ Submission 36, Woollahra Council, p4

²⁷⁶ Submission 54, Mr Peter Steele, Deputy CEO, NRMA, cover letter.

²⁷⁷ Submission 40, Ms Elizabeth George, p2

²⁷⁸ Submission 52, Ms Wanda Jaworski, 2011 Residents Association, p4

(ACE), an umbrella group representing 2011 Residents Association, Darlinghurst Residents Action Group, Residents of Woollahra and the Darlinghurst Business Partnership, Ms Jo Holder was critical of both the RTA and the City of Sydney Council:

Of particular concern is that the RTA and City of Sydney Council, represented by the Lord Mayor and Member for Bligh, appear to have deliberately kept public consultation to a minimum by not publishing, in an easily available forum, real information about the plans for road closures and changes associated with the CCT.²⁷⁹

6.51 Mr Malcolm Duncan, a member of the Kings Cross Community Liaison Group, pointed out in his submission that:

the finished product has never been on public display or the subject of detailed public comment.²⁸⁰

6.52 Clr Kerri Huxley of Woollahra Council also was concerned about lack of information from Lord Mayor and Member for Bligh Ms Clover Moore MP:

Despite numerous letters or submissions Clover may have made to the State Government or to the submissions, that is all we have seen of our local representative. The general feeling is great dissatisfaction, that this should never have occurred.²⁸¹

6.53 Specifically in relation to community consultation on air quality matters both in the context of the Lane Cove and Cross City Tunnels, Dr Ray Kearney, a representative of the Lane Cove Tunnel Action Group, commented in his submission to the Committee that:

In hind-sight, such controlled ‘community consultation’ was simply a mechanism to justify the RTA saying broadly “extensive community consultation took place” but in fact the process was highly exclusive while the issues of the select consultative meetings were sanitized and orchestrated by the RTA where truth was always elusive and information equivocal.²⁸²

6.54 Dr Kearney applied these comments more broadly:

Experience has shown that community consultation is a sham. Community members are constantly frustrated by their inability to achieve any real community benefit in a system that uses consultation merely to report through pretty presentations merely to meet the letter of the McOA [Minister’s Conditions of Approval] and to be able to say in answer to public criticism, that consultation has occurred.²⁸³

6.55 Ms Elizabeth George agreed with this opinion, calling consultation ‘tokenistic and opportunistic; not democratic’.²⁸⁴

²⁷⁹ Submission 53, Ms Jo Holder, Action City East, p3

²⁸⁰ Submission 56, Mr Malcolm Duncan, p2

²⁸¹ Clr Kerri Huxley, Woollahra Council, Evidence, 3 February 2006, p25

²⁸² Submission 41, Dr Ray Kearney, Lane Cove Tunnel Action Group, pp4-5

²⁸³ Submission 41, p10

²⁸⁴ Submission 40, p3

- 6.56** In responding to the concerns of local community members, Mr Les Wielinga, Director Motorways for the RTA, in evidence to the Committee stressed the difficulties involved in community consultation:

It is important to emphasise that issues like this are difficult to deal with. We do get a range of views from the community about what the right outcome should be. It is very important to us that we fully understand the issues. We get to understand those issues by discussion with community people. We try, as a matter of course, to agree a process with them up front. We try to get a maximum amount of participation. We try to develop a logical process for making the decision and involve them in it. But very, very often at the end of the day the RTA makes a call because of the range of views and we explain why we made that call in the report, such as the condition 288 report that goes on the web site.²⁸⁵

Conclusions

- 6.57** The Committee is aware of the diversity of opinion within the area in relation to the benefits and costs of surface road changes resulting from the Cross City Tunnel project.
- 6.58** The anger and frustration expressed by many members of the CLGs indicates that the role of these groups has not been adequately explained, and that expectations are unrealistically high. The community anger at the large number of changes associated with the 'long 80 tunnel' is likely to have been reflected in the CLGs, comprising as they did local residents arguably most affected by the local road changes.
- 6.59** The Committee believes that some of the community anger and frustration arises from consultation occurring at too late a stage, and the complexity of the information provided to them.

Proposed solutions to public consultation problems

- 6.60** A number of witnesses and submissions have suggested possible solutions to address the dissatisfaction of the community with consultation in relation to projects such as the Cross City Tunnel.
- 6.61** In a submission to the Committee from the Royal Australian Institute of Architects, Dr Deborah Dearing commented that consultation at all stages of a project is ideal:

The ideal process would include stakeholder consultations and information sessions throughout all stages and clearly demonstrate that the proposal is justified in terms of the public interest and needs.²⁸⁶

²⁸⁵ Mr Les Wielinga, Director Motorways, RTA, Evidence 2 February 2006, p27

²⁸⁶ Submission 39, Dr Deborah Dearing, Royal Australian Institute of Architects p3

6.62 The IIG *Review* similarly recognises the need for improved consultation processes:

The Review also proposes that the RTA, in conjunction with the relevant parties to a PPP contract, should develop a seamless process of consultation and stakeholder management through all phases of the project. Such processes should target an appropriate balance between involvement of general community, stakeholder, householder and road user groups.²⁸⁷

6.63 Ms Monique Roser, NSW President of the Planning Institute of Australia, went even further in her evidence to the Committee, suggested that consultation should occur not just during the planning phases of a major project but also in the contract negotiation phase. Ms Roser in evidence to the Committee stated:

In our view, the cross-city tunnel experience has demonstrated that robust public consultation is required not only for the planning approval phase, as is required by legislation, but also for the contract negotiation phase and the direct and indirect impacts of contract conditions need to be thoroughly and clearly understood in the decision-making process. The PIA's position is that in relation to the approvals phase, particularly those that will be funded through PPP mechanisms, projects should be subject to a rigorous, open and transparent approval process, particularly through the use of things like commissions of inquiry.²⁸⁸

6.64 While agreeing with the notion of transparency, Ms Roser's opinion was not shared by the representatives of the Australian Council for Infrastructure Development and Infrastructure Partnerships Australia who also gave evidence to the Committee as part of the same panel:

In fact the statement made by the Planning Institute of Australia in support of release of commercial terms before they have been settled and the involvement of community consultation in the commercial negotiation of these deals, is, I would say, absolutely ridiculous! ... Full transparency once a contract is signed but definitely no community consultation over the commercial terms of concession deeds—not even for PPPs. By implication it would absolutely disrupt all government contracting if you applied that principle across the notion of large contracts.²⁸⁹

6.65 The NRMA, in its submission to the Committee, recommended that the consultation be broadly inclusive of a range of community perspectives:

[W]hat is required is a process whereby the community is engaged and, to the greatest extent possible, widespread community views and preferences are incorporated into the project. It is important that consultation involves the entire community and not just the noisy minority.²⁹⁰

²⁸⁷ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p33

²⁸⁸ Ms Monique Roser, NSW President, Planning Institute of Australia, Evidence, 3 February 2006, p49

²⁸⁹ Mr Dennis O'Neill, Chief Executive Officer, Australian Council on Infrastructure Development, Evidence, 3 February 2006, p49

²⁹⁰ Submission 54, p2

- 6.66** Mr Malcolm Duncan's suggestion, in his submission to the Committee, was to re-visit how community consultation is judged to be successful:

What is essential is to formulate a paradigm or even a sort of checklist which enables both the proponent of a project and the community affected by it objectively to determine that the necessary and sufficient conditions have been fulfilled.²⁹¹

Conclusions

- 6.67** The Committee believes that community consultation and involvement in large-scale infrastructure projects such as the Cross City Tunnel 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 in line with the current evidence based best practice consultation theory.
- 6.68** The clear message from the CCT experience is that some members of 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.

Recommendation 10

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

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.

Accessing the Cross City Tunnel and Signage

- 6.69** While much of the evidence before the Committee has highlighted the 'funneling' effect of road changes associated with the Cross City Tunnel project, there was also concern about the difficulty of accessing the tunnel, particularly for those people living within the area bounded by the east and west portals. Clr Kerri Huxley, Woollahra Council, said:

as I move throughout the inner city and eastern and south-eastern communities I am repeatedly being told about the difficulties of actually finding access to it and how it closes people out from reasonable traffic routes they may normally take.²⁹²

- 6.70** The problem of access is exacerbated by the proliferation of new signage, some of which is not helpful in providing instruction to motorists on how to access both Cross City Tunnel

²⁹¹ Submission 56, p15

²⁹² Clr Huxley, Evidence, 3 February 2006, p26

entries and other major routes. The Chairman and members of the Committee enhanced their understanding of community confusion in relation to access and signage on their site visit to the area on 13 February 2006.

Specific Road Changes

6.71 The Committee has heard considerable evidence from members of the community critical of the road changes that have occurred as a result of the Cross City Tunnel. While the Committee's terms of reference are not intended to cover an in depth examination of every road change that has occurred as a consequence of the Cross City Tunnel, two road changes have been identified to illustrate the depth of community feeling, opportunities for consultation and the impact on the community that road changes can bring about.

6.72 Members of the Committee conducted a site visit on 13 February 2006 which included affected surface streets of central Sydney. They visited the two specific examples detailed below.

Sir John Young Crescent

6.73 One of the changes as a result of the completed Cross City Tunnel project been removal of free access to the Sydney Harbour Tunnel and the Sydney Harbour Bridge from Sir John Young Crescent. Road users are now required to either use the Cross City Tunnel, the Cowper Wharf Roadway or the Macquarie Street access.

6.74 The map at Figure 6.6 shows the location of Sir John Young Crescent and details the road changes.

6.75 The Supplementary EIS banned direct access from both Cowper Wharf Road and Sir John Young Crescent, however access from Cowper Wharf Road was re-instated following community consultation during the Supplementary EIS public exhibition.

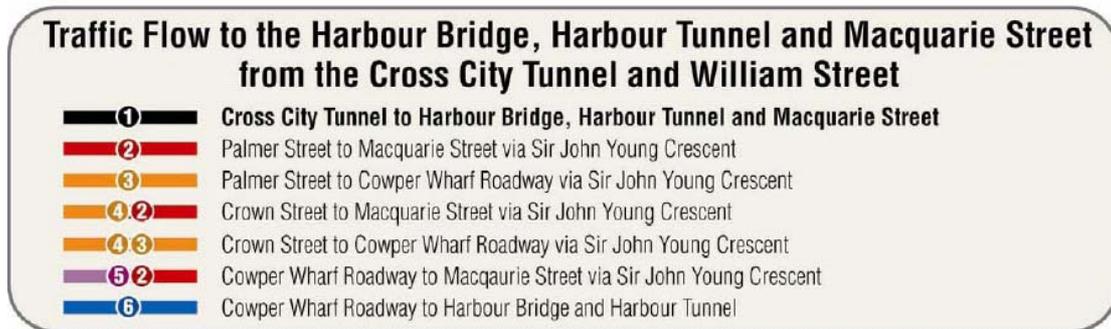
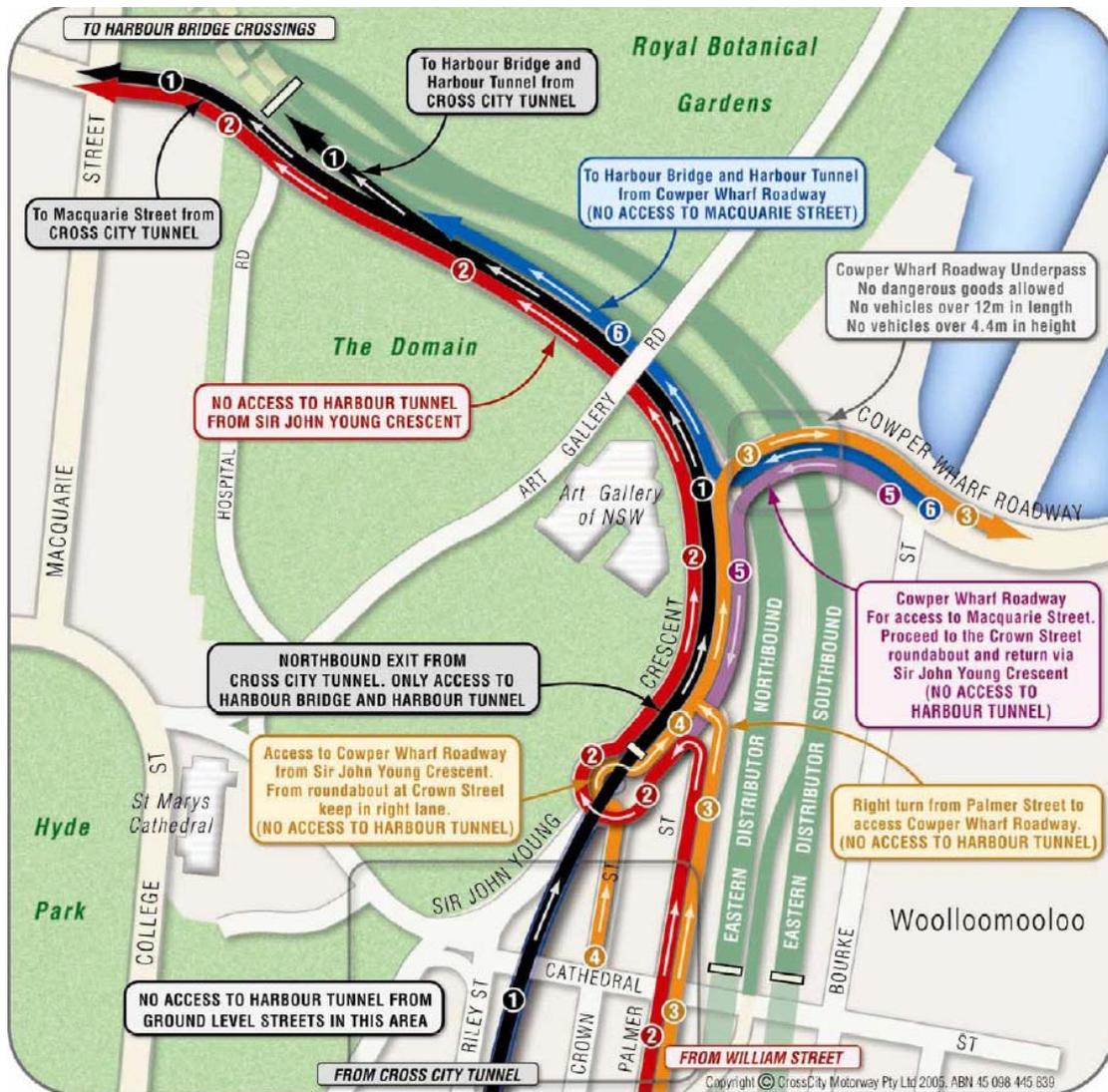
6.76 In his evidence to the Committee, Mr Alan Limbury was critical of the RTA's decision not to also re-instate the direct access to the Harbour crossings from Sir John Young Crescent. He posed the following question:

[W]hy would use of the new lane for access to the Harbour Tunnel by traffic from Sir John Young Crescent create unacceptable congestion while traffic using the same new lane from Cowper Wharf Road (regulated by the same road) would not?²⁹³

6.77 Mr Limbury cited the RTA's response to this question, which included a number of factors – that traffic congestion would result from queuing back from the Cahill Expressway ramp, and that the reinstatement would result in greater traffic volumes through the local area.

²⁹³ Submission 5, Mr Alan Limbury, p3

Figure 6.6 Sir John Young Crescent street changes.



Source: www.rta.nsw.gov.au

Bourke Street

6.78 The closure of Bourke Street to the south at the intersection with William Street, and to the north other than to access the Eastern Distributor, has clearly divided the residents of the area.

6.79 The then Department of Infrastructure, Planning and Natural Resources identified potential problems related to the impact of a right turn ban from William Street to Bourke Street north and access to the Eastern Distributor, suggested as part of the ‘long 80 tunnel’:

[T]he Director-General of the Department of Infrastructure, Planning and Natural Resources undertook an independent examination of the traffic impacts of the project described in the Cross City Tunnel Supplementary EIS. The resulting report ... noted that as the Cross City Tunnel would not provide direct access to the Eastern Distributor, the proposed full-time right turn ban at Bourke Street places an unnecessary restraint for Eastern Distributor bound traffic during off-peak periods.²⁹⁴

6.80 Consequently, the then Minister for Planning, the Hon Andrew Refshauge, imposed Planning Condition of Approval 288:

288. The proponent shall submit a report within 18 months from the Approval investigating the feasibility of allowing right-hand turn movements from William Street into Bourke Street. The report shall identify ways of limiting rat-runs using Bourke Street, the option to prohibit right turns at various times of the day (for example during peak periods 6 am to 10 am and 3 pm to 7 pm) and any other required traffic management measures. The findings of the report shall be implemented to the satisfaction of the Director-General.²⁹⁵

6.81 The *Cross City Tunnel: Response to Minister’s Condition of Approval 288* was prepared by Parsons Brinckerhoff for the RTA and completed in December 2004.²⁹⁶ The *Response to Minister’s Condition of Approval 288* summarised consideration of four options, from maintaining a ‘G-loop’ (where traffic accessing the Eastern Distributor would be required to turn right into Crown Street northbound, right again into Cathedral Street eastbound, right again into Bourke Street southbound and right into the Eastern Distributor) to allowing a right turn from William Street directly into Bourke Street northbound and closing Bourke Street southbound.

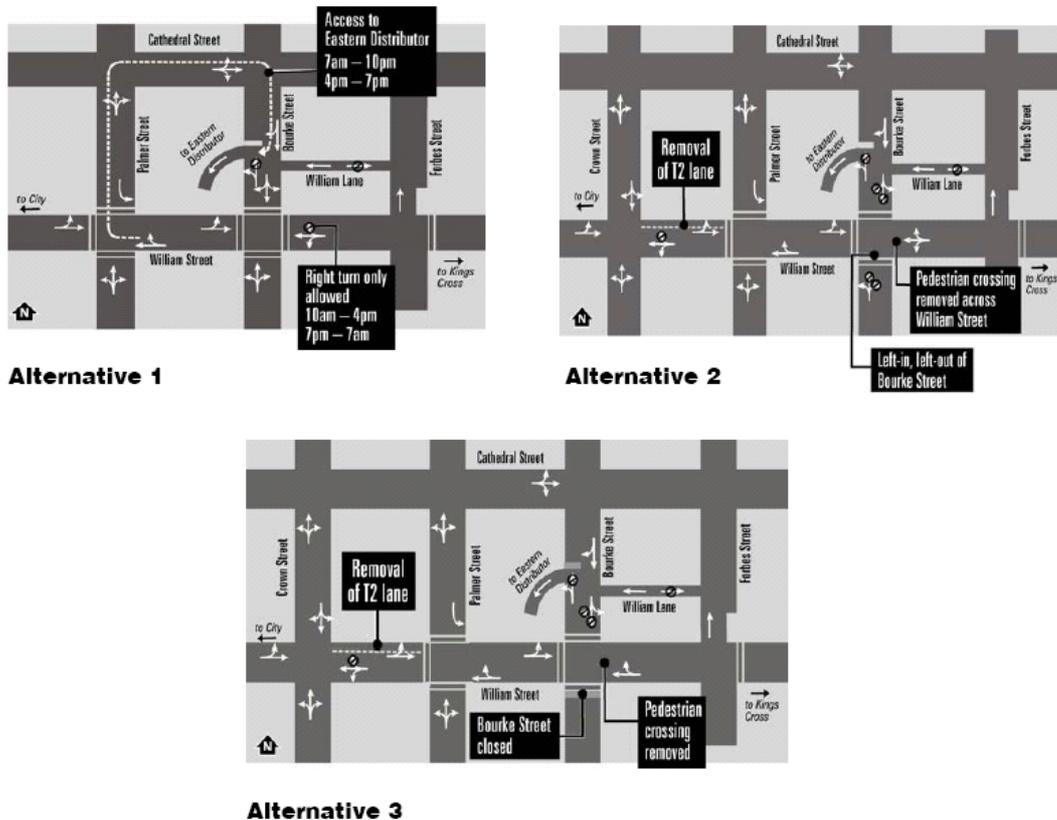
6.82 The maps at Figure 6.7 show the location of Bourke Street and detail the various alternatives considered in the *Response to Minister’s Condition of Approval 288*.

²⁹⁴ RTA, *Cross City Tunnel: Response to Minister’s Condition of Approval 288*, December 2004, pp1-4

²⁹⁵ *Environmental Planning and Assessment Act 1979: Modification of an Approval granted under section 115B of the Environmental Planning and Assessment Act 1979*, December 2002, Schedule 2, Condition 288.

²⁹⁶ RTA, *Cross City Tunnel: Response to Minister’s Condition of Approval 288*, December 2004

Figure 6.7 Bourke Street alternatives



Source www.rta.nsw.gov.au:

6.83 The options were assessed against criteria developed from the assessment objectives and community feedback on the options:

- reduce traffic congestion on William Street
- reduce through-traffic in Bourke Street
- improve accessibility to the Eastern Distributor on-ramp
- minimise impacts on other road users
- reduce impacts on the community.²⁹⁷

6.84 The *Response to Minister's Condition of Approval 288* clearly identified that there were divisions within the community over which option was most appropriate:

The consultation process highlighted the fact that there are a number of conflicting community positions regarding the best way to resolve issues associated with the feasibility of the right turn and rat runs on Bourke Street.

From the review of submissions it was apparent that some residents in East Sydney and Darlinghurst supported proposals that involved closure of Bourke Street (south

²⁹⁷ RTA, *Cross City Tunnel: Response to Minister's Condition of Approval 288*, December 2004, p iv.

of William Street). Conversely, road closures were not widely supported by other residents in Darlinghurst, Woolloomooloo and Kings Cross.²⁹⁸

6.85 According to the 2011 Residents Action Group, the closure of Bourke Street ‘has isolated Woolloomooloo and has had the effect of turning some of the streets in Darlinghurst into ‘ghost’ streets.’²⁹⁹

6.86 Mrs Margaret Hamilton, a member of the Central Community Liaison Group, disagreed:

The calls to re-open Bourke Street and the Palmer Street access to the bridge eliminate the possible benefits to local residents who have put up with 10 years of construction from the Eastern Distributor, followed by the Cross City Tunnel.³⁰⁰

6.87 In relation to consultation on this particular road change, Ms Jo Holder, co-convenor of community group Darlinghurst Resident’s Action Group, was clear in her evidence to the Committee that in relation to road changes generally and Bourke Street specifically:

[O]ur only consultation was an informal invitation to meet with CCT-RTA representatives on 15 December 2005 [2004] about closing Bourke Street. At that meeting we were told that the report was already completed and on its way to the Minister for Planning.³⁰¹

6.88 The Committee notes the extensive consultation undertaken by the RTA concentrated on people who were to be most affected by the change. DRAG was outside that immediate area.

6.89 Mr Malcolm Duncan, a former member of Kings Cross Community Liaison Group, told the Committee, in relation to the Bourke Street closure, that:

we were told we had approved of it. We had not. We did not know anything about it and they claimed that there had been community consultation. If there had been community consultation it certainly was not with our CLG.³⁰²

6.90 The Committee notes that the Minutes of the 5 April 2004 meeting of the Kings Cross CLG record a completed action item referring to a presentation by Parsons Brinckerhoff (the consultants preparing the RTA’s *Response to Minister’s Condition of Approval 288*) on ‘MUAP 288’.³⁰³ Mr Duncan is recorded as being present in the minutes of the meeting.

²⁹⁸ RTA, *Cross City Tunnel: Response to Minister’s Condition of Approval 288*, December 2004, pp4-9

²⁹⁹ Submission 52, p3

³⁰⁰ Mrs Margaret Hamilton, Evidence, 3 February 2006, p37

³⁰¹ Ms Jo Holder, co-convenor Darlinghurst Resident’s Action Group, Evidence, 1 February 2006, p35

³⁰² Mr Malcolm Duncan, former member of the Kings Cross CLG, Evidence, 1 February 2006, p29

³⁰³ Minutes of Kings Cross Community Liaison Group meeting 5 April 2004, p18

- 6.91** Mr Sam Harding, who is a resident of Rushcutter's Bay, in his submission to the Inquiry said that:

The closing of Bourke Street from William Street has made it a lot more difficult to simply move around the local area because it has isolated both Darlinghurst in the west and Woolloomooloo in the north.³⁰⁴

- 6.92** Not all the evidence received by the Committee was against the closure of Bourke Street. Ms Sue Pynenburg, Business Manager for Sydney Church of England Girls Grammar School, said in evidence to the Committee that:

Some of the parents have indicated that it might take them a few extra minutes to reach their destination after they have dropped off children. However we believe that the safety of children, air quality and the possibility of creating a grid lock situation in William Street are far more important issues than perhaps some people taking a little extra time to reach destinations.³⁰⁵

- 6.93** The closure will be reviewed for effectiveness at 6 and 12 month intervals from the opening of the CCT:

Following implementation, the RTA will monitor traffic, pedestrian and cyclist conditions of the affected intersections for a period of 12 months from the opening of the Cross City Tunnel, and report at six monthly intervals on the effectiveness of the measures and any additional means to maximise fulfil [sic] the stated objectives.³⁰⁶

- 6.94** Mr Wielinga outlined to the Committee the RTA's position in relation to this required monitoring:

[W]e are required by the Department of Planning to undertake a review at six months and 12 months. Recently the RTA project team that is working on this sent a community consultation process out for community comment. It may have already been mentioned here in the last couple of days. The RTA is seeking comment on that. In that document—which we are happy to provide you with a copy of—it details how the RTA proposes to go about it, what it is going to take into account and those sorts of things. We have asked the community members for comment on it.³⁰⁷

Conclusions

- 6.95** 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 effects of the closure of Bourke Street. In Chapter 7, the Committee considers the issue of public control of the road network and recommends that the RTA review all road changes in light of the primary objectives of the Cross City Tunnel project. The Committee does not believe it is

³⁰⁴ Submission 19, Mr Sam Harding, p2

³⁰⁵ Ms Sue Pynenburg, Business Manager, SCEGGS Darlinghurst, Evidence, 2 February 2006, p8

³⁰⁶ RTA, *Cross City Tunnel: Response to Minister's Condition of Approval 288*, December 2004, pp5-1

³⁰⁷ Mr Les Wielinga, Director Motorways, RTA, Evidence 2 February 2006, p27

appropriate to make recommendations about specific road changes, including whether Bourke Street should be opened or closed.

