



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

# Impact of the CBD and South East Light Rail Project



Impact of the CBD and South East Light Rail Project

Report 2

Report 2

January 2019

January 2019

[www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

Public Accountability Committee

# **Impact of the CBD and South East Light Rail Project**

Ordered to be printed 25 January 2019 according to Standing  
Order 231

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

**New South Wales. Parliament. Legislative Council. Public Accountability Committee.**

Impact of the CBD and South East Light Rail Project / Public Accountability Committee [Sydney, N.S.W.] : the Committee, 2019. [140] pages ; 30 cm. (Report no. 2 / Public Accountability Committee)  
“January 2019”

Chair: Rev. Hon. Fred Nile, MLC.

ISBN 9781922258748

1. CBD and South East Light Rail Project (N.S.W.)—Design and construction—Costs.
  2. CBD and South East Light Rail Project (N.S.W.)—Design and construction—Planning—Evaluation.
  3. Railroads, Local and light—New South Wales—Sydney.
  4. Local transit—New South Wales—Sydney.
  5. Street railroads—New South Wales—Sydney.
  - I. Nile, Fred.
  - II. Title.
  - III. Series: New South Wales. Parliament. Legislative Council. Public Accountability Committee. Report ; no. 2
- 388.46099441 (DDC22)

# Table of contents

	<b>Terms of reference</b>	<b>vi</b>
	<b>Committee details</b>	<b>vii</b>
	<b>Chairman's foreword</b>	<b>viii</b>
	<b>Finding</b>	<b>ix</b>
	<b>Recommendations</b>	<b>x</b>
	<b>Conduct of inquiry</b>	<b>xiii</b>
<b>Chapter 1</b>	<b>The CBD and South East Light Rail project</b>	<b>1</b>
	<b>The CBD and South East Light Rail route</b>	<b>1</b>
	<b>Timeline of the project</b>	<b>3</b>
	<b>Key stakeholders</b>	<b>4</b>
	<b>Benefits of the CBD and South East Light Rail project</b>	<b>5</b>
	<b>The Auditor-General's findings</b>	<b>8</b>
	Committee comment	10
<b>Chapter 2</b>	<b>Management of the project</b>	<b>11</b>
	<b>Project timeframes</b>	<b>11</b>
	Completion date	11
	Schedule of work in each zone and delays	13
	Mitigation of delays	14
	Perceived 'go slow' by Acciona	15
	Where is work up to?	16
	Committee comment	18
	<b>Project costs</b>	<b>18</b>
	Project budget	19
	Penalty clauses for delays	21
	Contract modifications	21
	Claims under the Building and Construction Industry Security of Payment Act 1999	23
	Committee comment	25
	<b>Treatment of utilities</b>	<b>25</b>
	Ausgrid's explanation of their Adjustment Guidelines	26
	Acciona's claims	27
	Transport for NSW's response	30
	Ausgrid's evidence	33

	Court case	35
	Contract management issues	36
	Committee comment	38
	<b>Management of heritage items and artefacts</b>	<b>39</b>
	Committee comment	43
<b>