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

6.97 The Committee acknowledges the difficulties faced by the RTA in reaching a decision in this situation and notes that a process has been established to ensure that the final decision on the status of the Bourke Street intersection with William Street is taken after full consideration of the range of community views.

Recommendation 12

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

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.

Chapter 7 Public control over the road network

One of the major public concerns in relation to the Cross City Tunnel is that it represents a loss of control over the public road network. This chapter examines this issue.

Is there public control of the road network?

7.1 The Premier, the Hon Morris Iemma MP, has publicly stated that ‘Never again will we surrender control of our road network’.³⁰⁸ In view of the Premier’s failure to accept repeated invitations to appear before the Committee to clarify his comments, the Premier’s comments appear to confirm the widely held public perception that the road changes were implemented at the request of CrossCity Motorway (CCM), and had the primary intention of ‘funnelling’ traffic into the Tunnel.

7.2 The recent Premier’s Department Infrastructure Implementation Group *Review of Future Provision of Motorways in NSW* released in December 2005 specifically recommended that:

An overriding imperative is to ensure the government maintains control of the road and transport network. Accordingly, the contract relationship must in no way fetter the rights of the Government, nor give rise to compensation, if the government increases public transport patronage and/or expands the capacity of the existing arterial road.³⁰⁹

7.3 Professor David Richmond, Special Advisor to the Infrastructure Implementation Group, in evidence to the Committee, stated that the recommendations of his review have been adopted by the Government:

These recommendations have been adopted by the Government and are now currently in the process of being implemented as Government policy. They represent a significant shift in the policy position, which drove, if you like, the procurement process for projects like the cross-city tunnel.³¹⁰

7.4 One of the specific recommendations of the IIG *Review* refers explicitly to retaining discretion over local road changes:

Local road changes must remain at the total discretion of government. As a general rule, the closure and/or alteration of existing local roads should not be for the purpose of directing traffic onto the toll road. Any closures/ alterations should ensure that through traffic is not encouraged to use local roads rather than the toll road or the alternative arterial route.³¹¹

³⁰⁸ ‘Report gives NSW room to manoeuvre’, *Australian Financial Review*, 9 December 2005, p11

³⁰⁹ Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p8

³¹⁰ Professor David Richmond, Special Advisor, Infrastructure Implementation Group, Evidence, 2 February 2006, p59

³¹¹ IIG *Review*, December 2005, p8

7.5 The Committee endorses the Government’s adoption on December 8 2005 of this recommendation by the IIG *Review of Future Provision of Motorways in NSW* for future projects.

7.6 The Committee also notes that the NSW Auditor General is currently undertaking a performance audit of the Cross City Tunnel, which will more closely consider:

whether the RTA had proper processes in place for deciding what roads to close or what road restrictions to put in.

...

Ideally, the process they should have in place would be one that takes account of those considerations—that is, reducing traffic in parts of the city and parts of the suburbs immediately to the east as opposed to traffic measures that were designed to improve the financial viability of the tunnel.³¹²

7.7 While the public perception has been that control of public roads has been ‘handed over’ to the private sector, and the subsequent actions of the Government appear to give credence to that perception, evidence to the Committee from the RTA, former members of the Government, CrossCity Motorway and others suggests that the issue is more complex.

7.8 Mr Peter Sansom, former Chief Executive of CCM denied that CCM had responsibility for the road changes:

It has been suggested that CCM had sought a number of road changes as part of the CCT project in an attempt to “funnel” traffic into the CCT. CCM rejects any suggestion that CCM is responsible for road closures and that they were made for that purpose.³¹³

7.9 Government agencies, former Ministers and the former Premier involved in the project have consistently said that the changes to the road network were principally intended to meet the project’s overall primary objectives:

- to improve the environmental quality of public spaces within Central Sydney
- to improve the ease of access and reliability of travel within Central Sydney
- to improve the reliability and efficiency of travel between areas east and west of Central Sydney.³¹⁴

³¹² Mr Bob Sendt, NSW Auditor General, Evidence, 2 February 2006, p50

³¹³ Submission 38, Mr Peter Sansom, former Chief Executive, CCM, p2

³¹⁴ RTA, *Cross City Tunnel Environmental Impact Statement*, August 2000, Summary, p5

7.10 The Hon Craig Knowles in evidence to the Committee described the road changes as necessary to meet the primary objectives of the Cross City Tunnel contained in the EIS:

[U]nless what I will call the freed-up new capacity of CBD road space was quickly reinforced for public transport use then it would be inevitable that private motor vehicles quickly would fill it up again and you would end up causing more congestion, not less and, of course, go counter to the principal objective of the tunnel proposal.³¹⁵

7.11 The former Treasurer, the Hon Michael Egan, said in his evidence to the Committee that the reality was in fact the reverse of public perception that control of public roads had been 'handed over' to the private sector. Mr Egan stated:

The planning changes, the traffic lane restrictions, preceded the building of the tunnel. They were not put there for the purposes of the tunnel. The tunnel was put there to enable those traffic changes to be implemented.³¹⁶

7.12 The former Chief Executive of the RTA, Mr Paul Forward, in evidence to the Committee agreed that the desire for some of the road changes preceded the Cross City Tunnel concept:

In fact, the desire for road changes – the road closures – many of these preceded the Cross City Tunnel concept itself. They were issues that were raised by very many people in the community. A distinguished group of architects, urban designers ... the Council of the City of Sydney, the South Sydney City Council, were all demanding of the RTA that this road space be captured early so that, over time, traffic did not grow and then occupy that additional space...³¹⁷

7.13 Mr Forward's understanding was confirmed by Mr Brett Skinner, Director of Finance, RTA, in evidence to the Committee, when he stated:

[T]he actual planning approval was completed before the detailed proposals submitted for the project ... The significant decisions in relation to the traffic arrangements were made as part of the planning approval process.³¹⁸

7.14 In response to questions relating to the number of intersections with traffic light changes, Mr Hannon said in evidence to the Committee that:

that would total approximately 400 intersections. Every intersection in the city would have undergone changes to cycle time and green time depending on traffic densities.³¹⁹

7.15 The Committee notes that CCM met with the RTA to discuss changes to traffic light phasing.

³¹⁵ Mr Knowles, former Minister for Infrastructure, Planning and Natural Resources, Evidence, 3 February 2006, p2

³¹⁶ Hon Michael Egan, Evidence, 6 December 2005, p47

³¹⁷ Mr Paul Forward, Evidence, 6 December 2006, p53

³¹⁸ Mr Brett Skinner, Director, Finance, RTA, Evidence, 6 December 2005, pp15-16

³¹⁹ Mr Mike Hannon, Acting Chief Executive, RTA, Evidence, 2 February 2006, p29

7.16 Ms Monique Roser, NSW President of the Planning Institute of Australia, in evidence to the Committee, agreed that the Cross City Tunnel was a good opportunity to make other changes to roads in central Sydney. Ms Roser stated that:

In our view, the cross-city tunnel provided a once-in-a-generation opportunity to improve the city's streets to benefit road users, pedestrians and public transport users. We thought that the anticipated reduction in traffic along Park and William Streets provided opportunities for those thoroughfares to become green boulevards with increased bus lanes, bicycle lanes, widened footpaths, et cetera. Such treatments obviously would provide a fitting entrance to the city from the east and would complement the City of Sydney Council's efforts to upgrade the amenity of Kings Cross.³²⁰

Figure 7.1 William Street upgrade.



Source: www.rta.nsw.gov.au

³²⁰ Ms Monique Roser, NSW President of the Planning Institute of Australia, Evidence, 3 February 2006, p49

- 7.17** The Hon Dr Andrew Refshauge, former Minister for Urban Affairs and Planning, confirmed that changes to bring about improvements in urban amenity were part of the Government and Sydney City Council's long standing plan for the area:

[I]n all of the discussions from, I think, back in 1990 the city council and the State Government suggested a tunnel, because they wanted to look at the access to Sydney from the east. William Street was to be dramatically changed to reduce the traffic able to come down William Street, expand the footpath and provide better public transport options by the T-ways, which were effectively a partial busway. That would mean there would be better public transport options, it would reduce the capacity for cars to come in and it would provide a better public environment for William Street.³²¹

- 7.18** Mr Paul Levins, General Manager, Corporate Affairs for Bilfinger Berger Australia described the tunnel as 'a deliberate attempt to decongest CBD streets':

That has been referred to as funnelling, a term that has now accrued derogatory connotations, because critics have used it to suggest that this traffic movement is about increasing the profit to the private sector. It is not. ... What the tunnel is about is an urban amenity program that was well consulted on and considered. ... To the extent the traffic changes give preference to drivers using the tunnel, that has occurred because the policy imperative was to take as many cars off the CBD streets.³²²

- 7.19** Mr Sendt, NSW Auditor General, in his evidence to the Committee confirmed the project's objectives and clarified that the current performance audit would consider whether the road changes were consistent with those objectives:

... it has always been talked of in terms of getting traffic off the surface streets of the CBD and inner-city suburbs. That obviously involved to some extent a mixture of carrot and stick approach. The carrot is the provision of the tunnel, which clearly substantially lessens the time it takes to get from one side of the CBD to the other. But— particularly given the complexity of the tunnel and the high cost, and hence the high toll—while there is a carrot in terms of better travelling times, there is also a penalty in terms of what is perceived by the public to be a fairly high toll for a fairly short road. So there needed to be road restrictions and road closures in order to achieve the Government's objective of getting traffic off the surface streets.³²³

³²¹ Hon Dr Andrew Refshauge, former Minister for Urban Affairs and Planning, Evidence, 3 February 2006, p13

³²² Mr Paul Levins, General Manager, Corporate Affairs, Bilfinger Berger Australia, Evidence, 3 February 2006, p74

³²³ Mr Sendt, Evidence, 2 February 2006, p50

7.20 The Hon Dr Andrew Refshauge succinctly provided a possible explanation for the extent of community opposition to the surface road changes as a result of the Cross City Tunnel project:

From my experience as a member of Parliament I have never found people who have said to me, "I want more traffic on my street or the road I go on." They want less. In that sense they would prefer to have less traffic on the city. I believe human nature would think it is better if someone else is the one that does not come in, rather than themselves.³²⁴

Fetters on the discretion of the RTA

7.21 A number of clauses in the *Cross City Tunnel Project Deed* refer to the RTA's right to manage the road network and perform its functions – in particular, clauses 2.3 and 18.1.

7.22 Clause 2.3(a) clearly states that nothing in the Project Deed will fetter the discretion of the RTA:

2.3 RTA as an authority

(a) Subject to clause 2.3(b), the Trustee and the Company acknowledge and agree that:

(i) nothing in this Deed or in any of the Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RTA to exercise any of its functions and powers pursuant to any legislation; and

(ii) without limiting clause 2.3(a)(i), anything which RTA does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by RTA under this Deed and will not entitle the Trustee or the Company to make any Claim against RTA arising out of the subject matter of the Deed and the other RTA Project Documents.³²⁵

7.23 Clause 18.1 explicitly protects the right of the RTA to make changes to the road infrastructure and to public transport arrangements:

18.1 No restrictions on RTA

Nothing in this Deed will in any way limit or restrict the ability or power of the RTA or the Government, directly or through any Authority to:

(a) develop, construct, operate and/or maintain directly, by sub-contractors or otherwise, other tollways, tunnels, freeways and other roads in New South Wales;

(b) maintain, manage, change or extend the Sydney road and transport network or traffic or transport system;

(c) extend, alter, close or upgrade existing public transport routes or services;

³²⁴ Hon Dr Andrew Refshauge, Evidence, 3 February 2006, p15

³²⁵ RTA, *Cross City Tunnel Project Deed*, 18 December 2002, clause 2.3(a)

- (d) extend, alter or upgrade existing public transport routes or establish new transport services;
- (e) develop the transport network generally;
- (f) implement Government policies; or
- (g) otherwise do anything which, subject to this Deed, they are empowered to do by Law.³²⁶

7.24 Legal advice provided to the RTA by Mr Bret Walker SC, a copy of which was provided to the Committee, is that these clauses act to prevent the RTA from being fettered from taking action in relation to the road network:

The provision made by clause 18.1 of the Project Deed is clear and unequivocal. The Project Deed expressly preserves all existing discretions and permits their due exercise.³²⁷

The issue of government liability to pay compensation for future road changes

7.25 Legal advice provided to the RTA by the legal firm Clayton Utz noted that while clause 18.1 prevented the Project Deed from restricting its power to ‘manage the transport network’ there ‘may however be financial consequences for RTA in doing so’.³²⁸ The Clayton Utz advice goes on to state that:

The Project Deed sets out in clauses 18.2 - 18.4 various local road traffic arrangements, connections to the Tunnel and traffic arrangements on feeder roads which, if changed by RTA in the future, may lead to RTA being obliged to provide certain financial or other relief to CCM.³²⁹

7.26 There are a large number of local road traffic arrangements, a detailed list of which can be found at Appendix 4. Maps referring to the area appear after Chapter 2. Changes to the East Sydney area include the narrowing of William Street and the restriction of lanes from general traffic use to Transit and Bus lanes, and restrictions in the Kings Cross Tunnel. The maintenance of traffic connections to the Cross City Tunnel are also included in the list, to ensure that the ‘number of general traffic lanes and transit lanes’ are not reduced.³³⁰

7.27 Clause 19.2 of the Project Deed provides that if any of the local road traffic arrangements listed in clauses 18.2-18.4 are changed and result in a ‘material adverse effect’ (MAE), then the RTA and CCM will ‘negotiate in good faith’ to restore the company to the situation they would have been in if the change had not occurred.³³¹

³²⁶ RTA, *Cross City Tunnel Project Deed*, 18 December 2002, clause 18.1

³²⁷ RTA, *Contractual Arrangements for the Cross City Tunnel: Memorandum of Advice*, December 2005, p8

³²⁸ email from John Shirbin, Clayton Utz to Les Wielinga and Graham Read, RTA, 8 October 2005, p1

³²⁹ email from John Shirbin, Clayton Utz to Les Wielinga and Graham Read, RTA, 8 October 2005, p2

³³⁰ RTA, *Cross City Tunnel Project Deed*, 18 December 2002, clause 18.2-18.4

³³¹ RTA, *Cross City Tunnel Project Deed*, 18 December 2002, clause 19.2

7.28 According to an email exchange between John Shirbin, Clayton Utz, to Les Wielinga and Graham Read, RTA, an MAE occurs if the change materially and adversely impacts CCM's ability to:

- Carry out the Project;
- Repay the project debt; or
- Pay the projected return to equity investors.³³²

7.29 The advice to the RTA from Clayton Utz notes that:

The potential financial exposure to RTA under the MAE provisions may be particularly high in present circumstances where the trading performance of the CCT is below that projected in the Base Case Financial Model. If a change to a traffic arrangement is made which triggers the MAE provisions, there is a risk that CCM will ascribe to the change an effect which would maximise the liability of RTA under the MAE provisions. Indeed, CCM is assisted in this respect as the definition of equity return provides that where there is insufficient historical information, the projections in the Base Case Financial Model are used.³³³

7.30 This advice suggests that while the RTA retains nominal control of the public road network, the financial cost of exercising that control may be so high as to effectively result in a loss of control.

7.31 Professor Tony Blackshield, Emeritus Professor and constitutional law expert, considered this perspective during his evidence to the Committee. He concluded that:

The argument would be that a public servant who knows that a particular decision he or she is likely to make would have the effect of landing the government with the liability for heavy compensation might well be deterred from making that decision, and so his awareness about liability might effectively operate as a fetter on discretion, just as much as an explicit fetter would do. That is the argument.³³⁴

7.32 Prof Blackshield rhetorically asked:

[D]oes the cross-city tunnel contract effectively fetter the discretion of either the Roads and Traffic Authority or other levels of government to make changes to the regime in relation to the tunnel? The answer is that, no, it does not fetter those discretions.³³⁵

³³² email from John Shirbin, Clayton Utz to Les Wielinga and Graham Read, RTA, 8 October 2005, p2

³³³ Email from John Shirbin, Clayton Utz to Les Wielinga and Graham Read, RTA, 8 October 2005, p3

³³⁴ Professor Tony Blackshield, Evidence, 1 February 2006, p73

³³⁵ Prof Blackshield, Evidence, 1 February 2006, p71

7.33 In relation to the question of the degree of compensation payable, Prof Blackshield contended that the provisions of clause 19.2 established an onerous compensation regime and that:

probably this is not binding and that probably any compensation would have to be assessed on more general principles and not the particular terms set out in clause 19.2.³³⁶

7.34 Prof Blackshield stressed that there was uncertainty around the legal arguments he discussed with the Committee, particularly in relation to the level of compensation payable, but contended that the effect of the uncertainty was to strengthen the Government's negotiating position in the event of an MAE change:

It is not correct to say that, whatever happens, the Government is now irrevocably bound either to accept the existing arrangements or to pay massive compensation. ... the developers might well be prepared to accept a lower level of compensation rather than face the possibility of not getting any compensation at all.³³⁷

7.35 Prof Blackshield summarised the effect of the clauses in the contract succinctly:

This is not the kind of contract that says, "I promise not to make any changes, and if I do make them I promise to pay you compensation". In a contract of that kind the likelihood is that both promises would be unenforceable. Rather, this is a contract that says, "We don't promise not to make any changes but we do promise that if our changes have a material adverse effect we will compensate you according to that clause".³³⁸

7.36 The Committee notes that the project's aims since the original EIS have consistently involved changes to William Street. The road changes could be characterised as the RTA exercising its control over the road network, as the project's principal objectives related to reducing the amount of traffic in the CBD and thus improving the environmental amenity of the area.

7.37 Despite the extensive evidence presented to the Committee demonstrating that the purpose of the Cross City Tunnel project was clear since its inception, and included modifications to surface streets to improve urban amenity – particularly changes to William Street – there remains a strong public perception that the road changes have occurred in order to 'funnel' traffic into the Cross City Tunnel for the purpose of ensuring the financial viability of the project.

7.38 Mr Craig Tansley, a resident of Darlinghurst, in his submission to the Committee succinctly stated a common community perception that '[m]any roads were closed purely so the owners of the CCT could make more money, and they should be re-opened immediately'.³³⁹

7.39 Ms Lucy Robertson agreed in her submission, suggesting that 'the road closures, especially those on William Street, have no purpose but to force motorists into the tunnel'.³⁴⁰

³³⁶ Prof Blackshield, Evidence, 1 February 2006, p71

³³⁷ Prof Blackshield, Evidence, 1 February 2006, p71

³³⁸ Prof Blackshield, Evidence, 1 February 2006, p73

³³⁹ Submission 43, Mr Craig Tansley, p1

7.40 Mr Richard Gration, a local resident, contends in his submission that:

the primary motivation of the closures was not the benefit of the local community but to increase profits by funnelling traffic into the Cross City Tunnel through forced local road closures.³⁴¹

7.41 The view of individuals in the community was shared by the NRMA, who stated in their submission that ‘Many of the road changes are designed to funnel traffic into the tunnel and limit the viability of alternative routes into, and across, the CBD.’³⁴²

7.42 Despite the extensive publicity that the project received in the lead up to the project commencement, especially the proposed changes to William Street, it seems that many members of the public did not fully understand the impact of the changes would be to make existing free journeys through the area more difficult and time consuming.

7.43 This situation was compounded by the fact that the changes associated with the initial project were not the same as those associated with the final project. There were less opportunities for consideration by the community of the road changes associated with the ‘long 80 tunnel’ project. The new proposal contained many significant changes that would affect the community in new and far-reaching ways. These changes were not presented to the community in their entirety, and as a consequence the final project created community anger. This issue is dealt with in greater detail in Chapter 6.

Implications for future provision of public transport

7.44 The Committee notes that public concern relating to public control of the road network extends to concern over limitations to the future provision of public transport options. New public transport initiatives which do have a material adverse effect on tunnel traffic may lead to compensation to CCM from the Government. In a letter from Clayton Utz to the RTA they say:

The Project Deed for the Cross City Tunnel project between Roads and Traffic Authority and CrossCity Motorway explicitly recognises the government’s unrestricted capacity to manage and upgrade the public transport network. To quote from the Project Deed: “Nothing in this Deed will any way limit or restrict the ability or power of RTA or the Government, directly or through any Authority to”:

- extend, alter or upgrade existing public transport routes or services;
- construct new public transport routes or establish new transport services; or
- develop the transport network generally.

³⁴⁰ Submission 44, Ms Lucy Robertson, p1

³⁴¹ Submission 9, Mr Richard Gration, p1

³⁴² Submission 54, NRMA, p4

Further, CCM will have no rights to compensation under the Project Deed if:

- there is increased patronage of existing public transport routes and services; or
- there are initiatives for new public transport routes or services introduced which do not have a material affect on traffic capacity on connections to and from the Cross City Tunnel.³⁴³

7.45 In response to a question relating to money potentially payable to the CCM for MAEs caused by improving public transport, taken on notice during the Committee's hearing on 1 February 2006, Dr Kerry Schott, Executive Director, Private Projects and Asset Management Directorate, confirmed that:

Nothing in the CCT Deed will in any way limit or restrict the ability or power of Government, directly or through any Authority to:

- (a) extend, alter, close or upgrade existing public transport routes or services;
- (b) construct new public transport routes or establish new transport services;
- (c) develop the transport network generally; or
- (d) implement Government policies.³⁴⁴

7.46 The Committee notes that, according to evidence before the Committee, the Government retains the power to improve public transport services in the area, including the future provision of light rail, if such provision meets the strategic transport planning objectives of Government.

Conclusions

7.47 The Committee agrees that the changes made to the road network are intended to funnel traffic into the Cross City Tunnel. 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 outcomes, however, have been more severe in creating disruptions than is acceptable to the community. 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.

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

³⁴³ Letter from Clayton Utz to RTA, 12 October 2005

³⁴⁴ Answers to questions on notice taken during evidence 1 February 2006, Dr Kerry Schott, NSW Treasury, Question 4, p2

7.49 The Committee notes the similarities between the Cross City Tunnel and the Eastern Distributor projects. As Mr Forward told the Committee:

It is difficult to come to a conclusion in the very early stages of a project like this. ... People criticised the Eastern Distributor in the early days. Most people in Sydney now do not know how we can operate a city as complex as Sydney without the Eastern Distributor. ... It takes at least two years to work through the ramp up and at least two years for the benefits to be understood.³⁴⁵

7.50 The Committee believes that the public perception that the Government is contractually locked into existing road changes is understandable, given the lack of information available to the community about the potential for road change reversals. Many of the surface road changes could probably be reversed without the need for compensation to be paid to CCM. Even major changes such as the William Street 'boulevard' could be reversed, with the amount of compensation payable ranging from very little to a lot depending on the legal interpretation of the relevant clauses of the Project Deed. However, the Committee believes that the primary objectives of the project – to address the continuing traffic congestion of the city of Sydney – are important to the future viability of the city.

7.51 Further, the Committee notes that the NSW Audit Office is conducting a performance audit of the Cross City Tunnel project that will examine in closer detail the processes used by the RTA to impose road changes.³⁴⁶

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

Recommendation 14

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

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.

³⁴⁵ Mr Forward, Evidence, 6 December 2005, p10

³⁴⁶ NSW Auditor General, *Auditor General's Report to Parliament 2005, Volume 4*, p5

Chapter 8 Public release of documents and ministerial accountability

This chapter examines issues that have arisen from the Cross City Tunnel project in relation to both the public release of contractual and other documents relevant to public private projects, and the communication and accountability mechanisms between the RTA and the Government, including Ministers and their staff.

Public release of contractual and associated documents

8.1 The Committee's terms of reference require it to inquire into the public release of contractual and related documents concerned with public private partnerships for large road projects. Concerns have been raised in relation to the public disclosure of documents relating to the Cross City Tunnel, including:

- delays to the tabling in Parliament of the *Cross City Tunnel: Summary of Contracts* and *Cross City Tunnel First Amendment Deed: Summary of Contracts*
- commercial-in-confidence and public interest aspects of releasing certain information in contract summaries.

Cross City Tunnel Project Deed

8.2 The RTA and the Cross City Motorway consortium signed the final Cross City Tunnel Project Deed on 18 December 2002. According to *Working with Government: Guidelines for Privately Financed Projects*³⁴⁷, the summary of contract should have been provided to the Auditor-General one month later in January 2003, and the audited summary of contract tabled in Parliament by the Minister for Roads by March 2003.

8.3 The RTA stated in its submission to the Committee that they:

met with the Auditor-General on 3 March 2003 and explained that if the terms of the Cross City Tunnel project had been made public during the negotiations of the Lane Cove Tunnel Project Deed, those negotiations would have been compromised.³⁴⁸

8.4 The *Cross City Tunnel: Summary of Contracts* was provided to the Auditor-General in June 2003, and tabled in Parliament on 29 February 2004,³⁴⁹ following finalisation of the Lane Cove Tunnel negotiations in December 2003. In justifying delaying publication of the summary of contracts, the RTA informed the Committee that 'the decision to table the contract after the conclusion of the Lane Cove Tunnel negotiations was made to protect taxpayers' interests'.³⁵⁰

³⁴⁷ Premier's Memorandum, No M2000-11, *Disclosure of Information on Government Contracts with the Private Sector*, NSW Government, November 2001, www.premiers.nsw.gov.au

³⁴⁸ Submission 1, RTA, p21

³⁴⁹ NSW Legislative Assembly, *Votes and Proceedings*, 19 February 2004

³⁵⁰ Submission 1, p21

- 8.5 The former Chief Executive Officer of the RTA, Mr Paul Forward, in evidence to the Committee, stated that:

We were under strict instructions to deliver best value for the taxpayer and there were some issues in that contract summary with regard to the risk sharing and we did not want to be exposed in terms of the other parties in the Lane Cove Tunnel project being aware of that risk profile, and that was part of the negotiations. So we felt that we would be at a disadvantage...³⁵¹

- 8.6 Mr Forward also stated, when asked about who, if anyone, informed the Premier's Department that the RTA would not be complying with the Premier's Memorandum 2001-11 on disclosure of documents, that 'I did not inform the Premier's office .. No, I informed the Minister [for Roads].'³⁵²

- 8.7 The Auditor-General's *Report to Parliament 2005 Volume Four* listed some recent privately financed project contracts and when they were provided to the Audit Office, and subsequently tabled in Parliament, including three negotiated by the RTA: the Cross City Tunnel, the M7 and the Lane Cove Tunnel. Of these RTA projects listed, none had been either supplied to the Auditor-General within the 30 day limit, or had subsequently been tabled in Parliament within the 90 days following submission to the Auditor-General.

- 8.8 While acknowledging a number of reasons why the summaries of contract may not be submitted within the required period, including some beyond the control of the Minister, the Auditor-General does not make mention of any special circumstances surrounding the disclosure of information in the contract summaries, and states that 'Except for the last reason [lack of legislative provision that would allow summaries to be tabled when Parliament is not sitting], Ministers should have tabled most of the contract summaries significantly earlier than dates shown.'³⁵³

Cross City Tunnel Project First Amendment Deed

- 8.9 The Cross City Tunnel First Amendment Deed was finalised on 23 December 2004, following the Treasurer's approval granted under section 20 of the *Public Authorities (Financial Arrangements) Act 1987*. In its submission to the Committee, the RTA indicated that 'at the time the First Amendment Deed was signed, RTA was not of the understanding that it was required to prepare a contract summary.'³⁵⁴

- 8.10 In evidence to the Committee Mr Paul Forward, stated that the Premier's directive is silent on variations to contracts, and that:

This was a variation to a contract, not a new contract. It was the RTA's interpretation that we had acted correctly at that particular point in time.³⁵⁵

³⁵¹ Mr Paul Forward, Evidence, 6 December 2005, p7

³⁵² Mr Forward, Evidence, 6 December 2005, p18

³⁵³ NSW Audit Office, *Auditor General's Report to Parliament 2005, Volume Four*, tabled 16 November 2005, p4

³⁵⁴ Submission 1, RTA, p21

³⁵⁵ Mr Forward, Evidence, 6 December 2005, p7

- 8.11** Mr Forward also stated that ‘I had advice from internal RTA people and I also had verbal advice from Treasury’, that there was no requirement to disclose amendments or variations to existing contracts.³⁵⁶ Mr Forward’s evidence to the Committee reiterates advice he gave to the Minister for Roads that:

neither policy contains a requirement that amendments or variations to existing contracts be disclosed. Further, the RTA has been advised that there is not a practice within Government of routine disclosure of amendments to existing contracts and it has not been asked by Treasury to prepare a summary of the Amending Deed for publication. While the Premier’s Memorandum refers to ‘all contracts’ it does so in the context of disclosure of information following the initial tender and contract award process.³⁵⁷

- 8.12** Documents tabled in the Legislative Council show that the question of whether the Cross City Tunnel Project First Amendment Deed is a contract to which Premier’s Memorandum M2000-11 – Disclosure of Information on Government Contracts with the Private Sector applies was referred by the Minister for Roads on 27 October 2005 to the Crown Solicitor for advice. The advice states that:

I have little doubt that the Deed of Variation [the First Amendment Deed] is a contract to which the Premier’s Memorandum would apply ... Nothing in the Premier’s Memorandum indicates some narrow or technical meaning is intended in relation to the “contractual arrangements” covered by the Premier’s Memorandum which would exclude an agreement between parties contained in a deed or an agreement contained in a deed to vary an earlier agreement contained in a deed.³⁵⁸

- 8.13** The Cross City Tunnel First Amendment Deed was tabled in the Legislative Council on 27 October 2005 in response to an order for papers under standing order 52. In a media release on the same day, the Minister for Roads, the Hon Joseph Tripodi MP, stated that ‘the NSW Government is determined to be open and upfront about the Cross City Tunnel deal’ and that:

The First Amendment Deed is of such significance that it should have been disclosed: The contract summary for the primary contract has been on the Treasury website for more than a year. The amending deed was executed in December 2004 and information about the deed should have been publicly available by April 2005 at the latest.³⁵⁹

- 8.14** In the same press release on 27 October 2005, the Minister for Roads stated in relation to Mr Forward’s resignation from the role of Chief Executive of the RTA, that:

The failure of the RTA to provide accurate advice to me as Minister, and to make the document public as required, was a very grave mistake, and one that cannot be overlooked. The people of NSW are entitled to expect that government agencies

³⁵⁶ Mr Forward, Evidence, 6 December 2005, p9

³⁵⁷ Correspondence from Mr Paul Forward, CEO, RTA to the Hon Joe Tripodi MP, Minister for Roads, 27 October 2005, tabled in the Legislative Council on 16 November 2005

³⁵⁸ Crown Solicitor, Advice: Disclosure of Deed of Variation – Cross City Tunnel, 27 October 2005, tabled in the Legislative Council on 16 November 2005

³⁵⁹ Minister for Roads, Media Release, ‘RTA Chief Executive Stands Down’, 27 October 2005

comply with guidelines requiring transparency in commercial deals. Mr Forward did not disclose to me the existence of this contract and failed to mention it in written advice he gave to me on October 13 it is simply unacceptable, given the level of public interest in this issue, that the Chief Executive neglected to inform me as the Minister of the existence of a very important document.³⁶⁰

- 8.15** The Cross City Tunnel First Amendment Deed Summary was posted on the Treasury website, www.treasury.nsw.gov.au, in November 2005.

Government policy on disclosure of documents

- 8.16** The Government policy on what information contained in government contracts with the private sector should be disclosed and what information should remain confidential is contained in the Premier's Memorandum No 2000-11: *Disclosure of Information on Government Contracts with the Private Sector*, and the *Working with Government Guidelines*.³⁶¹ Premier's Memorandum 2000-11 states that:

Agencies must ensure that ... for contracts over \$5 million involving private sector financing, land swaps, asset transfers and similar arrangements a summary of the main items of the contract listed in Schedule 1 and 2 is routinely released within 90 days of award of the contract.³⁶²

- 8.17** The following schedule 1 and 2 items are to be routinely disclosed for contracts over \$5 million dollars:
- details of contract (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the contract; the period of the contract)
 - the full identity of the successful tenderer including details of cross ownership of relevant companies
 - the price payable by the agency and the basis for future changes in this price
 - the significant evaluation criteria and the weightings used in the tender assessment
 - provisions for re-negotiation
 - details of future transfers of assets of significant value to the government at no or nominal cost and details of the right to receive the asset and the date of the future transfer
 - the identification and timing of any assets transferred to the contractor by the agency
 - all operation and/or maintenance provisions in the contract
 - the basis for changes (price variation clauses) in the price payable by the agency

³⁶⁰ Minister for Roads, Media Release, 'RTA Chief Executive Stands Down', 27 October 2005

³⁶¹ NSW Government, *Working with Government: Guidelines for Privately Financed Projects*, November 2001

³⁶² Premier's Memorandum, No 2000-11, *Disclosure of Information on Government Contracts with the Private Sector*, NSW Government, November 2001

- the results of cost-benefit analyses of the successful tender
- the risk sharing in the construction and operational phases of the project, quantified in net present value terms (where possible) and specifying the major assumptions involved
- significant guarantees or undertakings between the two parties, including loans entered into or agreed to be entered into
- to the extent not covered above, the remaining key non-commercial-in-confidence elements of the contractual arrangements.³⁶³

8.18 Items not to be disclosed in summaries of contracts are:

- the contractor's financing arrangements
- the contractors cost structure or profit margins
- items of the contractor having an intellectual property characteristic
- any other matters where disclosure would place the contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the contract and at any later date when there could be an effect on future competitive arrangements.³⁶⁴

8.19 The *Working with Government Guidelines*, issued in November 2001, provides additional requirements for privately financed projects, that include:

A contract summary is to be made available to the Auditor-General for audit within 30 days of the contract becoming effective. Within 90 days of receipt by the Auditor-General, the audited contract summary will be tabled in Parliament by the responsible Minister. After tabling, the availability of the contract summary will be advertised in the Public Notices.³⁶⁵

8.20 The Committee notes that, significantly, the *Working with Government Guidelines* also state that the contract summary should include 'the price to be paid by the public, and the basis for future changes in this price'.³⁶⁶

8.21 Mr Danny Graham, Director, Private Financed Projects, NSW Treasury, outlined the rationale for how contract information is provided in summaries. In evidence to the Committee, Mr Graham said:

The contract summary we produce for privately financed projects is a more comprehensive summary of the project. It will take you from the start to the finish of the project. That was our intention—describe the full process that was followed, not just the final contract. If you read the contract summary, you will see it talks about the evolution of the project, the different stages of approval and what happened in those

³⁶³ Attachment to Premier's Memorandum No 2000-11, 27 April 2000, p 2

³⁶⁴ Attachment to Premier's Memorandum No 2000-11, 27 April 2000, pp 2-3

³⁶⁵ NSW Government, *Working with Government Guidelines*, November 2001, p27

³⁶⁶ NSW Government, *Working with Government Guidelines*, November 2001, p27

stages, and the summary of the contract finally entered into. Our objective was to make it more amenable to people to understand how the project had evolved, how we got the decisions, and the contract that was available.³⁶⁷

8.22 Mr Graham also explained how the treatment of summaries evolved from recommendations of the Public Accounts Committee:

The PAC said it wanted the contract summary certified by the Auditor-General, which is the case. The Auditor-General certifies that it is a true and fair reflection of the full contracts and lists all the contract documents that he has reviewed in relation to the contract summary. Secondly, it was to be tabled in Parliament and, thirdly, it was to be made available to the public through public notices and, in this day and age, on web sites. We have taken on board all those recommendations from the PAC.³⁶⁸

8.23 During the course of examining witnesses, the Committee canvassed the issue of public disclosure of the full text of contracts. In relation to this, Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury stated that:

It was certainly never our intention to use the contract summary to not divulge information. If there is some sense that perhaps we should also be letting loose the whole contract, for whatever reason, we would be happy to consider that after the contract is executed, and excluding commercial in confidence matters, of which there are not necessarily very many.³⁶⁹

8.24 In its recent review, the Infrastructure Implementation Group provides details of revised protocols for the public release of contracts under consideration by the Government. These protocols, in the form of draft guidelines have been included in this Report at Appendix 6. Key changes to the current policy of relevance to this inquiry include:

- For contracts with an estimated value over \$5 million ... the complete contract, less any commercial-in-confidence material, and any information provided under Schedules 1 and 2 which is not in the complete contract, are routinely disclosed within 60 days of the contract becoming effective
- If there is an amendment to a contract valued at over \$100,000 (as distinct from a variation under the contract) that changes the information already routinely disclosed, the agency must ensure the amended information is made public within 60 days of such amendment
- Schedule 1 has been amended to include: Summary information used in full base case financial model such as pricing formula for tolls or other usage charges.

8.25 The Committee notes that the draft guidelines include the requirement to publicly disclose details of the 'risk sharing in the construction and operational phases of the contract'. Given that the RTA has stated that it did not follow the existing guidelines specifically in order to prevent disclosure of risk allocation in relation to the Cross City Tunnel which it believed would compromise ongoing negotiations in relation to the Lane Cove Tunnel project, the

³⁶⁷ Mr Danny Graham, Director, Private Projects, Evidence, 7 December 2005, p15

³⁶⁸ Mr Graham, Evidence, 7 December 2005, p15

³⁶⁹ Dr Kerry Schott, Executive Director, Private Projects and Infrastructure, NSW Treasury, Evidence, 7 December 2005, p15

Committee is concerned that the proposed guidelines may not adequately address this issue, and that the possibility of similar situations may arise in future. The Infrastructure Implementation Group proposal that agencies release a list of documents that are not to be publicly released within the stipulated period, with a timetable for future release if that is to occur, may be an adequate compromise solution.

8.26 The IIG *Review* endorsed the draft guidelines and in addition proposed that:

- details of all amendments and material variations to existing major PFP contracts be released
- all project deeds and other agreements signed on behalf of the government with consortia be released, with a clear timetable, agreed to by the Auditor-General, for the public release of these documents
- documents signed with consortia that are not to be disclosed should be specified in a list with reasons for non-disclosure, and if/when they will be released in future
- the guidelines be mandatory for all agencies

8.27 The Auditor-General, in his *Report to Parliament 2005 Volume Four*, made the following recommendations in relation to the contract summaries:

The Government should:

- introduce a standard template for contract summaries
- introduce legislation to:
 - cover key aspects of the Guidelines, particularly those relating to contract summaries and other disclosures
 - require Ministers to table the Audit Office review of a PFP contract summary at the same time they table the summary in Parliament
 - require the timely tabling of contract summaries, preferably within 30 days of the Audit Office report being signed
 - clarify the ability of Ministers to table contract summaries if Parliament is not sitting
 - require Ministers to table revised contract summaries in Parliament if any significant changes take place. This revised summary should also be subject to review by the Audit Office before tabling.³⁷⁰

8.28 The Committee supports the IIG *Review* proposals 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.

³⁷⁰ NSW Auditor General *Report to Parliament 2005*, Part 4

Recommendation 16

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

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

Impact of non-release of documents

- 8.29** The RTA, in both its submission and in evidence to the Committee, has stated that 'the RTA followed the Government's guidelines, including the *Working with Government Guidelines* for all aspects of the project's development and its implementation.³⁷¹ However, there has been considerable adverse public reaction to the toll level and to the manner in which the increase to the base toll was handled, providing an indication of the perceived lack of transparency and accountability in relation to the toll increase.
- 8.30** The Committee notes the RTA's evidence that they met with the Auditor-General to explain the delay in tabling the Cross City Tunnel summary of contract, and that the reasons for doing so were stated by the RTA to be in the public interest. The Committee believes that the failure to provide the public with information that materially altered the costs passed onto Cross City Tunnel users, with potentially broader implications for other parts of the road network, did not follow the spirit of the *Working with Government Guidelines* and may not have been in the public interest.

Conclusion

- 8.31** The management of the public release of documents by the Government has raised questions as to whose role it was to inform the public of a significant and politically sensitive issue. It may also have contributed to adverse public reaction to the Cross City Tunnel. In this regard, the Committee notes that significant Cross City Tunnel milestones were announced by either the Premier, or a Government Minister. Changes to the project plans at various stages, the decision to call for tenders, the selection of short-listed bidders and the initial toll are all examples. This might have raised a reasonable public expectation that the Minister for Roads, or other member of the Executive, would announce, or cause to be announced, the change in the base toll level. In doing so, the Committee reflects that, had the increased toll been announced in a timely manner, and with sufficient explanation, the extent of the adverse reaction to the discovery may have been substantially reduced.

³⁷¹ Mr Michael Hannon, Acting Chief Executive Officer, RTA, Evidence, 6 December 2005, p3. See also Submission 1, RTA, p 4, p 20, p 21, p 22

Cross City Tunnel documents tabled in Parliament

8.32 The Legislative Council has made two orders for the production of state papers relating to the Cross City Tunnel. Legislative Council standing order 52 states:

- (1) The House may order documents to be tabled in the House. The Clerk is to communicate to the Premier's Department, all orders for documents made by the House.
- (2) When returned, the documents will be laid on the table by the Clerk.
- (3) A return under this order is to include an indexed list of all documents tabled, showing the date of creation of the document, a description of the document and the author of the document.
- (4) If at the time the documents are required to be tabled the House is not sitting, the documents may be lodged with the Clerk, and unless privilege is claimed, are deemed to have been presented to the House and published by authority of the House.
- (5) Where a document is considered to be privileged:
 - (a) a return is to be prepared showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,
 - (b) the documents are to be delivered to the Clerk by the date and time required in the resolution of the House and:
 - (i) made available only to members of the Legislative Council,
 - (ii) not published or copied without an order of the House.
- (6) Any member may, by communication in writing to the Clerk, dispute the validity of the claim of privilege in relation to a particular document or documents. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, for evaluation and report within seven calendar days as to the validity of the claim.
- (7) The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
- (8) A report from the independent legal arbiter is to be lodged with the Clerk and:
 - (a) made available only to members of the House,
 - (b) not published or copied without an order of the House.
- (9) The Clerk is to maintain a register showing the name of any person examining documents tabled under this order.

First order for papers – 2003

8.33 The first order was made by the Legislative Council on June 2003 on the motion of Ms Lee Rhiannon. The order specifically related to contract negotiations for the financing, construction, operation and maintenance of the Cross City Tunnel including:

- (a) the contract between the RTA and the Cross City Motorway Consortium (CCM), signed in December 2002, to finance, construct, operate and maintain the Cross City Tunnel,

- (b) any documents subsequent to the successful tender by CCM relating to contract negotiations between the RTA and CCM concerning the financing of the project,
- (c) any document which records or refers to the production of documents as a result of this order of the House.³⁷²

8.34 The Government complied with the order within the required period, and requested that certain of the documents be privileged, effectively restricting access to these documents to members of the Legislative Council. The President of the Legislative Council in accordance with the resolution of the Legislative Council, referred the documents to an independent legal arbiter, Sir Laurence Street, to consider the claims of privilege. Sir Laurence upheld the claim of privilege on the majority of documents and only a small selection of privileged documents were made public.

8.35 On 13 October 2005, Ms Rhiannon moved that the documents received in response to the 2003 order for papers upon which a claim of privilege remained, be tabled and made public. The motion was narrowly defeated 18 votes to 17, to allow time for further reassessment of those documents.³⁷³ The following sitting day the Legislative Council resolved that, in view of the public interest in matters concerning the Cross City Tunnel, an independent legal arbiter would reassess those documents upon which privilege was upheld in 2003.³⁷⁴ As a result, the documents were again released to Sir Laurence Street.

8.36 In his report, Sir Laurence Street stated that a number of significant things had happened since his initial assessment in 2003. Principally, the Cross City Tunnel contract had been signed and the motorway had been built and was operating. Sir Laurence continued that:

most important of all, the Cross City Motorway, now that it is operating, has attracted a high degree of public concern in relation to a number of its aspects. I note in particular the level of charges and actual and proposed closures of roads and rerouting of traffic. In short, the project is now completed and it is perceived in many quarters to have controversial elements and collateral consequences. These elements and consequences can be legitimately recognized as raising concerns of public interest additional to those under consideration in September 2003.³⁷⁵

8.37 He further stated that ‘a major consideration in favour of the public interest in disclosure of the documents was that the continued non-disclosure had the potential to diminish public

³⁷² Legislative Council, New South Wales, *Minutes of Proceedings, No 12*, 1st Session of the 53rd Parliament, 23 June 2003, item 10

³⁷³ Legislative Council, New South Wales, *Minutes of Proceedings, No 121*, 1st Session of the 53rd Parliament, 13 October 2005, item 8

³⁷⁴ Legislative Council, New South Wales, *Minutes of Proceedings, No 122*, 1st Session of the 53rd Parliament, 18 October 2005, item 12. This was the first time the House had resolved that privileged documents be reassessed by an arbiter.

³⁷⁵ Sir Laurence Street, *Disputed Claim of Privilege – Papers on Cross City Motorway Consortium*, 2nd report of independent legal arbiter, para 8

confidence in the RTA's handling of the project, and in the RTA itself.³⁷⁶ In conclusion he stated that:

concealment is a fertile ground for suspicion and loss of confidence. This is a major element of public interest in the present case. And it demands the total lifting of all the existing constraints on disclosure.³⁷⁷

- 8.38** The advice of Sir Laurence was that privilege granted in September 2003 to some of the documents produced by the RTA was no longer justified in the public interest and should now be denied.³⁷⁸ The documents were consequently tabled in the Legislative Council on 20 October 2005 and, anticipating high levels of media and public interest in the documents, searchable electronic copies were made available on computer disc to the media, members' staff and other interested parties.³⁷⁹

Second order for papers – October 2005

- 8.39** On 18 October 2005, the House agreed to an order for the production of further documents relating to the Cross City Tunnel which had been created since the resolution of the House of 24 June 2003, with particular emphasis on the contracts, financial arrangements and consent deeds relating to the project:

- (a) the contract between the RTA and the Cross City Motorway Consortium (CCM), signed in December 2002, to finance, construct, operate and maintain the Cross City Tunnel,
- (b) the financing of the project including the successful tender by CCM between the RTA and CCM,
- (c) the RTA consent deed, the Project Deed and the Facility Agreement, and
- (d) any document which records or refers to the production of documents as a result of this order of the House.³⁸⁰

- 8.40** In response to this resolution 45 boxes of documents were received by the Clerk on Tuesday 1 November 2005. The documents were tabled in the Legislative Council on 8 November 2005. As with the previous order for papers in relation to the Cross City Tunnel, the government requested that certain of the documents be privileged. This claim was disputed and, in accordance with Standing Order 52 the documents were released to Sir Laurence Street for assessment.

³⁷⁶ Sir Laurence Street, *Disputed Claim of Privilege – Papers on Cross City Motorway Consortium*, 2nd report of independent legal arbiter, para 9

³⁷⁷ Sir Laurence Street, *Disputed Claim of Privilege – Papers on Cross City Motorway Consortium*, 2nd report of independent legal arbiter, para 9

³⁷⁸ Sir Laurence Street, *Disputed Claim of Privilege – Papers on Cross City Motorway Consortium*, 2nd report of independent legal arbiter, p

³⁷⁹ Legislative Council of New South Wales *Procedural Highlights* July to December 2005, p9

³⁸⁰ Legislative Council, New South Wales, *Minutes of Proceedings, No 122*, 1st Session of the 53rd Parliament, 18 October 2005, item 4

- 8.41 In line with his earlier report, Sir Laurence Street noted that the financial arrangements, the negotiations and administration of the tunnel project were all of public interest. He consequently determined that, in the interest of full and completely informed public discussion, and in light of the demands of open government, transparency and accountability, the public interest in the material being made public outweighed the grounds advanced in support of the claim of privilege.³⁸¹ The documents were subsequently tabled in the Legislative Council on 16 November 2005.

Conclusions

- 8.42 The Committee considers that the tabling in Parliament of papers has enabled closer scrutiny of the Cross City Tunnel project by Members of Parliament, the public and media. It enabled public access to a range of documents that provide an insight into the technical and practical aspects of development and implementation of a specific privately financed project.

- 8.43 The IIG *Review* notes that some of the documents that have now been publicly released, including the Base Case Financial models and the full Public Sector Comparator, ‘includes private commercial-in-confidence material and material which could disadvantage the Government or its partners in negotiations presently on foot or in future PFP projects.’ The IIG further suggests that

as these public disclosure processes mature a more detailed analysis and consideration of these classes of documents needs to be undertaken on a case by case basis. This indicates in the first instance that requests for privilege should be argued in the merits of the particular case, albeit in the context of the general Government policy proposal outlined [in the draft guidelines for public disclosure of documents].³⁸²

- 8.44 In response to this suggestion, the Committee recognises that, as the Arbiter has indicated in his report, the issue of what is public interest privilege is difficult to define, and involves assessing conflicting aspects of ‘public interest’. The Committee notes that the Arbiter indicated, in relation to the decision in September 2003 to uphold the claim of privilege, that his conclusions were ‘essentially focused on the situation as it stood at the time’ and ‘could be described as time-specific’. This approach is consistent with the IIG *Review*’s suggestion that such cases need to be considered on a case-by-case basis.

- 8.45 The Committee recognises the complexity of issues surrounding the public release of commercially sensitive material, in the context of community expectation that information be available to ensure that accountability and transparency are maintained in the public interest. The Committee, in making recommendations on the public release of contractual and other documents relating to public private partnerships in its second report, will consult with relevant public authorities and examine how the issue is dealt with in other jurisdictions.

³⁸¹ Legislative Council of New South Wales *Procedural Highlights* July to December 2005, p10

³⁸² Infrastructure Implementation Group, *Review of Future Provision of Motorways in NSW*, December 2005, p29

Ministerial accountability

- 8.46** The Committee is required by term of reference 1(f) to report on 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.
- 8.47** At an early stage of its inquiry the Committee resolved to invite a range of individuals and organisations to make submissions and give evidence. This was done with the aim of gaining as wide a range of views as possible on the Cross City Tunnel project, and the broader issues around the private provision of public infrastructure, within the brief period allowed by the terms of reference.
- 8.48** The Committee invited current and former Premiers, Treasurers, Ministers, public servants, local government representatives, community groups, interest groups, and a range of subject-matter experts. The Former Premiers the Hon Bob Carr and the Hon Nick Greiner, former Treasurer, the Hon Michael Egan, and former Planning Ministers, the Hon Andrew Refshauge and the Hon Craig Knowles all accepted the Committee's invitation and provided useful evidence that assisted the Committee in the preparation of this first report. The Directors General of the Premier's Department and the Departments of Planning and Environment and Conservation and the Ministry of Transport, as well as the Secretary of NSW Treasury and former and current NSW Auditors General also greatly assisted the inquiry by giving evidence, as did the CEO of the Sydney Harbour Foreshore Authority and the acting CEO of the State Transit Authority. Senior officials from the RTA, including former CEO Mr Paul Forward and current acting CEO, Mr Mike Hannon, also appeared, with current RTA officials appearing on two occasions.
- 8.49** The current Premier, the Hon Morris Iemma MP and Ministers Tripodi, Scully and Sartor were sent three invitations to appear before the Committee, and have consistently declined the invitation. An amendment to the motion establishing the Committee that leave be given to members of either House to appear before and give evidence to the committee was agreed to in the Legislative Council, and passed without debate in the Legislative Assembly. This amendment created an expectation in the Committee, that was reflected in the wider community, that current members including the Premier and Ministers, would appear before the Committee as part of its inquiry. The only current Member of Parliament who accepted the Committee's invitation to give evidence was the independent Member for Bligh, Ms Clover Moore MP.
- 8.50** At its meeting on 1 February 2006, the Committee resolved to provide the Premier and relevant Ministers with written questions relating to the Cross City Tunnel Inquiry for response, without withdrawing the invitation to attend a public hearing of the Committee. The Premier and Ministers have provided answers to questions, which have been published on the Committee website, www.parliament.nsw.gov.au/crosscitytunnel.
- 8.51** In response to the Premier and Ministers declining to appear, the Chairman examined the possibility of summoning the Premier and Ministers to appear. However, under the provisions of s4 of the *Parliamentary Evidence Act 1901*, Members of Parliament cannot be summoned to give evidence before a parliamentary committee.

Conclusion

8.52 In declining the Committee's invitation to attend the inquiry, the Premier stated that 'it is appropriate that the Government's thinking on this matter – as on all matters – is publicly aired and questioned.' Mr Iemma continued that:

As Premier there have been numerous opportunities for this to occur, both in the media and in the parliament. In fact, I would say that the issues in this case have been extensively and effectively addressed.

In addition, documents requested by the S.52 Legislative Council Call for Papers have been provided to the Parliament. I would encourage the Committee Members to avail themselves of Hansard's record of questions and answers given on this topic as well as those documents made available in the S.52 Legislative Council Call for Papers.

In view of the substantial amount of information which has already been placed on the public record, I respectfully decline your request to attend and give evidence.³⁸³

8.53 The Committee has received similar responses from Mr Tripodi, Mr Scully and Mr Sartor. The Committee is extremely disappointed by the responses received from the Premier and Ministers. While acknowledging the written answers provided to the Committee, the failure of the Premier and Ministers to appear before the Committee has significantly impeded the Committee's ability to properly address its terms of reference and is an example of a breakdown in accountability mechanisms of Ministers.

³⁸³ Correspondence from the Hon Morris Iemma MP, Premier to the Chairman, 18 January 2006. All correspondence between the Chairman and the Premier and Ministers relating to their appearance before the Committee is available on the Committee's website www.parliament.nsw.gov.au/crosscitytunnel.

Appendix 1 Submissions

No	Author
1	Mr Mike Hannon, NSW Roads and Traffic Authority
2	Mr Stephen Kozicki, Gordian Business
3	Mr Flash Langley
4	Ms Leonie Blair
5	Mr Alan Limbury
6	Mr Neville Peck
7	Mr Ross Nolan, Aircar Industry
8	Mr Matt Mushalik
9	Mr Richard Gration, Owners Corporation (the Horizon)
10	Dr David Sonnabend
11	Mr Tony Harris
12	Mr Bruce Loder
13	Mr Michael Rolfe, Natural Allies
14	Mr Bob Lemon
15	Mr Peter Ramshaw, NSW Taxi Council Ltd
16	Mr Peter Whitehead
17	Ms Robyn Hall
18	Mr Will Trippas
19	Mr Sam Harding
20	Mr Ralf Harding
21	Mrs Carole Ferrier
22	Mr Peter Mills
23	Mr Stephan Gyory, Darlinghurst Business Partnership
24	Mrs Kama Harding
25	Mr Jonathon Falk, Jonathon Falk Planning Consultants Pty Ltd
26	Mrs Elinor Wrobel, John Passmore Museum of Art 26a – Mrs Elinor Wrobel, John Passmore Museum of Art
27	Miss Jane Barnett
28	Ms Mary-Ann Bonney
29	Mrs Kylie Cossa
30	Ms Felicity Crombach
31	Miss Catherine Lyons
32	Mr Barrie Shepherd

No	Author
33	Mr W.G. Hamilton
34	Mr Alex Unwin, Bicycle New South Wales
35	Ms Suzanne O'Connor, Kings Cross Community Liaison Group
36	Mr Warwick Hatton, Woollahra Municipal Council
37	Mr Richard Jones
38	Mr Peter Sansom, CrossCity Motorways Pty Ltd
39	Dr Deborah Dearing, The Royal Australian Institute of Architects
40	Ms Elizabeth George, Cross City Tunnel Action Group
41	Dr Ray Kearney, Lane Cove Tunnel Action Group Inc
42	Dr Norman Thompson
43	Mr Craig Tansley
44	Ms Lucy Robertson
45	Mr Geoff Phillips
46	Ms Julia Perry, Darlinghurst Residents Action Group
47	Ms Jan Morrison
48	Dr Gerard Milton
49	Ms Narelle Thirkettle, Sydneysiders Against Polluting Stacks and Ms Lalita Lakshmi, UnitingCare Harris Community Centre
50	Mr Charles Kelly
51	Mr Benjamin Kelly
52	Ms Wanda Jaworski, 2011 Residents Association Incorporated
53	Ms Jo Holder, Action City East 53a – Ms Jo Holder, Action City East
54	Mr Brett Gale, NRMA Motoring and Services
55	Mr Richard d'Apice
56	Mr Malcolm Duncan - Partially Confidential
57	Mr John Oultram
58	Mr Mark Curren, Residents Against Polluting Stacks
59	Ms Denyse Rockey
60	Mr Peter Snepvangers
61	Ms Stacey Miers, Residents of Woolloomooloo
62	Ms Jill Yates, City of Sydney Residents' Network
63	Mr Michael Gormly
64	Ms Margy Osmond, State Chamber of Commerce
65	Mr Jozef Goj, UBTSC

No	Author
66	Councillor Nick Dyer, Leichhardt Council
67	Professor Bob Walker and Ms Betty Con Walker
68	Professor Anthony Blackshield
69	Mr Gregory Reich

Appendix 2 Witnesses

Date	Name	Position and Organisation
6 December 2005	Mr Paul John Forward	former Chief Executive, Roads and Traffic Authority
	Mr Michael John Hannon	Acting Chief Executive, Roads and Traffic Authority
	Mr Brett James Skinner	Director of Finance, Roads and Traffic Authority
	Mr Leslie Robert Wielinga	Director Motorways, Roads and Traffic Authority
	Mr Christopher Patrick Ford	Director Traffic and Transport, Roads and Traffic Authority
	Hon Robert John Carr	former Premier NSW
	Hon Michael Rueben Egan	former Treasurer NSW
7 December 2005	Mr Peter Sansom	Chief Executive and Managing Director, CrossCity Motorway Pty Ltd
	Dr Kerry Elizabeth Schott	Executive Director, Private Projects and Asset Management, NSW Treasury
	Mr Daniel Joseph Graham	Director, Private Finance Projects, NSW Treasury
	Mr Simon Arthur Yarwood Smith	Deputy Director General, Department of Environment and Conservation
	Ms Elizabeth Corbyn	Director General, Department of Environment and Conservation
	Mr Joe Woodward	Executive Director Operations, Department of Environment and Conservation
	Mr Sam Haddad	Director General, Department of Planning
9 December 2005	Hon Nicholas Frank Hugo Greiner	former Premier NSW
	Mr Christopher Joseph Wilson	Director, Masson Wilson Twiney Pty Ltd
	Dr John Louis Goldberg	Honorary Associate, Faculty of Architecture, University of Sydney
	Ms Clover Moore MP	Member for Bligh and Lord Mayor of Sydney

Date	Name	Position and Organisation
1 February 2006	Mr Anthony Clement Harris	former NSW Auditor General
	Professor Robert Graham Walker	Consultant, Centennial Consulting
	Ms Betty Con Walker	Principal, Centennial Consulting
	Ms Suzanne Lorraine O'Connor	former Member, Kings Cross Community Liaison Group
	Mr John Oultram	former Member, Kings Cross Community Liaison Group
	Mr Malcolm Bruce Duncan	former Member, Kings Cross Community Liaison Group
	Ms Jo Holder	Co-convenor, Action City East
	Ms Stacey Lee Miers	Member, Residents of Woolloomooloo
	Mr Stephan Rubenow Gyory	Communications Director, Darlinghurst Business Partnership
	Ms Julia Perry	Co-convenor, Darlinghurst Residents Action Group
	Ms Carole Rae Ferrier	Member, 2011 Residents Association
	Mr John Eric Pierce	Secretary, New South Wales Treasury
	Dr Kerry Elizabeth Schott	Executive Director, Private Project and Asset Management, New South Wales Treasury
	Mr Daniel Joseph Graham	Director, Private Project, New South Wales Treasury
Dr Colin Gellatly	Director General Premier's Department	
Professor Anthony Roland Blackshield	Emeritus Professor, Macquarie University	
Ms Michelle Zeibots	Transport researcher	
2 February 2006	Ms Deborah Jane Anderson	Adult Educator and Vice President, Eastern Sydney Neighbourhood Association
	Ms Suzanne Laurel Pynenburg	Business Manager, Sydney Church of England Girls Grammar School
	Ms Lalita Lakshmi	Community Development Worker, Harris Community Centre
	Mr Mark Curran	Representative, Groups Against Stack Pollution
	Ms Narelle May Thirkettle	Member, Air Quality Community Consultative Committee

Date	Name	Position and Organisation
	Dr Raymond Kearney	Representative, Groups Against Stack Pollution
	Dr Peter Charles Manins	Member, Air Quality Community Consultative Committee
	Mr Michael John Hannon	Acting Chief Executive, Roads and Traffic Authority
	Mr Brett James Skinner	Director of Finance, Roads and Traffic Authority
	Mr Leslie Robert Wielinga	Director Motorways, Roads and Traffic Authority
	Mr Christopher Patrick Ford	Director Traffic and Transport, Roads and Traffic Authority
	Mr Robert John Sendt	Auditor-General, New South Wales Audit Office
	Professor David Richmond AO	Special Adviser, Infrastructure Implementation Group, Premier's Department
	Mr Roger Frederick Wilson	Manager and Acting Chief Executive, State Transit Authority
	Mr Ian James Glasson	Manager and Director General, Ministry of Transport
	Mr Lyall William Kennedy	Manager and Director of Transport Planning, Ministry of Transport
	Dr Robert David Lang	Chief Executive Officer of the Sydney Harbour Foreshore Authority
	Ms Diana May Talty	Executive Director Major Projects, and Sydney Harbour Foreshore Authority
3 February 2006	Hon Craig John Knowles	former Minister for Infrastructure, Planning and Natural Resources NSW
	Hon Dr Andrew John Refshauge	former Minister for Planning NSW
	Mr Gregory Stewart	Manager, Public Infrastructure, Woollahra Municipal Council,
	Ms Kerri Lawson Huxley	Councillor, Woollahra Municipal Council
	Ms Margaret Eve Hamilton	Member, Central Community Liaison Group
	Ms Patricia Muller	Member, Central Community Liaison Group
	Mr Gundo Alpard Frenda	Member, Central Community Liaison Group

Date	Name	Position and Organisation
	Ms Monique Louise Roser	President, New South Wales Division, Planning Institute of Australia
	Mr Ken Morrison	New South Wales Executive Director, Property Council of Australia
	Mr Garry Robert Bowditch	Project Director, Infrastructure Partnerships Australia
	Mr Dennis Russell O'Neill	Chief Executive Officer, Australian Council for Infrastructure Development
	Mr Peter Sansom	Chief Executive and Managing Director, CrossCity Motorway Pty Ltd
	Mr Paul Levins	General Manager, Operations and Corporate Affairs, Bilfinger Berger Australia

Appendix 3 Site visit to the Cross City Tunnel

Date	Location
13 February 2006	<p>The Chairman and members of the Committee went on a site visit of the Cross City Tunnel and surrounding streets. The route followed is as follows:</p> <ul style="list-style-type: none"> • Macquarie Street to William Street eastbound. • Kings Cross – intersection of Darlinghurst and William streets. • Ward Avenue to Bayswater Road. • Bayswater Road to Cross City Tunnel westbound. • Cross City Tunnel westbound exit, link to Western Distributor and Anzac Bridge. • Cross City Tunnel eastbound, Western Distributor entrance. • Exit Cross City Tunnel at Bayswater Road. • Craigend Road to Kings Cross (intersection of Craigend Road and Victoria Street) • William Street to Crown Street. • William Street into Palmer Street northbound. • Sir John Young Crescent southbound • Sir John Young Crescent northbound to Cowper Wharf Road. • Cowper Wharf Roadway to Bourke Street. • Bourke Street southbound to William Street. • Note left turn only permitted. • Note entry to Eastern Distributor southbound. • William Street eastbound to Forbes Street. • Forbes Street southbound to Cathedral Street. • Cathedral Street westbound to Crown Street. Crown Street southbound to William Street, William Street eastbound, becomes Park Street.

Appendix 4 Road Changes following the SEIS

Description of proposed modifications as described in the Supplementary EIS
Table 1 – Modifications to the Exits and the Surrounding Road Network

Road	Proposed Modification
Market Street Viaduct	widening of the three lane Market Street viaduct to provide for an additional traffic lane over a distance of 360 metres
Druitt Street Viaduct	relocation of a supporting pier
Domain Tunnel/Cahill Expressway	<ul style="list-style-type: none"> ◆ loss of access from Cowper Wharf Road and Palmer Street to Domain Tunnel and Macquarie Street; ◆ access to the Domain Tunnel would only be available from the Cross City Tunnel and the Eastern Distributor; and, ◆ traffic signals at Cowper Wharf Road would be removed.
Sir John Young Crescent	<ul style="list-style-type: none"> ◆ relocation of the exit portal from the intersection with Palmer Street to the south west, in the vicinity of Crown Street; ◆ provision of a southbound parking lane between Palmer and Crown Streets.
Eastern Distributor connection	<ul style="list-style-type: none"> ◆ provision of the loop ramp connecting the Eastern Distributor (northbound) to William Street and the Cross City Tunnel on the outside rather than on the inside of the Bourke Street entry ramp; ◆ relocation of the ramp connecting eastbound Cross City Tunnel traffic to the Eastern Distributor (southbound) 660 metres further west; and, ◆ widening of the Eastern Distributor Tunnel over a length of 40 metres to accommodate Cross City Tunnel access.
William Street	<ul style="list-style-type: none"> ◆ loss of right turn into Palmer Street; ◆ potential for loss of right turn into Bourke Street; ◆ introduction of right turns into Riley and Crown Streets; ◆ extension of the existing westbound T2 lane from Forbes Street to the Kings Cross Tunnel.
Palmer Street	<ul style="list-style-type: none"> ◆ introduction of one way traffic flow (southbound) between Sir John Young Crescent and Cathedral Street; ◆ removal of traffic signals at the intersection with Sir John Young Crescent; and, ◆ provision of an additional northbound 25 metre right turn lane on the approach to William Street.
Crown Street	reconfiguring for northbound traffic
Access to Rail Yards and Domain Carpark	retain existing separate access to these facilities in place of the approved combined access way including dismantling and reassembly or removal of a section of heritage listed stone wall.

Road	Proposed Modification
Kings Cross Tunnel	<ul style="list-style-type: none"> ◆ traffic to enter and exit the Cross City Tunnel east of the Kings Cross Tunnel instead of within the Kings Cross Tunnel, requiring a reduction from three to two lanes in each direction within the Kings Cross Tunnel; and, ◆ provision of a daytime T2 Transit Lane in the Kings Cross Tunnel and along William to Forbes Street.
Kings Cross Road	altered kerblines and road width east of Darlinghurst Road
Craigend Street	<ul style="list-style-type: none"> ◆ altered kerblines and road width east of Darlinghurst Road; and, ◆ changes to pedestrian arrangements (westbound) at the intersection with McLachlan Avenue.
Bayswater Road	altered kerblines and road width west of Neild Avenue
New Ward Avenue Ramp	new single lane eastbound ramp from Ward Avenue providing access to Neild Avenue

Source: Director General's Report on the SEIS, pp8-9

Appendix – part 2

Table of revisions to the SEIS proposal, all of which were adopted. The revisions arose following the Supplementary Representations Report, and modified the changes in the SEIS, outlined in the table above.

Table 5 – Comparative assessment of the impacts of the proposed additional modifications

Description of Additional Modification	Justification	Potential Impacts	Estimated Positive or Negative Impact Compared to the Modifications Proposed in the Supplementary EIS	Nature of Impact
Revisions to Traffic Arrangements in Woolloomooloo	The Supplementary Representations Report indicates that this revision would improve access for local residents and provide efficient traffic circulation in the Woolloomooloo area	Regional Traffic (See Section 6.5)	Negative due to loss of relatively direct access to the Eastern Distributor (southbound) from William Street.	New Minor Change
For an outline of proposed revisions see Section 5.1.2 of this Report and Figures 6 a - b		Local Traffic and Access (See Section 6.6)	Positive due to provision of more direct access to the north-east of the CBD	Major Change
		Construction Issues (see Section 6.10)	Positive due to reductions in impacts on Cathedral Street and St Marys Road	Minor Change
			Negative to traffic increases on Riley Street	Minor Change
			Negative due to construction stage traffic impacts associated with roundabout construction	Minor Change
Direct Connection to the Domain Tunnel from Cowper Wharf Road	The Supplementary Representations Report indicates that this revision would allow for direct access to Harbour Crossing for northbound road users from Woolloomooloo	Regional Traffic (See Section 6.5)	Positive due to maintenance of access to the Domain Tunnel from Cowper Wharf Road	New Major Change
For an outline of this proposed revision see Section 5.1.3 of this Report and Figure 6 c		Physical Property Impacts (See section 7.3)	Positive due to maintenance of access from the Domain Tunnel to Macquarie Street via Cowper Wharf Road	Minor Change
		Landscaping (See Section 6.10)	Negative due to need to excavate rock from under the Domain land bridge and potential for stability issues	Minor Change
			Negative due to loss of fig trees in the median of the Cahill Expressway	Major Change

Description of Additional Modification	Justification	Potential Impacts	Estimated Positive or Negative Impact Compared to the Modifications Proposed in the Supplementary EIS	Nature of Impact
		Construction Issues (See Sections 7.1 and 6.10)	Negative due to need for additional road closures and additional worksite	Minor Change
<p>Revisions to Sir John Young Crescent Exit Ramp.</p> <p>For an outline of these revisions see Section 5.1.4 of this Report and Figure 6c</p>	<p>The Supplementary Representations Report indicates that this change would allow for more efficient tunnel alignment generally with flatter grades while reducing impacts on utilities, trees, the Woolloomooloo Drain</p>	<p>Local Traffic (See Section 6.6)</p> <p>Landscaping (See Section 6.10)</p> <p>Physical Property Impacts (See Section 7.3)</p> <p>Construction Issues (see Sections 6.10)</p> <p>Heritage (See Section 7.5)</p>	<p>Positive due to improved tunnel grades</p> <p>Positive due to improved weaving and merging</p> <p>Positive due to retention of Plane Trees</p> <p>Positive due to slightly reduced risk of settlement</p> <p>Positive due to elimination of need to close Riley Street during construction</p> <p>Positive due to reduced impacts on utilities</p> <p>Positive due to reduction in impact on the Woolloomooloo Drain</p>	<p>Minor Change</p> <p>Minor Change</p> <p>Major Change</p> <p>Minor Change</p> <p>Minor Change</p> <p>Minor Change</p> <p>Minor Change</p>
<p>Provision of a Ventilation Duct Tunnel and Spur Tunnel Connection.</p> <p>For an outline of this proposed revision see Section 5.1.5 of this Report</p>	<p>The Supplementary Representations Report indicates that the ventilation duct tunnel would ensure that in the event of a sustained period of congestion or blockage, the in-tunnel air quality criteria would continue to be met without the</p>	<p>Air Quality (See Section 6.2)</p> <p>Spoil Management (See Section 7.2)</p>	<p>Positive due to improvements in in-tunnel air quality</p> <p>Positive due to reductions to circumstances where portal emissions would occur</p> <p>Negative due to 69 000 m³ increase in spoil generation and associated traffic</p>	<p>Major Change</p> <p>Minor Change</p> <p>Major Change</p>

Description of Additional Modification	Justification	Potential Impacts	Estimated Positive or Negative Impact Compared to the Modifications Proposed in the Supplementary EIS	Nature of Impact
and Figure 6d	need for portal emissions. The stub connection would allow for the possibility of a future ventilation stack to be included as part of the Darling Walk Complex	Urban Design (See Section 6.11)	Positive due to potential for ventilation stack to be incorporated into a building	Minor Change
Replacement of Car Parking Spaces in Rushcutters Bay. For an outline of the proposed revision to parking arrangements see Section 5.1.6 of this Report and Figure 6e	The Supplementary Representations Report indicates that the additional spaces to be provided would improve the impact on amenity and local businesses	Impacts on Businesses (See Section 6.8) Residential Amenity (See Section 6.9)	Positive due to reduction in net loss of parking from 20 to 5 spaces Positive due to reduction in net loss of parking from 20 to 5 spaces	Minor Change Minor Change
Relocation of Variable Message Signs. For an outline of the proposed revision see Section 5.1.7 of this Report and Figure 6 f	The Supplementary Representations Report indicates that relocated VMS would provide road users with sufficient prior warning that they are entering a tolled tunnel and an opportunity to choose an alternate route. The three additional signs are required for better regional and local traffic management of incidents on surface streets	Traffic and Access (See Section 6.9) Emergency Management (See Section 6.10) Urban Design (See Sections 6.9 and 6.10)	Positive for identifying alternative toll-free routes Positive due to better emergency management capabilities Negative due to introduction of visual impact at new location Positive due to elimination of visual impact at old location	Minor change Minor Change Minor Change Minor Change

Description of Additional Modification	Justification	Potential Impacts	Estimated Positive or Negative Impact Compared to the Modifications Proposed in the Supplementary EIS	Nature of Impact
Provision of a Land Bridge over the Eastern Portal. For an outline of this proposed revision see Section 5.1.8 of this Report and Figure 6 g	The Representations Report indicates that this revision would reduce the impacts of the new eastern portal on the residents of Rushcutters Bay Precinct and improve social amenity	Urban Design (See Section 6.9) Noise (See Section 6.7) Construction Issues (See section 7.1)	Positive due to provision of landscaped open space Positive due to reductions in road noise emissions at residences near the land bridge Negative due to intensification of road closures	Major change Minor change Minor change

Source: DG Report on SEIS, pp31-34

Appendix 5 Road changes by category

The information in the following table is extracted from draft legal advice from Clayton Utz to the RTA on the effects of reversing the traffic restrictions implemented for the Cross City Tunnel, dated 8 October 2005.³⁸⁴ The Committee acknowledges that some of the traffic changes that are identified as ‘not completed’ in the table may have been completed after 8 October 2005.

The table relies on a list of traffic changes prepared by the RTA, divided between four categories of changes:

Category A	Permanent works that CCM must design and construct under the Project Deed, which if removed, may expose the RTA to a provide MAE Relief to CCM under clauses 18.2 to 18.4 of the Project Deed
Category B	Permanent works that CCM must design and construct under the Project Deed, which if removed, will not expose RTA to a liability to provide MAE Relief to CCM under clauses 18.2 to 18.4 of the Project Deed
Category C	Temporary traffic arrangements during construction
Category D	Traffic arrangements that RTA proposes to implement that relate to the CCT but are not contemplated in the Project Deed or Planning Approval.

³⁸⁴ Email from John Shirbin, Clayton Utz to Les Wielinga and Graham Read, RTA, 8 October 2005, pp2-6 and Annexure A

Classification	Completed item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
	1. West Zone				
B	1. Bus crossover for eastbound contra flow bus lane into Druitt St	Completed	CCM		EIS section 7.5.2, p7-39
B	2. Removal of eastbound bus lane on Bathurst St viaduct and conversion to general traffic lane	Completed	CCM		EIS section 7.5.2, p7-29
A	3. Introduction of dedicated lane and shared lane into CCT Bathurst St portal	Completed	CCM	MAE 18.3.c	EIS section 7.3.3, p7-10
A	4. Widening of Market St viaduct to accommodate extra CCT exit lane	Completed	CCM	MAE 18.3.f	EIS section 7.3.3, p7-13
B	5. Line marking modification of Market St and Harbour Bridge lane merge	Completed	CCM		SEIS section 2.4.2, p2-8
B	6. Provision of dual left turn lane from WD into Harbour St northbound at Bathurst St	Completed	CCM		
B	7. Additional left turn lane introduced from Harbour St southbound into Bathurst St	Completed	CCM		EIS section 7.3.3, p7-9
B	8. Introduction of right turn bay from WD eastbound into Harbour St southbound	Completed	CCM		
B	9. Closure of Day St access between Druitt and Bathurst	Completed	CC		EIS section 7.3.3, p7-11
B/D	10. Removal of eastbound bus lane on Bathurst St between Day and Kent Sts	Completed	CCM/RTA		EIS section 7.5.1, p7-29
A	11. Introduction of CCT entry in Harbour St northbound	Completed	CCM	MAE 18.3.m	EIS section 7.3.3, p7-9
A	12. Introduction of CCT exit lanes to Harbour St northbound and Bathurst St eastbound	Completed	CCM	MAE 18.3.g	
B	13. Druitt St viaduct changed from westbound bus lane plus two traffic lanes to westbound bus lane, general traffic lane and eastbound bus lane	Completed	CCM		EIS section 7.3.3, p7-12 and EIS section 7.5.2, p7-39
A	14. Druitt St contra flow bus lane from Sussex to York Sts introduced	Completed	CCM	MAE 18.2.a.vi	EIS section 7.5.2, p7-39

Classification	Completed item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
A	15. Druitt St between Kent and Clarence Sts closed to general traffic and introduction of bus lane in middle lane	Completed	CCM	MAE 18.2.a.v	EIS section 7.5.2, p7-39
B	16. Druitt St, Clarence to York. Changed from four lanes to one westbound bus lane, one eastbound bus lane and one westbound right turn lane into Clarence St	Completed	CCM		EIS section 7.5.1, p7-30
D	17. Westbound right turn ban from Park St into George St banned and northbound left turn from George St into Market St banned	CCT temporary arrangement/ RTA works	CCM		
C	18. Two southbound lanes in Sussex St between Druitt and Bathurst Sts temporarily changed to two lanes southbound and one lane northbound	CCT temporary arrangement	CCM		
B	2. Central zone 1. Construction of midblock blister in previous parking lane at Park St Hyde Park pedestrian signals	Completed	CCM	Change order 28	
B	3. Cowper Wharf zone 1. Installation of roundabout and pedestrian crossing at intersection of Sir John Young Cres and removal of traffic lights	Completed	CCM		Supp Repts Report p7-8
A	2. Introduction of CCT exit portal at Sir John Young Cres	Completed	CCM	MAE 18.3.j	Supp Repts Report p7-7
B	3. Removal of traffic signals at intersection of Palmer St and Sir John Young Cres	Completed	CCM		SEIS section 2.4.2, p2-13
B	4. Palmer St changed from two northbound to one lane northbound and one lane southbound between Sir John Young Cres and Cathedral St	Completed	CCM		Supp Repts Report p7-8
A	5. Change from two lanes northbound from Sir John Young Cres through to Cahill Expressway to one lane northbound for access to Cowper Wharf Rd only, one lane from CCT to Cahill Expressway and one lane to Macquarie St only	Completed	CCM	MAE 18.3.j	Supp Repts Report p7-7
B	6. Reduction of two lanes southbound in Sir John	Completed	CCM		SEIS section

Classification	Completed item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
	Young Cres from Cowper Wharf Rd to Palmer St to one lane southbound				2.4.2, p2-10
A/B	7. Introduction of low concrete median kerbs on lanes on Cahill Expressway from Sir John Young Cres to Macquarie St	Completed	CCM		SEIS section 2.4.2, p2-10
B	8. Reduction of two right turn lanes from Cowper Wharf Rd westbound to Cahill Expressway to one right turn lane	Completed	CCM		Supp Reps Report p7-3
B	9. Removal of one right turn lane from Cahill Expressway off ramp to Cowper Wharf Rd	Completed	CCM		SEIS Section 2.4.2, p2-14
A	10. Additional dedicated CCT lane added to Cahill Expressway	Completed	CCM	MAE 18.3.j	SEIS Section 2.4.2, p2-10
	4. East zone				
B	1. Removal of peak directional transit lanes on William St	Completed	CCM		EIS section 7.5.2, p7-39
C	2. Temporary occupation of two eastbound lanes in William St between College and Yurong Sts for footpath construction works in progress	CCT temporary arrangement	CCM		
A	3. William St from Yurong St to Dowling St removal of one eastbound lane and one westbound lane for footpath construction works in progress	Completed	CCM	MAE 18.2.a.i & ii	
D	4. Bourke St closed north of Eastern Distributor and closure of Bourke St south of William St	CCT temporary arrangement	CCM	Change order 53	
A	5. Removal of one westbound right turn lane from William St into Palmer St	Completed	CCM	MAE 18.2.a.i	EIS section 7.5.1, p7-34
A	6. Introduction of CCT entrance from ED northbound near Wisdom Lane	Completed	CCM	MAE 18.3.h	SEIS section 2.4.2, p2-13
B	7. Removal of one merging lane in Darlinghurst Rd onramp to William St at Darlinghurst Rd	Completed	CCM	Change order 28	
B	8. Introduction of bicycle lane on Craigend St between Roslyn St footbridge and Darlinghurst Rd	Completed	CCM		
B	9. Introduction of Ward Ave ramp between Ward Ave and Bayswater Rd	Completed	CCM		SEIS section 2.4.4, p2-23

Classification	Completed item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
B	10. Introduction of a right turn bay from Craighend St westbound to Ward Ave northbound and removal on one through lane on Craighend St	Completed	CCM		SEIE section 2.4.4, p2-23
A	11. Introduction of CCT entry adjacent to Craighend St	Completed	CCM	MAE 18.3.1	SEIS section 2.4.4, p2-23
B	12. Craighend St increase from 3 through to 4 lanes between Neild Ave and McLachlan Ave, by removal of left turn restriction at Neild Ave and left turn slip lane at McLachlan St	Completed	CCM		
A	13. Introduction of eastbound CCT exit portal to Bayswater Rd	Completed	CCM	MAE 18.3.k	SEIS section 2.4.2, p2-13

Classification	Remaining item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
	1. West Zone				
B	1. Install contraflow lane for general traffic in Bathurst St between Sussex St and Day St. Currently 3 lanes eastbound will change to 3 lanes eastbound plus one westbound	Permanent works not completed/ CCM temporary arrangement to be removed	CCM		Supp Repts Report
A	2. Install final tunnel exit intersection configuration at Bathurst St and Harbour St. Introduces southbound access from CCT to Harbour St	Permanent works not completed / CCM temporary arrangement to be removed	CCM	MAE 18.3.g	
C	3. Remove two way working in Sussex St between Druitt St and Bathurst St, including removal of mid-block pedestrian crossing. Currently 2 lanes southbound plus one lane northbound will change to 3 lanes southbound	CCM temporary arrangement to be removed	CCM		EIS section 10.3.1
	2. Central zone				
B	1. Create a cycle lane on Park St Eastbound between George St and College St	Permanent works not completed	CCM		
A	2. Create a 24hr Bus Lane westbound on Park St between College St and Hyde Park pedestrian	Permanent works not completed	CCM	MAE 18.2.a.iv	EIS section 7.5.2, p7-39

Classification	Remaining item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
A	signals – 1 lane for general traffic to remain 3. Create a 24hr Bus Lane eastbound on Park St between Elizabeth St and College St – 1 lane for general traffic to remain	Permanent works not completed	CCM	MAE 18.2.a.iii (westbound half) Change order 28	EIS section 7.5.2, p7-39
B	4. Remove the three slip lanes from the College/Park St intersection	Permanent works not completed	CCM	Change order 28	
B	5. Modify the Elizabeth St intersection – particularly the north east kerb alignment and convert dual right turn northbound in Elizabeth St to single right turn lane into Park St	Permanent works not completed	CCM	Change order 28	
B&D	6. Create a new bus lane southbound on Elizabeth St between Market St and Bathurst St by line marking adjustments	Permanent works not completed	CCM		
B	7. Convert Park St eastbound between George St and Castlereagh St to 1 parking lane, 1 cycle lane and 1 through lane for general traffic	Permanent works not completed	CCM		
B	8. Convert Park St westbound between Pitt St and George St to 1 cycle lane, 1 parking left lane, 1 through lane and 1 right turn lane	Permanent works not completed	CCM		
B	9. Provide right turn bays in Park St westbound into Pitt St and eastbound into Castlereagh St	Permanent works not completed	CCM		
C	10. Remove the dedicated left turn westbound in Park St into Castlereagh St	CCT temporary arrangement to be removed	CCM		
C	3. Cowper Wharf Zone (College St east) 1. Remove U Turn facility from Shakespeare Place	CCT temporary arrangement to be removed	CCM		
C	2. Re-instate the slip lane from Macquarie Street southbound into Shakespeare Place	CCT temporary arrangement to be removed	CCM		
D	4. East zone 1. Investigate Zipper merge for Darlinghurst Rd on	RTA works	RTA	None	None

Classification	Remaining item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
	ramp/William St westbound including continuity of the T2 Transit Lane between Kings Cross Tunnel and Forbes St				
D	2. Investigate a dual left turn from Eastern Distributor exit to William St westbound	RTA works	RTA	None	None. Investigation included in RTA/AML agreement
B	3. Opening of the fourth exit lane (right turn) from Eastern Distributor at William St	Permanent works not completed	CCM		
D	4. Permanent closure of Bourke St northbound north of the Eastern Distributor. Change resulting from community consultation required under COA 288. Six month trial.	RTA works	RTA	None	COA 288
D	5. Permanent closure of Bourke St south of William St, incorporating cycle facilities to cross William St. Change resulting from community consultation required under COA 288. Six month trial	RTA works	RTA	None	COA 288
B	6. Paddington Local Area Traffic Management measures. Traffic calming measures on 3 local streets in Paddington – Glenmore Rd, Neild Ave and Brown St	Permanent works not completed	CCM	Project Deed Schedule 9	COA 59
A	7. Provide T2 Transit lane in Kings Cross Tunnel westbound. Currently two lanes westbound. One lane will be designated T2	Permanent works not completed	CCM	MAE 18.2.a.vii	SEIS section 2.4.5, p2-31
A/B	8. Provide T2 Transit Lane in William St westbound from Forbes St to College St. Currently two lanes westbound. One lane will be designated T2	Permanent works not completed	CCM	MAE 18.2.a.i applies to shorter length between Forbes St and Crown St	EIS section 7.5.1, p7-28
A/B	9. Provide T2 transit Lane in William St eastbound from College St to Palmer St. Currently two lanes eastbound. One lane will be designated T2	Permanent works not completed	CCM	MAE 18.2.a.ii applies to shorter length between Crown	EIS section 7.5.1, p7-28

Classification	Remaining item description	Status of item	Responsible for delivery	Project deed reference	EIS reference
B	10.Reduction in length of the William St left turn lane into College St southbound to accommodate footpath widening/parking	Permanent works not completed	CCM	St and Forbes St Change order 28	
B	11.Create a cycle lane on Kings Cross Rd eastbound between Darlinghurst Rd and Ward Ave	Permanent works not completed	CCM		
A	12.Create a cycle lane on William St eastbound and westbound between College St and Darlinghurst Rd	Permanent works not completed	CCM	MAE 18.2.a.i and 18.2.a.ii	
B	13.Create indented parking bays in William St, various locations between College St and Darlinghurst Rd	Permanent works not completed	CCM	Change order 28	
B	14.Queens Cross intersection reconfiguration, including removal of one right hand turn lane from Darlinghurst Rd to Kings Cross Rd and Darlinghurst Rd to William St on-ramp	Permanent works not completed	CCM	Change order 28	

Appendix 6 Draft Treasury guidelines for the public disclosure of information arising from NSW Government tenders and contracts

Source: IIG *Review of Future Provision of Motorways in NSW*—Appendix 14

The purpose of these guidelines is to provide NSW government agencies with a practical model to determine what, how and when specific information arising from government tenders and contracts with the private sector should be publicly disclosed and what information should remain confidential. The requirements of these guidelines:

- are to be implemented by all agencies including Government Trading Enterprises (but excluding State Owned Corporations and Department of State and Regional Development contracts which involve industry support). Shareholding Ministers and boards of State Owned Corporations may give consideration to voluntarily adopting the guidelines by incorporating them in statements of corporate intent.
- apply to all transactions (including procurement, sale or disposal) such as for construction, infrastructure, property, goods, services and information technology and includes consultancies and lease agreements.

Disclosure requirements apply both through the tender process and once a contract has been awarded. Schedules of disclosure requirements for contracts are attached. The schedules establish it is government practice to:

- vary the routine disclosure of information according to the size and complexity of the contract;
- limit the extent of commercial-in-confidence material to very specific areas and not disclose it unless required by law; and
- treat the information in an unsuccessful tender as commercial-in-confidence and not disclose it unless required by law.

In addition to these requirements privately funded public infrastructure contracts also need to comply with disclosure requirements to Parliament set out in the “Working with Government - Guidelines for Privately Financed Projects” (see www.treasury.nsw.gov.au).

Method of disclosure:

Tender call documents are to contain advice that there are public disclosure requirements associated with the tender process and contracts that are awarded and where those requirements can be accessed.

Tender and contract information required to be routinely disclosed is to be posted on the government website <http://tenders.nsw.gov.au> operated by the Department of Commerce in addition to any other location agencies choose to use. Agencies not already using this website need to contact the Department of Commerce on telephone xxx or email xxx to make arrangements to post information on the site.

Contract information shall remain posted on the website until all work or services under the contract are completed, and/or all goods under the contract supplied. Tender information shall remain posted

on the website until the tender call process has been concluded and a contract either awarded or decision made not to award any contract.

Where a request is made for contract information not routinely disclosed and not commercial-in-confidence, the agency, in consultation with the party making the request, shall determine the most suitable method of providing that information.

Disclosure requirements

Agencies must ensure that:

- **For all public calls for tender, expressions of interest or other such calls** which may result in a contract with the private sector, a concise description of the proposed works, goods or services the subject of the tender call, the date responses to the tender call close and location of the tender call documents (as a minimum) are routinely disclosed at the time such tender calls are advertised.
- **For all public calls for tender, expressions of interest or other such calls**, the names and addresses of all entities which submit responses are routinely disclosed within 7 days of the date tender calls closed.
- **In a multi-stage tender process**, the names and addresses of the shortlisted entities are routinely disclosed within 7 days of these entities being so advised.
- **For all contracts with an estimated value above \$100,000** (or where government transfers ownership of property valued over \$100,000), the items of the contract listed in Schedule 1 are routinely disclosed within 60 days of the contract becoming effective.
- **For contracts with an estimated value between \$100,000 and \$5 million** which result from a direct negotiation or are an Alliance type contract where the final contract terms are negotiated with the preferred tenderer, or which involve private sector financing, land swaps, asset transfers and similar arrangements, the items of the contract listed in Schedules 1 and 2 are routinely disclosed within 60 days of the contract becoming effective.
- **For contracts with an estimated value over \$5 million** which result from a direct negotiation or are an Alliance type contract where the final contract terms are negotiated with the preferred tenderer, or which involve private sector financing, land swaps, asset transfers and similar arrangements, the complete contract, less any commercial-in-confidence material, and any information provided under Schedules 1 and 2 which is not in the complete contract, are routinely disclosed within 60 days of the contract becoming effective.
- **For any contract**, if information not routinely disclosed for that contract but routinely disclosed on other contracts is requested, provide this information to the requesting party within 60 days of such request.

Commercial-in-Confidence material

- The information listed in Schedule 3 is deemed to be commercial-in-confidence and is not disclosed.
- The information included in an unsuccessful tender is treated as commercial-in-confidence material. In exceptional circumstances, such information may be released with the agreement of the unsuccessful tenderer(s), or where the original tender provisions allowed for the release of such information.

- The preferred tenderer is to be invited to nominate items it considers are commercial-in-confidence and why.
- In the event of disagreement between an agency and the 'preferred tenderer' or a member of the public as to what should be disclosed (for example, there may be some disagreement as to what constitutes intellectual property or commercial-in-confidence material) the agency is to seek the advice of:

The Chairman
 State Contracts Control Board
 Level 22 McKell Building
 2-24 Rawson Place
 Sydney NSW 2000

The Chairman may consult with the Crown Solicitor and may seek the advice of independent experts, particularly in situations where the State Contracts Control Board is Principal under the contract. The Chairman will provide a report and recommendations to the Chief Executive Officer of the agency involved in the tender.

Specific requests for information outside the ambit of the contract details, for example enquiries regarding an unsuccessful tender or the tender process will continue to be dealt with under the provisions of the Freedom of Information Act.

Summary of contract disclosure requirements

The following table summarises the relationship between the size of the contract, the level of disclosure and basis of disclosure.

Contract size	Level of disclosure	Basis of disclosure
Above \$100,000	Schedule 1 items	Routine
Above \$100,000 to \$5 million for directly negotiated or Alliance type contracts or contracts involving private sector financing, land swaps, asset transfers and similar arrangements.	Schedule 1 and 2 items.	Routine
Above \$5 million for directly negotiated or Alliance type contracts or contracts involving private sector financing, land swaps, asset transfers and similar arrangements.	The complete contract and any information provided under Schedules 1 & 2 that is not in the complete contract, less commercial-in-confidence information.	Routine

Any value contract.	Information not routinely disclosed on that contract but routinely disclosed on other contracts.	On request
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If there is an amendment to a contract valued at over \$100,000 (as distinct from a variation under the contract) that changes the information already routinely disclosed, the agency must ensure the amended information is made public within 60 days of such amendment.

Fees for disclosure:

All tender and contract information required to be routinely disclosed is to be provided by an agency free of charge.

For contracts valued at \$100,000 or less, Schedule 1 information, if requested, is also to be provided free of charge.

In other cases, where information on a contract is sought which is not routinely disclosed on that contract but is routinely disclosed on other contracts, the costs in providing such information may be recovered from the party making the request on an equivalent basis to Freedom of Information Act requests.

SCHEDULES OF DISCLOSURE

SCHEDULE 1

- Tendering method (as defined in the Tendering Guidelines available on www.treasury.nsw.gov.au/procurement/procure-intro.htm).
- Details of contract (description of work to be completed or goods/services to be provided or property to be leased or transferred; commencement date of the contract; the duration of the contract);
- The full identity and address of the successful tenderer as well as details of cross ownership of relevant companies;
- The estimated price payable by the agency and the basis for future changes in this price, including bonuses or penalties;
- The significant evaluation criteria and the weightings used in tender assessment including the components and quantum of the public sector comparator if used;
- Summary information used in full base case financial model such as pricing formula for tolls or other usage charges, where model used;
- Provisions for re-negotiation (where applicable).

SCHEDULE 2

- Details of future transfers of assets of significant value to government at no or nominal cost and details of the right to receive the asset and the date of the future transfer;
- The identification and timing of any assets transferred to the contractor by the agency;

- All operation and/or maintenance provisions in the contract;
- The results of cost-benefit analyses of the successful tender;
- The risk sharing in the construction and operational phases of the contract, quantified in net present value terms (where possible) and specifying the major assumptions involved;
- Significant guarantees or undertakings between the parties, including loans entered into or agreed to be entered into;
- To the extent not covered above, the remaining key non-commercial-in-confidence elements of the contractual arrangements.

SCHEDULE 3

Commercial-in-confidence information

Items **not to be disclosed** for any contracts

- The contractor's financing arrangements;
- The contractor's cost structure or profit margins;
- Items of the contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
- The full base case financial model when used;
- Any other matters where disclosure would place the contractor at a substantial commercial disadvantage with its competitors.

Appendix 7 Display locations of EIS and SEIS

The Cross City Tunnel: Release of Environmental Impact Statement, July 2000

Cross City Tunnel: Supplementary Environmental Impact Statement, July 2002

Available for purchase at:

- Government Information Centre, Goodsell Buildings, City Centre
- NSW Government Information Centre, Parramatta Branch
- RTA, Centennial Plaza, Surry Hills
- RTA, Blacktown

Available for viewing at:

- Customs House City Exhibition Space, Circular Quay
- NSW Environment Centre, Nature Conservation Council, Sydney
- Department of Urban Affairs and Planning, Sydney
- Leichhardt Council
- South Sydney Council One Stop Shop
- Sydney City Council One Stop Shop
- Waverley Council
- Woollahra Council
- Haymarket Library
- Kings Cross Library
- Paddington Library
- Surry Hills Library
- Sydney City Council Library
- Ultimo Library
- www.rta.nsw.gov.au

Available for viewing at:

- RTA, Cross City Tunnel Display Centre, Woolloomooloo
- RTA, Centennial Plaza, Surry Hills
- RTA, Blacktown
- NSW Government Information Centre, Goodsell Buildings, Sydney
- City Exhibition Space, Customs House, Circular Quay
- PlanningNSW, Sydney
- Sydney Convention Centre, Darling Harbour
- NSW Environment Centre, Nature Conservation Council, Sydney
- Leichhardt Council
- South Sydney Council One Stop Shop
- Sydney City Council One Stop Shop
- Waverley Council
- Woollahra Municipal Council
- Haymarket Library
- Kings Cross Library
- Paddington Library
- Surry Hills Library
- Sydney City Council Library
- Ultimo Library
- www.rta.nsw.gov.au/cct.htm

Appendix 8 Minutes

Minutes No. 1

Thursday 1 December 2005

Room 1153, Parliament House, at 1:08 pm

1. Clerk of the Parliaments opened meeting

The Clerk of the Parliaments declared the meeting open at 1.08pm according to the Resolutions 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 Clerk tabled the Resolutions establishing the Joint Select Committee, and confirmed the membership of the Committee.

The Clerk advised the Committee that the Legislative Council Standing Orders would apply for the duration of the Committee's existence.

Revd Nile took the Chair.

2. Members Present

Revd Fred Nile (Chairman)

Ms Amanda Fazio

Mr Greg Pearce

Ms Lee Rhiannon

Mr Matt Brown

Mr Andrew Constance

Mr Paul McLeay

Mr John Turner

3. Correspondence

Received

- Ms Lee Rhiannon MLC, to the Clerk of the Parliaments, 18 November 2005, nominating as the Cross Bench member of the Committee
- Hon Tony Kelly MLC, Leader of the House, to the Clerk of the Parliaments, 24 November 2005, advising of Hon Amanda Fazio's appointment to the Committee
- Hon Mike Gallacher MLC, Leader of the Opposition in the Legislative Council, to the Clerk of the Parliaments, 22 November 2005, advising of Hon Greg Pearce's appointment to the Committee
- Mr Gerard Martin MP, Government Whip, to the Clerk of the Legislative Assembly, 23 November 2005, advising of Mr Paul McLeay and Mr Matt Brown's appointment to the Committee
- Mr Peter Debnam MP, NSW Liberals Leader, to the Clerk of the Legislative Assembly, 22 November 2005, advising of Mr Andrew Constance's appointment to the Committee
- Mr Andrew Stoner MP, Leader of the Nationals, to the Clerk of the Legislative Assembly, 22 September 2005, advising of Mr John Turner's appointment to the Committee

4. **Procedural Resolutions**

The Committee considered the draft initial motions, previously circulated.

Resolved, on the motion of Mr Brown, that the following initial resolutions be adopted for the life of the Committee:

1. Sound and television broadcasting

That in accordance with the resolution of the Legislative Council of 11 October 1994, the Committee authorises the sound and television broadcasting as appropriate, of its public proceedings, unless the Committee decides otherwise.

2. Arrangements for hearings and site visits

That the arrangements for the calling of witnesses and for visits of inspection be left in the hands of the Chairman and the Secretariat after consultation with the Committee.

3. Media statements

That media statements on behalf of the Committee be made only by the Chairman, if possible after consultation with the Committee.

4. Advertising

That the Secretariat be empowered to advertise and/or write to persons, bodies and organisations inviting written submissions relevant to the terms of reference for the Committee's inquiries.

5. Publication of transcripts

That, in accordance with section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 223, the Committee authorise the Director to publish the transcript of evidence taken at public hearings, unless the Committee decides otherwise.

6. Committee correspondence

That the Secretariat be empowered to respond to correspondence on behalf of the Committee, where the correspondence concerns routine or administrative matters. In all other cases the Chairman must approve replies to correspondence.

7. Dissenting statements

That any member who wishes to append a statement of dissent to a report in accordance with Standing Order 228 must advise the Committee of their intention to do so at the last deliberative meeting considering the report.

5. **Call for Submissions**

The Committee considered the proposed advertising schedule for the call for submissions.

Resolved, on the motion of Mr Pearce, that advertisements calling for submissions be placed in the Sydney Morning Herald, Wednesday 7 and Saturday 10 December 2005, The Daily Telegraph, Wednesday 7 and Saturday 10 December 2005, The Weekend Australian, Saturday 10 December 2005, The Australian, Wednesday 7 December 2005, The Australian Financial Review, Wednesday 7 December 2005, and The Wentworth Courier, Wednesday 7 December 2005.

Resolved, on the motion of Ms Rhiannon, that advertisements also be placed in the Inner Western Suburbs Courier and the Glebe.

Resolved, on the motion of Mr Pearce, that the Chairman write to relevant individuals and organisations to invite submissions.

Resolved, on the motion of Mr Pearce, that the closing date for submissions be 18 January 2006.

6. Hearing Schedule

The Committee considered the Chairman's draft hearing schedule for the Inquiry, previously circulated.

Resolved, on the motion of Mr Brown, that the first hearing be held on Tuesday 6 December, from 9am to 5pm and that the following witnesses be invited:

Mr Paul Forward, former CE, RTA
 Mr Mike Hannon, Acting CE, RTA
 Mr Brett Skinner, Director Finance, RTA
 Mr Les Wielinga, Director Motorways, RTA
 Mr Chris Ford, Director Traffic & Transport, RTA
 The Hon Bob Carr, former Premier NSW
 The Hon Michael Egan, former Treasurer, NSW
 Mr Peter Sansom, CE, CrossCity Motorway Pty Ltd.
 The Hon Nick Greiner, former Premier NSW (subject to availability; or on Wednesday 7 December)

Resolved, on the motion of Ms Fazio, that the second hearing be held on Wednesday 7 December, from 1pm to 5pm and the third hearing be held on Friday 9 December from 9am to 1pm. Witnesses for the Wednesday hearing to include:

Representatives from NSW Treasury including Dr Kerry Schott, Executive Director, Private Projects & Assets Management
 Representatives of the Department of Planning (formerly Dept Infrastructure, Planning and Natural Resources) including Mr Sam Haddad, Director General
 Representatives of the Department of Environment and Conservation.

Witnesses on Friday to include:

Representatives of the former South Sydney City Council and the current Council of the City of Sydney
 Dr John Goldberg, traffic analyst
 Representatives of the RTA's traffic analysis consultants.

Resolved, on the motion of Mr Brown, that three further hearings be held on 1, 2 and 3 February 2006 from 9am to 5pm, and that Committee members forward suggested witnesses to the Committee by close of business Tuesday 6 December 2005.

7. Adjournment

The committee adjourned at 1:40 pm until 9:00 am on Tuesday 6 December 2005 in the Jubilee Room, Parliament House.

Rachel Simpson
Committee Director

Minutes No.2

Tuesday 6 December 2005

Jubilee Room, Parliament House, at 9:01 am

1. Members Present

Revd Fred Nile (Chairman)
Ms Amanda Fazio
Mr Greg Pearce
Ms Lee Rhiannon
Mr Matt Brown
Mr Andrew Constance
Mr Paul McLeay
Mr John Turner

Participating Members

Dr Arthur Chesterfield-Evans

2. Public Hearing

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing and other matters.

The following witnesses from the RTA were sworn and examined:

Mr Mike Hannon, Acting Chief Executive; Mr Paul Forward, former Chief Executive; Mr Chris Ford, Director Traffic & Transport; Mr Brett Skinner, Director Finance; Mr Les Wielinga, Director Motorways.

Questioning concluded, the witnesses withdrew.

The Hon Bob Carr was sworn and examined.

Questioning concluded, the witness withdrew.

The Hon Michael Egan was sworn and examined.

Questioning concluded, the witness withdrew.

The following witnesses from the RTA were re-admitted and questioning continued under their previous oaths:

Mr Mike Hannon, Acting Chief Executive; Mr Paul Forward, former Chief Executive; Mr Chris Ford, Director Traffic & Transport; Mr Brett Skinner, Director Finance; Mr Les Wielinga, Director Motorways.

Questioning concluded, the witnesses withdrew.

Mr Peter Sansom, former Chief Executive of the CrossCity Motorway Pty Ltd was sworn and examined.

Questioning concluded, the witness withdrew.

3. Deliberative

Minutes

Resolved, on the motion of Mr Brown, that Minutes No. 1 be adopted.

Resolved, on the motion of Ms Fazio, that the RTA's submission, tabled by Mr Hannon, be published.

Resolved, on the motion of Mr Turner, that the Committee accept and make public the memorandum of advice tabled by Mr Hannon.

Resolved, on the motion of Mr Brown, that members provide supplementary questions for witnesses to the secretariat by 5pm on the day following the witness' appearance.

Resolved, on the motion of Mr Pearce, that witnesses be requested to provide answers to questions taken on notice and supplementary questions within 10 working days of the date of the letter sent.

Resolved, on the motion of Mr Brown, that members provide documents referred to in questions taken on notice during the hearing to the secretariat by 5pm on the day following the witness' appearance.

Resolved, on the motion of Mr Brown, that the Chairman write to the individuals and organisations listed, inviting a submission to the inquiry:

1. NSW Treasury
2. Sydney City Council
3. (former) South Sydney Council
4. Tony Harris, former NSW Auditor General
5. Dr John Goldberg, Traffic Analyst, University of Sydney
6. Professor David Richmond AO, Strategic Advisor, Infrastructure Implementation Group (NSW)
7. Baulderstone Hornibrook, construction company for the Cross City Tunnel.
8. Hon Mark Birrell, Infrastructure Partnerships Australia (former Minister for major projects in Kennett Government)
9. Professor Tony Blackshield
10. Department of Planning (formerly Dept Infrastructure, Planning and Natural Resources)

11. DEC
12. Members of community liaison groups (i.e. GASP, RAPS)
13. Community groups and members (i.e. Cross City Tunnel Action Group)
14. State Chamber of Commerce
15. NRMA
16. Australian Council for Infrastructure Development
17. Property Council of Australia
18. Road Transport Association (Hugh McMaster)
19. Taxi Council of Australia
20. Bicycle NSW
21. Pedestrian Council of Australia
22. Tourism Taskforce
23. Institute of Architects
24. Local councils in the Cross City Tunnel area.

4. **Adjournment**

The committee adjourned at 5.10 pm until 1:00 pm on Wednesday 7 December 2005 in the Jubilee Room, Parliament House.

Simon Johnston
Committee Clerk

Minutes No 3

Wednesday 7 December 2005

Jubilee Room, Parliament House, at 1:00 pm

1. **Members Present**

Revd Fred Nile (Chairman)
Ms Amanda Fazio
Mr Greg Pearce
Ms Lee Rhiannon
Mr Matt Brown
Mr Andrew Constance
Mr Paul McLeay
Mr John Turner

Participating Member

Dr Arthur Chesterfield-Evans

2. **Public Hearing**

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

The following witnesses from NSW Treasury were sworn and examined:

Dr Kerry Schott, Executive Director, Private Projects & Asset Management; and Mr Danny Graham, Director, Private Finance Projects.

Questioning concluded, the witnesses withdrew.

The following witnesses from the Department of Environment and Conservation and the Department of Planning were sworn and examined:

Ms Lisa Corbyn, Director General, Department of Environment and Conservation; Mr Simon Smith, Deputy Director General, Department of Environment and Conservation; Mr Joe Woodward, Executive Director, Operations, Department of Environment and Conservation; and Mr Sam Haddad, Director General, Department of Planning.

Questioning concluded, the witnesses withdrew.

The Hon Nick Greiner was sworn and examined.

Questioning concluded, the witness withdrew.

3. Adjournment

The committee adjourned at 5.02 pm until 9:45 am on Friday 9 December 2005 in the Jubilee Room, Parliament House.

Rachel Simpson
Director

Minutes No 4

Friday 9 December 2005

Jubilee Room, Parliament House, at 9:45am

1. Members Present

Revd Fred Nile (Chairman)
Ms Amanda Fazio
Mr Greg Pearce
Ms Lee Rhiannon
Mr Matt Brown
Mr Andrew Constance
Mr Paul McLeay
Mr John Turner

2. Public Hearing

The public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Mr Chris Wilson, Director, Masson Wilson Twiney Pty Ltd, was sworn and examined.

Questioning concluded, the witness withdrew.

Dr John Goldberg, Honorary Associate, University of Sydney Faculty of Architecture, was sworn and examined.

Questioning concluded, the witness withdrew.

Ms Clover Moore MP, Lord Mayor, City of Sydney and Member for Bligh, was sworn and examined.

Questioning concluded, the witness withdrew.

3. **Deliberative**

Confirmation of minutes

Resolved, on the motion of Mr Brown, that Minutes No. 2 be confirmed.

Resolved, on the motion of Mr Pearce, that the Committee accept and make public the following documents:

- *Summary of Action on the Cross City Tunnel*, tabled by Ms Clover Moore MP.
- *Cross City Tunnel, Analysis of traffic projections and financial viability*, tabled by Dr John Goldberg.
- *Review of Post Opening Traffic Demand for Cross City Tunnel*, Masson Wilson Twiney Pty Ltd., tabled by Mr Chris Wilson.
- *Strategic Travel Model*, tabled by Mr Chris Wilson.

Future committee activity

Resolved on the motion of Mr Pearce that the Committee hold public hearings on Hearing dates Wednesday 1 February, Thursday 2 February and Friday 3 February 2006, with Monday 6 February 2006 a reserve hearing date and that the following witnesses be examined:

Bilfinger Berger

- Paul Levins, General Manager, Corporate Affairs

RTA

- Mr Mike Hannon, Acting Chief Executive Officer
- Mr Brad Skinner, Director, Finance
- Mr Chris Ford, Director, Traffic and Transport
- Mr Les Wielinga, Director, Motorways
- Mr Paul Forward, Former Chief Executive Officer

RTA witnesses to be accompanied by:

- Mr Graham Read, Corporate Counsel
- Mr Garry Humphrey, General Manager
- Ms Mulavana Lakshmy, Project Services Manager
- Mr Howard Penn, Project Services Manager
- Mr Paul Goldsmith, Project Management Services
- Mr John Munro, Manager, Tunnel Technology

NSW Audit Office

- Bob Sendt, Auditor General

State Transit Authority

- Peter Hammond, General Manager

Sydney Harbour Foreshore Authority

- Rob Lang, Chief Executive Officer

NSW Government

- Hon Craig Knowles, former Minister for Infrastructure, Planning and Natural Resources
- Hon Carl Scully MP, former Minister for Roads/Transport
- Hon Frank Sartor MP, Minister for Planning
- Hon Morris Iemma MP, Premier, Treasurer
- Hon Joseph Tripodi MP, Minister for Roads
- Hon Dr Andrew Refshauge, former Minister for Planning

NSW Government advisers

- Dr Col Gellatly, Premiers Department

Expert and other witnesses

- Professor Bob Walker, University of Sydney, Accounting
- Tony Harris, former NSW Auditor General
- David Richmond AO, Strategic Advisor, Infrastructure Implementation Group (NSW)
- Representatives of other (previous or current) major PPP projects (for Part 2 of inquiry)
- Hon. Mark Birrell, Infrastructure Partnerships Australia
- Professor Tony Blackshield, legal expert
- Ken Morrison, Property Council of Australia
- Dennis O'Neill, Infrastructure Council of Australia
- Monique Roser, Planning Institute of Australia
- John Pierce, NSW Treasury

Community representatives

- Suzanne O'Connor, Residents Association, Kings Cross Community Liaison Group (CLG)
- Dr Laura Pearce, Kings Cross CLG
- Trish Muller, Sir John Young Crescent CLG
- Julia Perry
- Other community representatives (e.g. Groups Against Stack Pollution, the Darlinghurst Business Partnership, etc.)
- Eastern Suburbs Neighbourhood Association
- 2011
- Darlinghurst Residents Action Group
- Woollahra Council
- Michelle Zeibots, Transport

4. Adjournment

The Committee adjourned at 1.00pm, *sine die*.

Simon Johnston
Committee Clerk

Minutes No 5

Tuesday 24 January 2006

Room 1153, Parliament House, at 2.06pm

1. Members Present

Revd Fred Nile (Chairman)
 Ms Amanda Fazio
 Ms Lee Rhiannon
 Mr Andrew Constance
 Mr Paul McLeay
 Mr John Turner

2. Apologies

Mr Brown
 Mr Pearce

3. Minutes

Resolved, on the motion of Ms Fazio, that Minutes No. 3 and 4 be adopted.

4. Correspondence

The Chairman noted correspondence sent and received.

Received

- Mr Gerard Martin MP, Member for Bathurst, Government Whip, to the Clerk of the Parliaments, 23 November 2005, advising of Hon Amanda Fazio's appointment to the Committee
- Ms Helen Vickers, Acting Corporate Counsel, RTA, to the Director, 28 November 2005, proposing possible RTA witnesses
- Chairman to Secretariat, 28 November 2005, confirming proposed RTA witnesses
- Mr John Turner MP, Member for Myall Lakes, to the Clerk of the Parliaments, 29 November 2005, relating to the dates of the proposed public hearings
- Mr Peter Sansom, former Chief Executive Officer, CrossCity Motorway Pty Ltd, to Principal Council Officer, 22 December 2005, requesting an extension to provide corrected transcript and answers to questions taken on notice
- Hon Carl Scully MP, Minister for Police, Minister for Utilities, to the Chairman, 22 December 2005, responding to the invitation to appear before the Committee
- Hon Joe Tripodi MP, Minister for Roads, to the Chairman, 23 December 2005, responding to the invitation to appear before the Committee
- Hon Frank Sartor MP, Minister for Planning, to the Chairman, 9 January 2006, responding to the invitation to appear before the Committee
- Mr Mike Hannon, Acting Chief Executive, RTA, to the Director, 10 January 2006, responding to the Committee's invitation to RTA representatives to appear before the Committee
- Mr Mike Hannon, Acting Chief Executive, RTA, to the Director, 16 January 2006, advising the availability of Mr Graham Read to attend the hearing as an advisor
- Mr Glenn Byers, Director, Public Affairs, Infrastructure Partnerships Australia, to Principal Council Officer, 18 January 2006, informing the Committee that Mr Garry Bowditch will appear instead of the Hon Mark Birrell

- Hon Morris Iemma MP, Premier and Treasurer, to the Chairman, 18 January 2006, responding to the invitation to appear before the Committee

Sent

- Chairman to the Hon Morris Iemma MP, Premier and Treasurer, 21 December 2005, inviting him to appear before the Committee
- Chairman to the Hon Carl Scully MP, Minister for Police and Minister for Utilities, 21 December 2005, inviting him to appear before the Committee
- Chairman to the Hon Frank Sartor MP, Minister for Planning, 21 December 2005, inviting him to appear before the Committee
- Chairman to the Hon Joseph Tripodi MP, Minister for Roads, 21 December 2005, inviting him to appear before the Committee
- Chairman to the Hon Dr Andrew Refshauge, former Minister for Planning, 21 December 2005, inviting him to appear before the Committee
- Chairman to the Hon Craig Knowles, former Minister for Infrastructure, Planning and Natural Resources, 21 December 2005, inviting him to appear before the Committee

Resolved, on the motion of Mr Turner, that the Committee re-issue the invitation to Ministers and the Premier to give evidence to the Committee.

Submissions

Resolved, on the motion of Ms Fazio, that the Committee publish the following submissions, with the deletion of the names of certain individuals in Submission 56, and with Appendix 3 of Submission 56 kept confidential, as requested by the author:

- No. 1 – Roads and Traffic Authority
- No. 2 – Gordian Business
- No. 3 – Mr Flash Langley
- No. 4 – Ms Leonie Blair
- No. 5 – Mr Alan Limbury
- No. 6 – Mr Neville Peck
- No. 7 – Aircar Industry
- No. 8 – Mr Matt Mushalik
- No. 9 – Owners Corporation (the Horizon)
- No. 10 – Dr David Sonnabend
- No. 11 – Mr Tony Harris
- No. 12 – Mr Bruce Loder
- No. 13 – Natural Allies
- No. 14 – Mr Rob Lemon
- No. 15 – NSW Taxi Council Ltd
- No. 16 – Mr Peter Whitehead
- No. 17 – Ms Robyn Hall
- No. 18 – Mr Will Trippas
- No. 19 – Mr Sam Harding
- No. 20 – Mr Ralf Harding
- No. 21 – Mrs Carole Ferrier

- No. 22 – Mr Peter Mills
- No. 23 – Darlinghurst Business Partnership
- No. 24 – Mrs Kama Harding
- No. 25 – Jonathon Falk Planning Consultants Pty Ltd
- No. 26 – John Passmore Museum of Art
- No. 27 – Miss Jane Barnett
- No. 28 – Ms Mary-Ann Bonney
- No. 29 – Mrs Kylie Cossa
- No. 30 – Ms Felicity Crombach
- No. 31 – Miss Catherine Lyons
- No. 32 – Mr Barrie Shepherd
- No. 33 – Mr W.G Hamilton
- No. 34 – Bicycle New South Wales
- No. 35 – Kings Cross CLG
- No. 36 – Woollahra Municipal Council
- No. 37 – Mr Richard Jones
- No. 38 – CrossCity Motorway Pty Ltd
- No. 39 – The Royal Australian Institute of Architects
- No. 40 – Cross City Tunnel Action Group
- No. 41 – Lane Cove Tunnel Action Group
- No. 42 – Dr Norman Thompson
- No. 43 – Mr Craig Tansley
- No. 44 – Ms Lucy Robertson
- No. 45 – Mr Geoff Phillips
- No. 46 – Darlinghurst Residents Action Group
- No. 47 – Ms Jan Morrison
- No. 48 – Dr Gerard Milton
- No. 49 – Sydneysiders Against Polluting Stacks (SAPS) and UnitingCare Harris Community Centre
- No. 50 – Mr Charles Kelly
- No. 51 – Mr Benjamin Kelly
- No. 52 – 2011 Residents Association Incorporated
- No. 53 – Action City East
- No. 54 – NRMA Motoring and Services
- No. 55 – Mr Richard d’Apice
- No. 57 – Mr John Oultram
- No. 58 – Groups Against Polluting Stacks

Late Submissions

Resolved, on the motion of Ms Rhiannon, that the Committee accept late submissions as full submissions.

Questions on Notice

Resolved, on the motion of Ms Rhiannon, that the Committee publish answers to questions taken on notice received from:

- Hon Bob Carr, to the secretariat, 8 December 2005, answers to questions on notice
- Dr Kerry Schott, Executive Director, Private Projects and Asset Management, Directorate, NSW Treasury, to the Chairman, 9 December 2005, answers to questions on notice
- Mr Mike Hannon, Acting Chief Executive, RTA, to the Director, 11 December 2005, answers to questions on notice
- Hon Nick Greiner, to the secretariat, 12 December 2005, answers to questions on notice
- Hon Michael Egan, to the Director, 19 December 2005, answers to questions on notice
- Mr Sam Haddad, Director General, Department of Planning, to the Director, 23 December 2005, answers to questions on notice
- Hon Bob Carr, to the Director, 10 January 2006, answers to questions on notice
- Ms Lisa Corbyn, Director General, Department of Environment and Conservation, to the Director, 13 January 2006
- Mr Peter Sansom, former Chief Executive Officer, CrossCity Motorway Pty Ltd, to the Director 2006, answers to questions on notice
- Mr Christopher Wilson, Director, Masson Wilson Twiney, to the Director, 20 January 2006, answers to questions on notice
- Dr John Goldberg, Honorary Associate, School of Architecture, University of Sydney, to the Director, 23 January 2006, answers to questions on notice, no to publish item 3 at the request of the author

Publishing committee documents

Resolved, on the motion of Ms Rhiannon, that where practical, when the Committee publishes documents those documents are placed on the Committee's web page as well as being made available in hard copy

5. Public hearings 1, 2 and 3 February 2006

Resolved, on the motion of Ms Fazio, that the Committee confirm the hearing schedules.

6. Future committee activity

Resolved on the motion of Mr Turner that the Committee's first report be considered on Wednesday 22 and Thursday 23 February 2006, with the morning of Friday 24 February retained as a reserve date.

Ms Rhiannon moved:

That the Inquiry call the following people to give evidence:

Stuart Bright, Director, Ernst and Young
 Robert Steffan, Principal – Tax, Ernst and Young
 John Shirbin, Partner, Clayton Utz
 Professor Doug Jones, Partner, Clayton Utz
 Stuart Cosgriff, Senior Associate, Clayton Utz.

The Committee agreed to defer consideration of the motion until its next deliberative meeting.

7. Adjournment

The Committee adjourned at 2.32pm until Wednesday 1 February 2006 at 9.00am in the Jubilee Room (public hearing).

Simon Johnston
Committee Clerk

Minutes No 6

Wednesday 1 February 2006

Jubilee Room, Parliament House, at 9:01 am

1. Members Present

Revd Fred Nile (Chairman)
Ms Amanda Fazio
Mr Greg Pearce
Ms Lee Rhiannon
Mr Matt Brown
Mr Andrew Constance
Mr Paul McLeay
Mr John Turner

Participating Member

Dr Arthur Chesterfield-Evans

2. Public Hearing

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Mr Tony Harris was affirmed and examined.

Questioning concluded, the witness withdrew.

Professor Bob Walker, Consultant, Centennial Consulting was affirmed and examined

Ms Betty Con Walker, Consultant, Centennial Consulting was sworn and examined.

Professor Walker tendered a submission. Resolved on the motion of Mr Brown, that the submission be accepted and published.

Questioning concluded, the witnesses withdrew.

Mr John Oultram, former Member, Kings Cross CLG; Mr Malcolm Duncan, former Member, Kings Cross CLG were affirmed and examined.

Ms Suzanne O'Conner, former Member, Kings Cross CLG was sworn and examined.

Mr Duncan tendered a document, *EPA Community Consultation Report*. Resolved on the motion of Mr Brown, that the document be accepted and published.

Questioning concluded, the witnesses withdrew.

Mrs Carole Ferrier, Representative, 2011 Residents' Association; Ms Julia Perry, co-Convenor, Darlinghurst Residents Action Group were sworn and examined.

Ms Jo Holder, Representative, Action City East; Ms Stacey Miers, Member, Residents of Woolloomooloo; and Mr Stephan Gyory, Member, Darlinghurst Business Partnership were affirmed and examined.

Mrs Ferrier, Ms Perry, Ms Manins, Ms Holder and Mr Gyory tendered statements and documents. Resolved, on the motion of Ms Fazio, that the statements and documents be accepted and published.

Questioning concluded, the witnesses withdrew.

Mr John Pierce, Secretary, NSW Treasury was sworn and examined.

Dr Kerry Schott, Executive Director, Private Projects and Asset Management, NSW Treasury; Mr Danny Graham, Director, Private Finance Projects, NSW Treasury were examined under former oath.

Questioning concluded, the witnesses withdrew.

Dr Col Gellatly, Chief Executive, Premier's Department was affirmed and examined.

Questioning concluded, the witness withdrew.

Professor Tony Blackshield, Emeritus Professor, Macquarie University was sworn and examined.

Professor Blackshield tendered a submission to the inquiry.

Resolved, on the motion of Ms Fazio, that the submission be accepted and published.

Questioning concluded, the witness withdrew.

Ms Michelle Zeibots, transport researcher was affirmed and examined.

Ms Zeibots tendered a copy of power point presentation.

Resolved, on the motion of Ms Fazio, that the presentation be accepted and published.

Questioning concluded, the witness withdrew.

3. Deliberative Meeting

Confirmation of minutes

Resolved, on the motion of Fazio, that Minutes No. 5 be confirmed.

Resolved on the motion of Fazio, that Minutes No. 4 be amended to include papers tabled at the public hearing on 9 December 2006.

Correspondence

The Chairman noted correspondence sent and received.

Sent

- Chairman to the Hon Morris Iemma MP, Premier and Treasurer, 24 January 2006, re-inviting him to appear before the Committee
- Chairman to the Hon Carl Scully MP, Minister for Police and Minister for Utilities, 24 January 2006, re-inviting him to appear before the Committee
- Chairman to the Hon Frank Sartor MP, Minister for Planning, 24 January 2006, re-inviting him to appear before the Committee
- Chairman to the Hon Joseph Tripodi MP, Minister for Roads, 24 January 2006, re-inviting him to appear before the Committee

Received

- Hon Joe Tripodi MP, Minister for Roads, to the Chairman, 30 January 2006, responding to the re-issued invitation to appear before the Committee
- Hon Morris Iemma MP, Premier and Treasurer, to the Chairman, 31 January 2006, responding to the re-issued invitation to appear before the Committee

Submission

- Revised submission no. 53 from Action City East. Replace submission published

Answers to questions on notice

- Mr Mike Hannon, RTA, 31 January 2006, to the Director, answers to questions on notice

Resolved, on the motion of Pearce, that correspondence between the Chairman and the Premier and Ministers relating to their appearance before the Committee, be published.

Appearance of Premier and Ministers

Ms Fazio moved: That the Committee write to Premier Iemma and Ministers Scully, Tripodi, and Sartor providing them with questions relating to the Cross City Tunnel Inquiry, for response by Friday 10 February 2006, and that Committee members provide the Secretariat with questions within 24 hours (5.30pm, Thursday 2 February 2006).

Mr Pearce moved: that the question be amended by inserting at the end “provided that such a request is not to be taken as any diminishing in the Committee’s determination that it wishes to hear from each of the witnesses in person”.

Question: That the amendment of Mr Pearce be agreed to - put and passed.

Mr Pearce moved that the question be further amended by inserting at the end “Further that some members may consider that providing written questions is a fetter on their entitlements as members of the Committee entitlements to question witnesses and seek information.”

Question: That the amendment of Mr Pearce be agreed to.

The Committee divided:

Ayes:

Mr Pearce

Mr Constance

Mr Turner

Ms Rhiannon

Noes:

Revd Nile

Ms Fazio

Mr Brown

Mr McLeay

There being an equality of votes, the Chairman exercised his casting vote and the question was resolved in the negative.

Question: That the original motion, as amended, be agreed to - put and passed.

Questions on Notice

Resolved, on the motion of Fazio, that witnesses at the public hearings on 1, 2 and 3 February 2006 be requested to return answers to questions on notice within 7 days from receipt of the transcript by the witness.

Consideration of Deferred Motion

The Committee considered the motion of Ms Rhiannon deferred from meeting no.5:

That the Inquiry call the following people to give evidence:

Stuart Bright, Director, Ernst and Young

Robert Steffan, Principal – Tax, Ernst and Young

John Shirbin, Partner, Clayton Utz

Professor Doug Jones, Partner, Clayton Utz

Stuart Cosgriff, Senior Associate, Clayton Utz.

Motion put and lost.

4. Adjournment

The Committee adjourned at 5.30pm until Thursday 2 February 2006 at 9.00am in the Jubilee Room (public hearing).

Rachel Simpson

Director

Minutes No 7

Thursday 2 February 2006

Jubilee Room, Parliament House, at 9:03 am

1. Members Present

Revd Fred Nile (Chairman)

Ms Amanda Fazio

Mr Greg Pearce

Ms Lee Rhiannon

Mr Matt Brown

Mr Andrew Constance

Mr Paul McLeay

Mr John Turner

Participating Member

Dr Arthur Chesterfield-Evans

2. Public Hearing

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Ms Jane Anderson, representative, East Sydney Neighbourhood Association and Ms Sue Pynenburg, Liaison Officer, Sydney Church of England Girls Grammar were sworn and examined.

Ms Anderson and Ms Pynenburg tendered statements and documents. Resolved, on the motion of Ms Fazio, that the statements and documents be accepted and published.

Questioning concluded, the witnesses withdrew.

Ms Narelle Thirkettle, member of the Air Quality Community Consultative Committee; Ms Lalita Lakshmi, Dr Ray Kearney and Mr Mark Curran, representatives of Groups Against Stack Pollution; and Dr Peter Manins, Independent Technical Advisor to the AQCCC were sworn and examined.

Questioning concluded, the witnesses withdrew.

Mr Mike Hannon, Acting Chief Executive, RTA; Mr Brett Skinner, Director Finance, RTA; Mr Chris Ford, Director Traffic and Transport, RTA; and Mr Les Wielinga, Director Motorways, RTA were sworn and examined.

Mr Hannon tendered statements and documents. Resolved, on the motion of Mr Brown that the statements and documents be accepted and published.

Questioning concluded, the witnesses withdrew.

Mr Bob Sendt, NSW Auditor General, was sworn and examined.

Questioning concluded, the witness withdrew.

Professor David Richmond AO, Special Advisor Infrastructure Implementation Group, Premier's Department, was sworn and examined.

Questioning concluded, the witness withdrew.

Mr Roger Wilson, Acting Chief Executive, State Transit Authority; Mr Jim Glasson, Acting Director General, Ministry of Transport; and Mr Lyall Kennedy, Acting Director Transport Planning Division, Ministry of Transport were sworn and examined.

Mr Wilson tendered a document. Resolved, on the motion of Mr Brown that the statements and documents be accepted and published.

Questioning concluded, the witnesses withdrew.

Dr Rob Lang, Chief Executive, Sydney Harbour Foreshore Authority; and Ms Di Talty, Executive Director, Major Project Division were sworn and examined.

Questioning concluded, the witnesses withdrew.

3. Deliberative Meeting

Transcripts and tabled documents

Resolved, on the motion of Mr Brown, that the transcripts for the hearings yesterday and today and the tabled documents from today be amended to remove potential adverse mentions that are not relevant to the Inquiry.

Ms Rhiannon made a personal statement relating to comments made about her by a witness in the hearing and tabled a letter responding to the comments.

Resolved on the motion of Ms Fazio that the document be accepted.

Resolved on the motion of Ms Rhiannon that the document be published.

Appearance of Premier and Ministers

Revd Nile noted that questions to be included in the letters to be sent to the Minister and Premier had been received from Government members and the Chairman.

Witnesses

Mr Constance moved:

That Minister John Della Bosca be invited to give evidence to the Committee.

The Committee divided:

Ayes:

Mr Pearce

Mr Constance

Mr Turner

Ms Rhiannon

Noes:

Revd Nile

Ms Fazio

Mr Brown

Mr McLeay

There being an equality of votes, the Chairman exercised his casting vote and the question was resolved in the negative.

Questions on Notice

Resolved, on the motion of Ms Rhiannon, that additional questions on notice from Members for witnesses from Thursday 2 February and Friday 3 February hearings be provided to the Secretariat by the morning of Monday 6 February 2006.

Site Visit

Discussion of details of a site visit were deferred until the next deliberative meeting.

4. Adjournment

The Committee adjourned at 4.45pm until Friday 3 February 2006 at 9.00am in the Jubilee Room (public hearing).

Rachel Simpson

Director

Minutes No 8

Friday 3 February 2006

Jubilee Room, Parliament House, at 9:00 am

1. Members Present

Revd Fred Nile (Chairman)

Ms Amanda Fazio

Mr Greg Pearce

Ms Lee Rhiannon

Mr Matt Brown

Mr Andrew Constance

Mr Paul McLeay

Apologies

Mr John Turner

Participating Member

Dr Arthur Chesterfield-Evans

2. Public Hearing

The witnesses, the public and the media were admitted.

The Chairman made an opening statement regarding procedures for the hearing.

Hon Craig Knowles Former Minister for Infrastructure, Planning and Natural Resources, NSW, was sworn and examined.

Questioning concluded, the witness withdrew

Hon Dr Andrew Refshauge Former Minister for Planning, NSW, was sworn and examined.

Questioning concluded, the witness withdrew.

Mr Greg Stewart, Manager Public Infrastructure, and Clr Kerri Huxley, Councillor, Woollahra Municipal Council, were sworn and examined.

Questioning concluded, the witnesses withdrew.

Ms Trish Muller, Mr Gundo Frenda and Ms Mags Hamilton, Members, Central CLG, were sworn and examined.

Ms Muller and Mr Frenda tabled documents and statements.

Resolved, on the motion of Mr McLeay, that the documents and statements be accepted and published.

Questioning concluded, the witnesses withdrew.

Mr Ken Morrison, Property Council of Australia, Mr Dennis O'Neill, Infrastructure Council of Australia, Ms Monique Roser, Planning Institute of Australia and Mr Garry Bowditch, Infrastructure Partnerships Australia, were sworn and examined.

Questioning concluded, the witnesses withdrew.

Mr Peter Sansom, Chief Executive Officer, CrossCity Motorway Pty Ltd, was sworn and examined.

Questioning concluded, the witness withdrew.

Mr Paul Levins Director, Corporate Affairs, Bilfinger Berger Australia, was sworn and examined.

Questioning concluded, the witness withdrew.

3. Deliberative Meeting

Confirmation of minutes

Resolved, on the motion of Mr McLeay, that Minutes 6 and 7 be confirmed.

Correspondence

The Chair noted the following correspondence sent and received:

Sent:

- Chair to the Hon Morris Iemma MP, Premier and Treasurer, 2 February 2006, inviting him to appear before the Committee and providing questions

- Chair to the Hon Carl Scully MP, Minister for Police and Minister for Utilities, 2 February 2006, inviting him to appear before the Committee and providing questions
- Chair to the Hon Frank Sartor MP, Minister for Planning, 2 February 2006, inviting him to appear before the Committee and providing questions
- Chair to the Hon Joseph Tripodi MP, Minister for Roads, 2 February 2006, inviting him to appear before the Committee and providing questions

Resolved, on the motion of Mr McLeay, that the correspondence between the Chairman and the Ministers regarding their appearance before the Committee, be published.

Received

- Ms Michelle Zeibots, to the Chair, 2 February 2006, Ceiling Capacity for the Cross City Tunnel
- Ms Jo Holder, co-convenor, Action City East, response to criticism by Jane Anderson, including email from Ms Stacey Miers and letter from Mr Peter Carroll.

Resolved, on the motion of Mr Brown, that the correspondence from Ms Zeibots, be published.

Resolved, on the motion of Mr Brown, that Ms Holder's correspondence be published.

Resolved, on the motion of Mr Brown, that Ms Anderson's evidence on 1 February 2006 not be struck from the transcript.

Submissions

- No. 26a – John Passmore Museum of Art
- No. 59 – Ms Denyse Rockey
- No. 60 – Mr Stephen Snepvangers
- No. 61 – Residents of Woolloomooloo
- No. 62 – City of Sydney Residents Network
- No. 63 – Mr Michael Gormly
- No. 64 – State Chamber of Commerce
- No. 65 – UBTSC
- No. 66 – Leichhardt Council

Resolved, on the motion of Mr Brown, that submissions 26a and 59-66, be published and that submission 53A (tabled at meeting 6) be published.

Future Committee activity

Ms Rhiannon moved: That noting the circumstances of the establishment of this Committee, on the understanding that the Premier and Ministers Tripodi, Scully and Sartor would appear before the inquiry, as advised by the Chairman, senior staff of the Premier, Minister Scully, Minister Sartor and Minister Tripodi be called to give evidence before the Inquiry.

Question put and negatived.

Site visit

Resolved, on the motion of Mr Constance, that the Committee conduct a site visit of the Cross City Tunnel and surrounding streets on Monday 13 February, departing Parliament House at 5pm.

Conduct of committee members

Ms Fazio moved that:

1. the Committee notes the comments made by Ms Rhiannon during a radio interview with Alan Jones on 2GB on 3 February 2006
2. the Committee considers the action of Ms Rhiannon in making statements in relation to deliberations of the Committee is in breach of Standing Order 224, initial resolution 3 of the Committee and parliamentary practice
3. Ms Rhiannon is reminded that the deliberation of the a committee may not be disclosed until made public or until the Committee has reported to the House
4. the Committee does not report this matter to the House

Resolved, on the motion of Mr Pearce, that the Committee defer consideration of Ms Fazio's motion until the next meeting and that the secretariat obtain full transcripts of Mr Jones' interviews with Revd Nile and Ms Rhiannon.

4. Adjournment

The Committee adjourned at 5.15pm until Monday 13 2006 at 5.00pm (site visit)

Rachel Simpson
Director

Minutes No 9

Wednesday 22 February 2006

Room 1153, Parliament House, at 9:30 am

1. Members Present

Revd Fred Nile (Chairman)
Ms Amanda Fazio
Mr Greg Pearce
Ms Lee Rhiannon
Mr Andrew Constance
Mr Michael Daley
Mr Paul McLeay
Mr John Turner

2. New committee member

The Chairman welcomed Mr Daley who has been nominated by the Leader of the Government in the Legislative Assembly as a member of the Committee to replace Mr Brown.

3. Confirmation of Minutes

Resolved, on the motion of Ms Fazio: That Minutes No 8 be adopted.

4. Correspondence

- ***Received***

- Hon Carl Scully, Minister for Police, Minister for Utilities, to the Chairman, 2 February 2006, responding to invitation to appear
- Ms Jane Anderson, to the Chairman, 2 February 2006, responding to evidence given
- Mr Philip Begbie, to the parliamentary feedback website, 4 February 2006, responding to evidence given on 3 February 2006
- Mr Ken Morrison, Property Council, to the secretariat, 6 February 2006, *Funding Urban Public Infrastructure* (cover attached – document available from the secretariat)
- Dr Ray Kearney, Chairman, Lane Cove Action Group, to the Director, 7 February 2006, providing supplementary responses to questions asked on 2 February 2006
- Ms Jane Anderson, to the Director, 9 February 2006, clarifying evidence
- Ms Jane Anderson, to the Chairman, 9 February 2006, seeking advice regarding possible witness intimidation
- Ms Brian Noad, to the Committee, 12 February 2006, comment on the Inquiry
- Ms Jane Anderson, to the Chairman, 15 February 2006, seeking further advice regarding possible witness intimidation
- Mr Robert Stefanic, A/Clerk Assistant – Committees, to East Sydney Business, 15 February 2006, regarding possible witness intimidation
- Hon Carl Scully MP, Leader of the Government in the Legislative Assembly, to the Clerk of the Legislative Assembly, dated 22 February 2006, nominating Mr Michael Daley MP as replacement Member for Mr Matt Brown MP

- ***Answers to questions on notice***

- Mr Paul Levins, General Manager, Operations and Corporate Affairs, Bilfinger Berger Australia, to the Director, 8 February 2006, answers to questions on notice
- Hon Carl Scully, Minister for Police, Minister for Utilities, to the Chairman, 9 February 2006, responding to questions provided by the Committee
- Hon Frank Sartor, Minister for Planning, to the Chairman, 10 February 2006, responding to questions provided by the Committee
- Hon Joseph Tripodi, Minister for Roads, to the Chairman, 10 February 2006, responding to questions provided by the Committee
- Mr Peter Sansom, CrossCity Motorway Pty Ltd, to the Director, 13 February 2006, answers to questions on notice
- Mr Mike Hannon, Acting Chief Executive, RTA, to the Director, 13 February 2006, answers to questions on notice and a box on requested documents
- Hon Morris Iemma, Premier, to the Chairman, 13 February 2006, responding to questions provided by the Committee
- Mr Col Gellatly, Director General, Premier's Department, 15 February 2006, answers to questions on notice
- Mr Jim Glasson, Director General, Ministry of Transport, 15 February 2006, answers to questions on notice
- Dr Kerry Schott, Executive Director, Private Projects and Asset Management Directorate, to the Chairman, 15 February 2006, answers to questions on notice.

Resolved, on the motion of Ms Fazio: That the Committee publish responses to the Committee's invitation received from the Premier and Ministers Tripodi, Scully and Sartor.

Resolved, on the motion of Mr Constance: That the Committee publish answers to questions on notice.

Resolved, on the motion of Ms Fazio: That the Committee publish submission No 69.

5. Possible witness intimidation

Resolved, on the motion of Mr Pearce: That the Committee note the letter from the A/Clerk Assistant – Committees, and that the Chair write to Ms Anderson to endorse the contents of the letter from the A/Clerk Assistant – Committees, enclosing a copy of the letter from the A/Clerk Assistant – Committees.

6. Deferred motion

Resolved, on the motion of Ms Fazio: That the Committee defer consideration of the Ms Fazio's motion until the next meeting.

7. Future committee activity

Resolved, on the motion of Mr Pearce: That the reporting date for the Committee's second report be the last sitting date in May.

Resolved, on the motion of Mr McLeay: That Committee Members submit lists of proposed witnesses to the Secretariat by Friday 3 March 2006.

8. Chairman's Draft First Report

The Chairman tabled the draft First Report, which having been circulated, was taken as being read. The Committee proceeded to consider the draft First Report in detail.

Chapter One read.

Resolved, on the motion of Ms Fazio: That Chapter One be adopted by the Committee.

Chapter Two read.

Resolved, on the motion of Ms Fazio: That the table following paragraph 2.6 be amended as follows:

- amend the first row by adding '(1998)' at the end of the final sentence
- amend the last row by adding the following as a footnote: 'A connection to the Domain Tunnel allows traffic from the eastern suburbs to directly access the harbour crossings with a base toll of \$1.25.'

Resolved, on the motion of Ms Fazio: That the third dot point of paragraph 2.9 be amended by deleting 'present' and inserting instead '16 February 2006'.

Resolved, on the motion of Ms Fazio: That the second dot point of paragraph 2.13 be amended by deleting 'present' and inserting instead '16 February 2006'.

Resolved, on the motion of Ms Fazio: That paragraph 2.16 be amended by inserting as a new first sentence 'Membership of the BCC changes from time to time, as determined by Cabinet.'

Resolved, on the motion of Ms Fazio: That paragraph 2.16 be amended by inserting 'MP' after 'Hon Bob Carr' and 'Hon Dr Andrew Refshauge'.

Resolved, on the motion of Ms Fazio: That paragraph 2.26 be amended by deleting 'build, operate' and inserting instead 'finance, build, own, operate and maintain'.

The Committee noted that the Secretariat was authorised to make any typographical or grammatical changes to the report prior to tabling of the report.

Resolved, on the motion of Ms Fazio: That paragraph 2.45 be amended by deleting 'Evans Peck' and inserting instead 'PKK Environment and Infrastructure Pty Ltd (Evans and Peck)'.

Resolved, on the motion of Ms Fazio: That paragraph 2.47 be amended by deleting 'submitted to DUAP by the proponent, the Minister for Roads' and inserting instead 'placed on public display by the proponent, the RTA.'

Resolved, on the motion of Ms Fazio: That paragraph 2.52 be amended by replacing 'acceptance' with 'selection'.

Resolved, on the motion of Ms Fazio: That a link be added to the Committee's website to the documents referred to in the section of the report entitled 'Contracts'.

Resolved, on the motion of Ms Fazio: That the Chronology following paragraph 2.63 be amended to list all items in correct date order, and that the following be amended, subject to confirmation of accuracy by the Secretariat:

- Replace Mr Refshauge with Dr Refshauge.
- Replace "18 June 2000" with "18 June 2001".
- In the Sept 2001 item, replace "released" with "submitted to the Minister for Urban Affairs and Planning".
- In the Feb 2002 item, add "as preferred proponent" after "selected", replace "model" with "Long 80 Tunnel", add "as the preferred proposal" at the end of the paragraph.
- Entry for 24 June 2003 indicate that call for papers was in the Legislative Council.
- In 24 June 2003 note that a substantial volume of documents were released in the public domain without a claim for privilege being made.
- In Sep 2003 for accuracy, note that a substantial volume of documents were released in the public domain without a claim for privilege being made.
- 4 November 2005 – refer to the Clerk of the Legislative Council.

Resolved, on the motion of Ms Rhiannon: That the name of the worker killed in the construction of the Cross City Tunnel remain in the Chronology, and that the Secretariat seek the consent of the worker's family.

Resolved, on the motion of Mr Pearce, that Chapter 2 as amended, be adopted.

Chapter Three read.

Resolved, on the motion of Ms Fazio: That the Introduction be amended to read: '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.'

Resolved, on the motion of Ms Fazio: That following paragraph 3.7 a new paragraph be inserted to read: 'The RTA's view on the project is referred to and discussed in Chapter 6'.

Ms Fazio moved: That paragraph 3.9 be deleted.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Ms Fazio moved: That paragraph 3.10 be deleted.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Ms Fazio moved: That paragraph 3.13 be amended by deleting sentences two and four.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That following paragraph 3.22 a new paragraph be inserted to read:

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 to 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 areas

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.

Resolved, on the motion of Ms Fazio: That following the new paragraphs inserted after paragraph 3.22 (quoting Mr Harris), a new paragraph be inserted as follows:

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.

Resolved, on the motion of Ms Fazio: That the words: 'That was the experience of the previous Government and it is the experience of governments all around the world' be inserted at the end of the quote in paragraph 3.18.

Resolved, on the motion of Ms Fazio: That paragraph 3.23 be amended by deleting 'claimed' and inserting instead 'believes'.

Resolved, on the motion of Ms Fazio: That paragraph 3.28 be deleted.

The Committee considered the motion of Ms Rhiannon: That following paragraph 3.32 new paragraphs be inserted to read:

Mr Tony Harris' submission argues that:

Private funding of public roads, especially those in urban areas, has lead to higher costs for the public. This is a sufficient reason to find fault with the provision of public roads with the private sector.

Perhaps more importantly, the franchising, leasing or sale of parts of the urban road network, including the Cross City Tunnel, has lead to other sub-economic outcomes that have reduced the welfare of NSW residents.

Prof John Quiggins of University of Queensland and Prof Bob Walker of Sydney University argue the government can borrow money more cheaply than the private sector because the spread of government investments reduces the risks of lending to governments.

Ms Con Walker, Principal of Centennial Consultancy, at the public hearings advised, ‘there is nothing wrong with government borrowing to finance infrastructure that will be of benefit to current and future generations. (1 Feb 2006)

Mr Harris concludes in his submission that:

The economic adage that the part best equipped to handle an identified risk should handle it, when applied to the network of urban roads, indicates that roads should be owned by the government.

Mr Harris closes his submission with, ‘in fact, there is so much wrong with the government’s position that no economist I know has supported it, either publicly or privately.’

It is clear that the involvement of the private sector in the Cross City Tunnel has left the public interest as a very poor cousin to corporate profits. The benefits of private sector involvement have been over-played by the government, for example it is said this minimises risk and avoids debt.

The RTA, in negotiating the deal with the Cross City Tunnel consortium, has also failed to keep the best interests of the public firmly in view to ensure the public interest is maximised.

RECOMMENDATION:

The government should depart from the tradition of private ownership of public roads, All future new roads should be owned by the public and finance arranged by the government.

Question put and negatived.

Resolved, on the motion of Ms Rhiannon: That paragraph 3.28, which was deleted by the Committee, be replaced with the following paragraph to read:

Ms Con Walker, Principal of Centennial Consultancy, at the public hearings advised, ‘there is nothing wrong with government borrowing to finance infrastructure that will be of benefit to current and future generations.’

Ms Fazio moved: That paragraph 3.39 be deleted.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Resolved, on the motion of Mr Turner: That paragraph 3.39 be amended to delete 'entirely' from the second sentence.

Resolved, on the motion of Ms Fazio: That following paragraph 3.39 a new paragraph be inserted to read:

The Committee acknowledges the conclusion reached in the Motorways 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.

Resolved, on the motion of Ms Fazio: That paragraph 3.40 be deleted and a new paragraph be inserted to read:

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.

Ms Fazio moved: That paragraph 3.51 be amended by deleting the second last sentence.

Question put and negatived.

Ms Fazio moved: That paragraphs 3.55 – 3.57 be deleted.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 3.55 be amended to read: 'Mr Peter Mills, in his submission to the Inquiry, was critical ...'

Resolved, on the motion of Ms Fazio: That following paragraph 3.57 a new paragraph be inserted to read:

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.

Ms Fazio moved: That paragraph 3.61 be amended by deleting all words after 'tunnel portals' in the final sentence.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Mr McLeay moved: That paragraph 3.61 be amended by amending the last sentence to read, ‘... leading to considerable frustration and anger in certain sections of the community and potentially leading to a political cost to government.’

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay, Revd Nile

Noes: Mr Constance, Mr Pearce, Ms Rhiannon, Mr Turner

There being an equality of votes, the Chairman exercised his casting vote with the ayes.

Question resolved in the affirmative.

Ms Fazio moved: That following paragraph 3.61 a new paragraph be inserted to read:

However, the Committee notes that the no cost to Government policy has meant no cost to taxpayers collectively and no diversion of funding from other road projects. The Committee also heard evidence about the benefits of the tunnel, not only to the motorists who use it but also to the environment, pedestrians, public transport users and to the amenity of the city in general.”

Question put and negatived.

Resolved, on the motion of Mr McLeay: That Chapter Three, as amended, be adopted by the Committee.

Chapter Four read.

Resolved, on the motion of Ms Fazio: That paragraph 4.1 be amended by deleting the final sentence of the final dot point

Resolved, on the motion of Ms Fazio: That table following paragraph 4.3 be amended by deleting the title of the ‘date’ column and inserting instead ‘timeline’.

Resolved, on the motion of Ms Fazio: That paragraph 4.5 be amended by inserting ‘they’ between ‘how’ and ‘hoped’.

Ms Fazio moved: That paragraphs 4.15 – 4.16 be deleted.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Ms Fazio moved: That paragraph 4.23 be deleted.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Resolved, on the motion of Mr McLeay: That paragraph 4.24 be amended by deleting ‘and in the current Government’ in the first sentence.

Resolved, on the motion of Ms Fazio: That paragraph 4.26 be deleted.

Resolved, on the motion of Ms Fazio: That paragraph 4.27 be deleted and the following paragraph inserted instead:

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.

Resolved, on the motion of Ms Fazio: That following paragraph 4.37 a new paragraph be inserted to read:

Despite this, non-conforming bids are a normal part of Government procurement processes. Professor 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.”

Ms Fazio moved: That paragraph 4.42 be deleted.

Question put and negatived.

Mr Pearce moved: That paragraph 4.41 be amended in the second sentence by deleting ‘have the opportunity to’.

Question put and negatived.

Resolved, on the motion of Mr Turner: That paragraph 4.41 be amended by deleting 'did not have' and inserting instead 'were not given'.

Resolved, on the motion of Mr McLeay: That paragraph 4.48 be amended in the first sentence by deleting 'The fact that' and deleting 'has' and inserting instead 'and this'.

Resolved, on the motion of Mr Pearce: That Recommendation 4 be amended by deleting the second sentence and accompanying dot points, and inserting instead 'and this will be further considered in the Committee's second report.'

Ms Fazio moved: That paragraph 4.49 be amended in the first sentence to read: 'The Committee heard evidence in relation to providing for Sydney's future transport needs.'

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Mr McLeay moved: That paragraph 4.51 be amended by deleting the first sentence.

Question put and negatived.

Resolved, on the motion of Mr Pearce: That paragraph 4.54 be amended in the first sentence by deleting 'commends' and inserting instead 'supports'.

Resolved, on the motion of Ms Fazio: That paragraph 4.59 be amended in the first sentence to read: 'The Committee notes that the RTA as the proponent of the project was required to ...'.

Ms Fazio moved: That paragraphs 4.64 – 4.65 be deleted.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That Recommendation 6 be deleted.

Resolved, on the motion of Mr Pearce: That Chapter Four, as amended, be adopted.

Chapter Five read.

Mr McLeay moved: That paragraph 5.37 be deleted.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 5.46, 5.54 and 5.56 be amended by updating the positions of the persons listed, to reflect their position at the time of assessment and their current position.

Resolved, on the motion of Mr McLeay: That paragraph 5.61 be amended in the second sentence by deleting 'have sufficient information about' and inserting instead 'fully comprehend'.

Resolved, on the motion of Ms Fazio: That following paragraph 5.65 a new paragraph be inserted to read:

However, the Committee notes that only change sought by CCM concerned limited vehicle movements was at Cowper Wharf Road. That change was publicly exhibited as part of the SEIS, but was not approved by RTA, as published in the subsequent Preferred Activity Report.

Mr McLeay moved: That paragraph 5.68 be amended in the first sentence to delete from 'which is likely to of resulted in the selection of the 'long 80 tunnel' over the original scheme.'

Question put and negatived.

Ms Fazio moved: That paragraph 5.81 be deleted.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That following paragraph 5.87 a new paragraph be inserted to read:

The committee heard evidence from Chris Wilson, traffic expert from Masson Wilson Twiney that:

One of the complications we have at the moment is that we are going into the Christmas holiday period and the numbers are all over the place at the moment.

Resolved, on the motion of Mr McLeay: That paragraphs 5.97 – 5.98 a new paragraph be inserted to read:

Mr Chris Ford, Director Traffic and Transport, RTA, in response to the suggestion that the ceiling capacity of the tunnel was less than the traffic estimates, discussed in evidence to the Committee, the use of expansion factors in calculating ceiling capacity:

In the evidence that was tendered yesterday, an expansion factor derived from the Sydney Harbour Bridge was applied to the lane capacities to return the ceiling capacity for the cross-city tunnel. An assumption in determination of the expansion factor was that, in fact, there were nine traffic lanes on the Sydney Harbour Bridge; in fact, there were only eight traffic lanes at the time the analysis was undertaken. The expansion factor, using the same analysis, was increased from 10 to 11.5 and, using the same calculations, would generate a ceiling capacity of 90,000 rather than the 80,000 quoted yesterday. At the very least I have some issues with the calculations.

Resolved, on the motion of Ms Fazio: That following the new paragraph inserted after paragraph 5.98, a new paragraph be inserted to read:

The Committee recognises that creating traffic projections for major projects is complex. The accuracy of such projections relies on assumptions made by traffic experts. Different experts may generate different assumptions and therefore different projections for the same projects.

Resolved, on the motion of Ms Fazio: That following paragraph 5.98 a new paragraph be inserted to read:

The difficulties in accurately forecasting traffic volumes was demonstrated by Ms Ziebots revising the estimates she provided to the Committee the day after giving evidence.

Resolved, on the motion of Ms Fazio: That paragraph 5.100 be amended by deleting all the words after ‘we wish to raise...’

Ms Rhiannon moved: That following paragraph 5.101 a new recommendation be inserted to read:

That the RTA request that CrossCity Motorway place daily and monthly Cross City Tunnel traffic use figures on their website.

Resolved, on the motion of Mr McLeay: That paragraph 5.108 be moved to after paragraph 5.113.

Ms Fazio moved: That Recommendation 8 be deleted.

Question put and negatived.

Resolved, on the motion of Mr Constance: That Recommendation 8 be amended to read ‘That any policy of charging ...’.

Resolved, on the motion of Ms Fazio: That paragraph 5.115 be amended in the first sentence by deleting ‘many’.

Resolved, on the motion of Ms Fazio: That paragraph 5.119 be amended by deleting ‘major’.

Resolved on the motion of Mr Turner: That following paragraph 5.124 a new paragraph be inserted to read:

The Committee notes that the Ernst & Young advice to the RTA in December 2004 states that the 15¢ increase would result in a change in toll revenue from \$5,500,430,000 to \$5,808,600,000 over the course of the project term. This is an increase of \$308,199,000.

Resolved, on the motion of Ms Fazio: That the Committee urgently refer to the RTA the paragraphs proposed by Mr Pearce to follow paragraph 5.129, requiring a response by 4:30pm. The Committee will reconsider Mr Pearce’s amendments after the 4:30pm deadline.

The Committee considered the advice received from the RTA. Resolved, on the motion of Mr Pearce: That following paragraph 5.129 a new paragraph be inserted to read:

Calculation of toll escalation

A number of Committee members raised issues about the calculation of the toll and the toll escalation formula. At the time of this report, the issues had not been resolved with the RTA, and are still being investigated.

Resolved, on the motion of Mr Pearce, that the Committee seek further clarification of the RTA's advice.

Resolved, on the motion of Ms Fazio: That paragraph 5.131 be amended by inserting a footnote reference.

Resolved, on the motion of Ms Fazio: That paragraph 5.137 be amended by deleting 'similarly'.

Resolved, on the motion of Mr Pearce: That paragraph 5.139 be amended by deleting 'upper level' and inserting instead 'increased escalation.'

Mr McLeay moved: That paragraph 5.139 be amended by deleting 'the BCF' and inserting instead 'the costs of delivering the project'.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That following paragraph 5.139 a new paragraph be inserted to read:

However, evidence was provided to the Committee from Mr Chris Wilson of Massey Wilson Twiney about the effect of a reduction in the toll:

Preliminary analysis has indicated that should the toll for the main tunnel be decreased to \$2.90 for cars, the resultant additional traffic would likely result in a revenue neutral outcome."

Resolved, on the motion of Mr Pearce: That paragraph 5.140 be amended in the first sentence by deleting 'little' and inserting instead 'insufficient'.

Ms Fazio moved: That paragraph 5.140 be deleted.

Question put and negatived.

Resolved, on the motion of Mr Constance that Chapter Five, as amended, be adopted.

Chapter Six read.

Resolved, on the motion of Ms Fazio: That paragraph 6.4 be amended in the first sentence to delete 'potentially'.

Resolved, on the motion of Mr McLeay: That paragraph 6.11 be amended in the quote by adding the following to the end of the quote:

They actually produced a report in 1999, submitted that to government and sought comment. As I said, there was an enormous amount of consultation with the Chamber of Commerce, the task force, the William Street committees and the like. At the end of the day, while the Government put out the report in 1998 suggesting that it be a short tunnel, the decision was made at that point in time to make it a longer tunnel. But the objectives I talked about in my opening address was very much about improving the environmental quality of public spaces within central Sydney, improving ease of access and reliability of travel within Sydney. An important one was doing a lot of things for the bus and basically the public transport lobby as well.

Ms Fazio moved: That paragraph 6.17 be amended in the second sentence by deleting from ‘that there was concern ... ‘long tunnel’” and inserting instead ‘the level of awareness in the community about the differences this option represented over the ‘long tunnel’ and indicates the success of the community liaison process.’

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Resolved, on the motion of Ms Fazio: That following paragraph 6.27 a new paragraph be inserted to read: ‘A full list of all road changes is included in Appendix 4.’

Resolved, on the motion of Ms Fazio: That paragraph 6.32 be deleted.

Resolved, on the motion of Ms Fazio: That paragraph 6.33 be deleted.

Resolved, on the motion of Ms Fazio: That paragraph 6.41 be amended in the second sentence by deleting ‘assuming the consultation ... was appropriate’, and inserting instead:

given the project and its parameters had been approved and the role of the Community Liaison Groups was to make comments and recommendations about the implementation of development and environmental plans and monitor compliance with the conditions of planning approval

Resolved, on the motion of Ms Fazio: That paragraph 6.52 be deleted.

Ms Fazio moved: That paragraphs 6.54 – 6.55 be deleted.

Question put and negatived.

Resolved, on the motion of Ms Rhiannon: That following paragraph 6.51 a new paragraph be inserted to read:

Cr Kerri Huxley of Woollahra Council also was concerned about lack of information from Ms Moore, Lord Mayor and local Member:

Despite numerous letters or submissions Clover may have made to the State Government or to the submissions, that is all we have seen of our local representative. The general feeling is great dissatisfaction, that this should never have occurred.

Ms Fazio moved: That following paragraph 6.52 a new paragraph be inserted

However, the Committee notes that the approved project was set out in the SEIS as amended by the Preferred Activity Report both of which were publicly exhibited. The preferred activity report, it was released and put on public display from 25 November to tunnel opening. This was supported by included a media release on 25/11/02, newspaper advertising, and website information. Both documents were on display at several locations between 25/11/02 and 23/12/02, including the RTA public display office and council offices. The preferred activity report and Supplementary EIS were also included in the BHBB project display offices from Jan 2003 until the tunnel opened.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 6.56 be amended by deleting 'and adding that' and deleting the quote 'To the RTA ... (secret) project.'

Resolved, on the motion of Ms Fazio: That paragraph 6.65 be amended in the first sentence by deleting 'entirely'.

Resolved, on the motion of Ms Fazio: That paragraph 6.69 be amended in the first sentence by inserting 'some members of' before 'the community'.

Resolved, on the motion of Ms Fazio: That paragraph 6.69 be amended by deleting the last sentence.

Resolved, on the motion of Ms Fazio: That paragraph 6.65 be amended in the quote by inserting the following to the beginning of the quote:

In fact, the statement made by the Planning Institute of Australia in support of release of commercial terms before they have been settled and the involvement of community consultation in the commercial negotiation of these deals, is, I would say, absolutely ridiculous!

Ms Fazio moved: That Recommendation 11 be deleted.

Question put.

Committee divided.

Ayes: Mr Daley, Ms Fazio, Mr McLeay, Ms Rhiannon

Noes: Mr Constance, Revd Nile, Mr Pearce, Mr Turner

There being an equality of votes, the Chairman exercised his casting vote with the noes.

Question resolved in the negative.

Resolved, on the motion of Ms Rhiannon: That following paragraph 6.90 a new paragraph be inserted to read:

Sam Harding, who is a resident of Rushcutters Bay, said:

The closing of Bourke Street from Williams Street has made it a lot more difficult to simply move around the local area because it has isolated both Darlinghurst in the west and Woolloomooloo in the north.'

Resolved, on the motion of Ms Fazio: That following the two new paragraphs inserted after paragraph 6.90, a new paragraph be inserted to read:

Not all the evidence received by the Committee was against the closure of Bourke Street. Ms Sue Pynenburg, Business Manager for Sydney Church of England Girls Grammar School, said in evidence to the Committee that:

Some of the parents have indicated that it might take them a few extra minutes to reach their destination after they have dropped off children. However we believe that the safety of children, air quality and the possibility of creating a grid lock situation in William Street are far more important issues than perhaps some people taking a little extra time to reach destinations.

Resolved, on the motion of Mr McLeay: That paragraph 6.91 be amended in the first sentence to read: 'The closure will be reviewed for effectiveness at 6 and 12 monthly intervals'.

Resolved, on the motion of Mr McLeay: That paragraph 6.94 be amended by deleting 'and the willingness ... community.'

Ms Rhiannon moved: That Recommendation 13 be deleted and insert instead:

The trial closure of Bourke Street ends on 28 February 2006. The Committee recommends the RTA immediately re-open that street while a review is conducted.

Question put.

Committee divided.

Ayes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Noes: Mr Daley, Ms Fazio, Mr McLeay

Question resolved in the affirmative.

Resolved, on the motion of Ms Fazio: That following paragraph 6.88 a new paragraph be inserted to read:

The Committee notes the extensive consultation undertaken by the RTA concentrated on people who were to be most affected by the change. DRAG was outside that immediate area.

Resolved, on the motion of Mr Pearce: That Chapter Six, as amended, be adopted by the Committee.

Chapter Seven read.

Resolved, on the motion of Ms Fazio: That the Introduction be amended in the first sentence by deleting from 'with road changes ... Tunnel operator.'

Ms Fazio moved: That paragraph 7.1 be amended by deleting the second sentence.

Question put and negatived.

Mr Turner moved: That paragraph 7.1 be amended by inserting the following at the beginning of the second sentence: 'In view of the Premier's failure to accept repeated invitations to appear before the Committee to clarify his comments, the Premier's comments appear ...'.

Committee divided.

Ayes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Noes: Mr Daley, Ms Fazio, Mr McLeay

Question resolved in the affirmative.

Resolved, on the motion of Ms Fazio: That paragraph 7.26 be amended by inserting after change 'materially and'.

Resolved, on the motion of Mr Pearce: That following paragraph 7.13 a new paragraph be inserted to read:

In response to questions relating to the number of intersections with traffic light changes, Mr Hannon said in evidence to the Committee that:

that would total approximately 400 intersections. Every intersection in the city would have undergone changes to cycle time and green time depending on traffic densities.

Resolved, on the motion of Mr Turner: That following paragraph 7.13 a new paragraph be inserted to read: The Committee notes that CCM met with the RTA to discuss changes to traffic light phasing.

Ms Rhiannon moved: That following paragraph 7.22 a new section be inserted to read:

The government has refused to re-negotiate the tunnel contract and claims that buying back the tunnel would cost more than \$1 billion.

Advice to the inquiry from the eminent constitutional law expert, Prof Tony Blackshield is that the constitutional law practices mean the tunnel contract does not restrict the government's ability to take action to better the tunnel chaos:

the agreements impose no legally binding constraint on the NSW Government or the RTA in determining how best to deal with the management of the tunnel and of the various traffic problems associated therewith.

Prof Blackshield says that uncertainty in the contract is significant in that:

it is not correct to say that ... the Government is now irrevocably bound either to accept the existing arrangements or pay massive compensation ... [and] ... in any serious negotiations with the developers that very uncertainty might itself strengthen the government's hand ... the developers might well be prepared to accept a lower level of compensation rather than face the possibility of not getting any compensation at all.

The government and the RTA should be should by its primary duty to the public of NSW to take action to fix the growing problems created by the road closures.

The 90,000 cars per day traffic figure that the Premier has based his \$1 billion figure was never realistic. The reality is that only 30,000 are using the tunnel per day. This would be that straight to the point for any contract renegotiations.

Legal advice from Prof Blackshield is that the contract is very uncertain and this strengthens the government's ability to renegotiate road closures and lower the toll.

This legal advice from Prof Blackshield makes possible of a public buy back of the tunnel at a cost far lower than the \$1 billion that the Premier continues to say would be the sale price.

RECOMMENDATION:

The government should immediately request that the Crown solicitor review the:

- advice provided to the inquiry by Professor Tony Blackshield
- the Cross City Tunnel contract

and provide independent legal advice to the government about its ability to renegotiate the Cross Coty Tunnel contract.

The government should then enter into fresh negotiations with the Cross City Tunnel consortium with the aim of:

- reversing above ground road changes
- reducing the toll to \$2
- removing the possibility of financial compensation if the government improves public transport or introduces new public transport.

The government should also actively investigate the feasibility of a public buy back of the tunnel, either now or in the future when the price is right. If the government brought the tunnel back into public hands it should lower the toll, making the tunnel more attractive to users. Once the price of the tunnel is recouped, the toll should be

kept on and the profits put into a special fund to pay for future public transport projects.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 7.40 be amended by deleting 'appreciate' and inserting instead 'fully understand'.

Resolved, on the motion of Ms Rhiannon: That paragraph 7.42 be amended by inserting new sentences after the first sentence to read: 'New public transport initiatives which do not have a material adverse effect on tunnel traffic may lead to compensation to CCM from the Government. In a letter from Clayton Utz to the RTA, dated 12 October 2005, they say:

The Project Deed for the Cross City Tunnel project between Roads and Traffic Authority and CrossCity Motorway explicitly recognises the Government's unrestricted capacity to manage and upgrade the public transport network. To quote from the Project Deed: 'Nothing in this Deed will any way limit or restrict the ability or power of RTA or the Government, directly or through any Authority to:

- extend, alter or upgrade existing public transport routes or services
- construct new public transport routes or establish new transport services; or
- develop the transport network generally.

Further, CCM will have no rights to compensation under the Project Deed if:

- there is increased patronage of existing public transport routes and services; or
- there are initiatives for new public transport routes or services introduced which do not have a material affect on traffic capacity on connections to and from the Cross City Tunnel.

Ms Fazio moved: That paragraph 7.45 be amended by:

- deleting the first sentence
- amending the second sentence to begin: 'The Committee notes that changes were made to the road network and that this is ...'
- amending the third sentence by deleting 'funnelling' and inserting instead 'changes to the road network'.

Question put.

Committee divided.

Ayes: Ms Fazio, Mr McLeay

Noes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That paragraph 7.45 be amended to add a new third sentence after 'EIS' to read: 'The outcomes however, have been more severe in creating disruption than are acceptable to the community.'

Ms Fazio moved: That paragraph 7.48 be amended by deleting the second sentence, and in the third sentence deleting 'even'.

Question put and negatived.

Mr Constance moved: That Recommendation 14 be deleted and replaced with the following: 'That the RTA immediately reverse the traffic changes identified in Appendix 5 and categorised as categories B, C or D and further investigate those referred to as category A as soon as possible.'

Question put.

Committee divided.

Ayes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Noes: Mr Daley, Ms Fazio, Mr McLeay

Question resolved in the affirmative.

Resolved, on the motion of Mr Turner: That Recommendation 15 be amended in the second sentence to read: 'A reduction of the toll to \$2.90, as suggested by the RTA's traffic consultants, would be revenue neutral and improve patronage of the tunnel.'

Mr Pearce moved: That Chapter Seven, as amended, be adopted by the Committee.

Question put.

Committee divided.

Ayes: Mr Constance, Revd Nile, Mr Pearce, Ms Rhiannon, Mr Turner

Noes: Mr Daley, Ms Fazio, Mr McLeay

Question resolved in the affirmative.

Chapter Eight read.

Resolved, on the motion of Ms Fazio: That paragraph 8.30 be amended by deleting the last sentence.

Ms Fazio moved: That paragraph 8.31 be amended by deleting 'deemed' and inserting instead 'stated'

Ms Fazio moved: That paragraph 8.31 be amended by deleting the second sentence.

Question put and negatived.

Resolved, on the motion of Ms Fazio: That paragraph 8.34 be amended by deleting 'Greens member'.

Ms Fazio moved: That paragraph 8.54 be amended by deleting the second and third sentences.

Question put and negatived.

The Committee considered the motion of Ms Rhiannon: That following paragraph 8.54 a new paragraph be inserted to read: 'The unwillingness of the Committee to call representatives from Clayton Utz and Ernst & Young limited the work of the Committee.'

Question put and negatived.

Resolved, on the motion of Mr Turner: That Chapter Eight, as amended, be adopted by the Committee.

Resolved, on the motion of Mr Constance: That Chapter Five, as amended, be adopted by the Committee.

Resolved, on the motion of Ms Fazio: That dissenting statements be submitted to the Secretariat no later than 9am Friday 24 February 2006.

The Chairman indicated that he would endeavour to circulate a copy of his Foreword at the following day's deliberative meeting.

9. **Adjournment**

The Committee adjourned at 6:05pm until Thursday 23 February at 9:30am.

Rachel Simpson
Clerk to the Committee

Minutes No 10

Thursday 23 February 2006

Room 1153, Parliament House, at 9:30 am

1. **Members Present**

Revd Fred Nile (Chairman)
Ms Amanda Fazio
Mr Greg Pearce
Ms Lee Rhiannon
Mr Andrew Constance
Mr Michael Daley
Mr Paul McLeay
Mr John Turner

2. **Confirmation of Minutes**

Resolved, on the motion of Ms Rhiannon: That Minutes No 9 be confirmed, subject to committee members having an opportunity to check them.

3. Correspondence

• ***Received***

- Ms Helen Vickers, Corporate Counsel, RTA, to Committee Director, in response to the Committee's question regarding toll escalation methodology

4. Deferred motion

Debate resumed on the motion of Ms Fazio, deferred from the previous meeting:

That:

1. the Committee notes the comments made by Ms Rhiannon during a radio interview with Alan Jones on 2GB on 3 February 2006
2. the Committee considers the action of Ms Rhiannon in making statements in relation to deliberations of the Committee is in breach of Standing Order 224, initial resolution 3 of the Committee and parliamentary practice
3. Ms Rhiannon is reminded that the deliberation of the a committee may not be disclosed until made public or until the Committee has reported to the House
4. the Committee does not report this matter to the House

Question put.

The Committee divided.

Ayes: Revd Nile, Mr Daley, Ms Fazio, Mr McLeay

Noes: Mr Constance, Mr Pearce, Ms Rhiannon, Mr Turner

There being an equality of votes, the Chairman exercised his casting vote with the ayes.

Question resolved in the affirmative.

5. Conduct of committee members

Ms Rhiannon moved:

That:

1. the Committee notes the comments made by Revd Nile during radio interviews with Alan Jones on 2GB on 15 November 2005 and 3 February 2006
2. the Committee considers the action of Revd Nile in making statements in relation to deliberations of the Committee is in breach of Standing Order 224, initial resolution 3 of the Committee and parliamentary practice
3. Revd Nile is reminded that the deliberation of the a committee may not be disclosed until made public or until the Committee has reported to the House
4. the Committee reports this matter to the House

Debate ensued.

Question put.

The Committee divided.

Ayes: Mr Constance, Mr Pearce, Ms Rhiannon, Mr Turner

Noes: Revd Nile, Mr Daley, Ms Fazio, Mr McLeay

There being an equality of votes, the Chairman exercised his casting vote with the noes.

Question resolved in the negative.

6. Chairman's Draft First Report

The Draft First Report, as amended, was circulated.

Resolved, on the motion of Ms Fazio: That the report, with amendments, be adopted by the Committee, signed by the Chairman and presented to the Houses.

Resolved, on the motion of Ms Fazio: That the Secretariat be authorised to make any typographical or grammatical changes to the report prior to tabling of the report.

Resolved, on the motion of Ms Fazio: That the Committee hold a media conference at 1.45pm on Tuesday 28 February 2006, and that the report be tabled with the Clerks of both houses prior to the media conference.

7. Disclosure of Draft First Report

Resolved, on the motion of Ms Fazio:

That:

1. the Chairman write to the following persons requesting an indication as to whether they were responsible for the disclosure or are able to provide any information that could be of assistance in determining the source of the disclosure.:
 - Committee members including the Chairman
 - former committee member Mr Matt Brown
 - staff of the Committee Secretariat
 - journalists (print and radio) who have reported on the Committee's draft report
2. the Committee consider responses received and any action it will take.

8. Future committee activity

Resolved, on the motion of Ms Fazio: That the Secretariat circulate a calendar for members' availability for further hearings as part of the second part of the Committee's inquiry.

9. Adjournment

The Committee adjourned at 10.15 *sine die*.

Rachel Simpson
Clerk to the Committee

Appendix 9 Dissenting statements

STATEMENT OF DISSENT— MS LEE RHIANNON

The controversy surrounding the Cross City Tunnel has fuelled many conflicting viewpoints about the contract, tunnel operations and associated matters. Most submissions and evidence from witnesses assisted the Inquiry. However, I believe the Inquiry's work would have been more thorough if we had heard evidence from representatives of Clayton Utz, the legal firm for the RTA, and Ernst and Young, the financial company that advised the Cross City Consortium. Other Committee members did not support my motion to call representatives of these companies to give evidence to the Inquiry.

I also proposed a number of additions to the Committee's report that were not supported.

Roads should be owned by the public with finance arranged by the government

Mr Tony Harris' submission argues that, 'private funding of public roads, especially those in urban areas, has lead to higher costs for the public. This is a sufficient reason to find fault with the provision of public roads by the private sector. ... Perhaps more importantly, the franchising, leasing or sale of parts of the urban road network, including the Cross City Tunnel, has lead to other sub-economic outcomes that have reduced the welfare of NSW residents.'³⁸⁵

Professor Bob Walker of Sydney University argues the government can borrow money more cheaply than the private sector because the spread of government investments reduces the risks of lending to governments.³⁸⁶

Mr Harris concludes in his submission that, 'the economic adage that the part best equipped to handle and identified risk should handle it, when applied to the network of urban roads, indicates that roads should be owned by the government.' Mr Harris closes his submission with, 'in fact, there is so much wrong with the government's position that no economist I know has supported it, either public or privately.'³⁸⁷

It is clear that the involvement of the private sector in the Cross City Tunnel has left the public interest as a very poor cousin to corporate profits. The benefits of private sector involvement have been overplayed by the government, for example it is said this minimises risk and avoids debt.

The RTA, in negotiating the deal with the Cross City Tunnel consortium, has also failed in its primary task which is to work in the interests of the public.

Recommendation:

The government should depart from the tradition of private ownership of public roads. All future new roads should be owned by the public and finance arranged by the government.

³⁸⁵ Submission 11, Tony Harris, paragraphs 6 and 7

³⁸⁶ Submission 67, Professor Bob Walker, University of Sydney, and Betty Con Walker, Centennial Consultancy, p9

³⁸⁷ Submission 11, Tony Harris, paragraphs 62-64

Government should renegotiate the contract in the public interest

The government has refused to re-negotiate the tunnel contract and claims that buying back the tunnel would cost more than \$1 billion.

Advice to the inquiry from Professor Anthony Blackshield is that constitutional law principles mean the tunnel contract does not restrict the government's ability to take action to better manage the tunnel chaos. Professor Blackshield told the inquiry that:

there are serious possibilities that government might be able to abandon this contract without paying any compensation at all, and the developers' awareness of that possibility might well lead them to accept a more reasonable level of compensation.³⁸⁸

Professor Blackshield says that uncertainty in the contract is significant in that:

it is not correct to say that...the Government is now irrevocably bound either to accept the existing arrangements or pay massive compensation...[and]...in any serious negotiations with the developers that very uncertainty might itself strengthen the government's hand...the developers might well be prepared to accept a lower level of compensation rather than face the possibility of not getting any compensation at all.³⁸⁹

The government should be bound by its primary duty to the public to take action to fix the growing problems created by the road closures.

The 90,000 cars per day traffic figure that the Premier has based his \$1 billion figure was never realistic. Peter Sansom when he gave evidence as the CCM CEO said that on most days less than 30,000 vehicles use the tunnel.³⁹⁰ The actual daily traffic figures should be the starting point for any contract renegotiations.

Legal advice from Professor Blackshield is that the contract is very uncertain and this strengthens the government's ability to renegotiate road closures and lower the toll.

This legal advice makes possible a public buy back of the tunnel at a cost far lower than the \$1 billion that the Premier continues to say would be the sale price.

Recommendation:

The government should immediately request that the Crown Solicitor review the:

- advice provided to the inquiry by Professor Tony Blackshield
- the Cross City Tunnel contract and provide independent legal advice to the government about its ability to renegotiate the Cross City Tunnel contract.

The government should then enter into fresh negotiations with the Cross City Tunnel consortium with the aim of:

- reversing above ground road changes
- reducing the toll to \$2

³⁸⁸ Professor Anthony Blackshield, Evidence, 1 February 2006, p79

³⁸⁹ Professor Anthony Blackshield, Evidence, 1 February 2006, p73

³⁹⁰ Mr Peter Sansom, Evidence 3 February 2006, p65

- removing the possibility of financial compensation if the government improves public transport or introduces new public transport.

The government should also actively investigate the feasibility of a public buy back of the tunnel, either now or in the future when the price is right. If the government brought the tunnel back into public hands it should lower the toll, making the tunnel more attractive to users. Once the price of the tunnel is recouped, the toll should be kept on and profits put into a special fund to pay for future public transport projects.

CCT traffic figures

On the two occasions that Mr Peter Sansom, as the CCM CEO, gave evidence he was asked to release daily Cross City Tunnel traffic use data. He refused arguing that such data is “commercial in confidence”.³⁹¹ Mr Sansom said “it is not Cross City Motorway’s policy to publish figures”.³⁹²

This lack of cooperation from the former CEO of the Cross City Consortium was disappointing. Clearly there is a great deal of public interest in this project. Restricting the public’s access to such information fuels the perception that this project is not fulfilling the traffic projections that the Project Deed is based on.

³⁹¹ Mr Peter Sansom, Evidence, 3 February 2006, p69

³⁹² Mr Peter Sansom, Evidence, 3 February 2006, p69

DISSENTING REPORT– HON AMANDA FAZIO MLC

Evaluation of Public Interest

The Government members are disappointed the Committee has concluded the public interest was not sufficiently evaluated before the decision was taken to open the project to the private sector.

The Committee heard evidence from former Premier Carr that:

The 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.³⁹³

John Pierce, Secretary, NSW Treasury³⁹⁴ gave evidence on the mechanisms established under the Working with Government Guidelines for ensuring public interest is taken into account and on how the public sector comparator (PSC) works to enable a value based comparison to be made with private sector bids. He said:

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. 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.

No net cost to Government policy

This conclusion is not balanced and does not reflect the full extent of evidence on the outcomes of this policy. The Committee heard the no cost to Government policy has meant no cost to taxpayers collectively and no diversion of funding from other important road or infrastructure projects.³⁹⁵

Evidence was presented about the expected benefits of the tunnel, particularly after the ramp up period, to the environment, pedestrians, public transport users, and to the amenity of the city in general. The conclusion that the selection of the long 80 tunnel was “likely” to have resulted from the no net cost to Government objective is not supported by evidence.³⁹⁶

Planning Approval

The report’s claim that the timing of the final planning approval contributed to the increase in the base toll level is disputed. The RTA gave evidence that the physical scope of projects can easily change, particularly a project such as this:

When you are dealing with a very complex environment like the central business area of Sydney where you are going underneath multistorey buildings and basements and tunnels that impact on

³⁹³ Hon Bob Carr, former NSW Premier, Evidence, 6 December 2005, p 22

³⁹⁴ Mr John Pierce, Secretary, NSW Treasury, Evidence, 1 February 2006, pp 50 - 51

³⁹⁵ For example, Hon Bob Carr, former NSW Premier, Evidence, 6 December 2005, p 34, Hon Michael Egan, former NSW Treasurer, Evidence, 6 December 2005, p 37 to 38

³⁹⁶ For example, Hon Bob Carr, former NSW Premier, Evidence, 6 December 2005, p 22, Hon Michael Egan, former NSW Treasurer, Evidence, 6 December 2005, p 37 to 38

those sorts of things, you sometimes get physical scope changes to projects that could not have been forecast by anyone.³⁹⁷

Environmental Impact Statement and Supplementary Environmental Impact Statement process

The Government members dispute the conclusions in the report that the aim of no cost to government overrode other objectives of the project and had implications for environmental outcomes, that the initially approved tunnel was a better project, and that the analysis and assessment following the SEIS was not as in depth as that undertaken in the EIS process.

The objectives for the project were detailed in both the EIS and SEIS. Additionally, the RTA prepared and exhibited a representations report and a preferred activity report.³⁹⁸ The Committee has also acknowledged that a sophisticated and technologically superior tunnel was delivered with less construction impacts, following these processes.³⁹⁹

Strategic Planning

The Committee ignored evidence it received, and put into the body of its report, about the Government's strategic planning work including the recently released Metropolitan Strategy, the State Infrastructure Strategic Plan, including the current work being undertaken to update it, and the role of the new Infrastructure Implementation Group.⁴⁰⁰

Negotiation of contracts and project tendering methodology

In relation to the information available to the community concerning road changes, the report does not include evidence about the public display and advertising of the approved project through the SEIS and the Preferred Activity Report.⁴⁰¹

In paragraph 5.130, a proper explanation of the effect on the Cross City Motorway revenues has not been provided. The Report's comment on the change in toll revenues of \$308,199 as a result of the 15 cent change in the toll does not recognise this amount includes the impact of inflation over a 30 year period.

The amount has a net present value of \$39.4 million. To provide a simple example, the cost of a house over a 30 year period would also increase considerably as a result of inflation.

Business Consideration Fee

The report has noted the RTA provided a detailed breakdown of the Business Consideration Fee which showed it had been used entirely for cost recovery, but still recommends that "any policy" of charging a "right to operate fee" as part of a business consideration fee be discontinued. There is no Government policy of charging a right to operate fee.

³⁹⁷ Mr Les Wielinga, Director, Motorways, RTA, Evidence, 6 December 2005, p 11

³⁹⁸ Mr Les Wielinga, Director, Motorways, RTA, Evidence, 6 December 2005, p 11

³⁹⁹ First Report par 4.22

⁴⁰⁰ See First Report pars 4.54 and 4.55

⁴⁰¹ Mr Les Wielinga, Director, Motorways, RTA, Evidence, 2 February 2006, p 38 to 39

Community Consultation

Recommendation 13 incorrectly states that the closure of Bourke Street ends on 28 February 2006. As required under the planning approval, the Bourke Street closure is being reviewed. Given the strength of opposing community views that the Committee heard on Bourke Street, the Government members are surprised at this recommendation.

Public control over the road network

The speculation in paragraph 7.1 of the Report that any road changes were made at the request of the Cross City Motorway company is refuted. The changes to the road network were all decided as part of the EIS, SEIS and planning approval process before the private sector was invited to bid on the project.

Recommendation 14

The Government members are surprised the Committee has recommended immediate road changes when it is not in a position to fully understand all possible adverse effects, eg, on local residents who sought road changes during community consultation to prevent rat runs through their local streets. The Committee is not in a position to be able to identify possible liability to the Government and, ultimately the taxpayers of NSW that might be created should the Cross City Motorway company chose to activate the material adverse effect clauses of the contract.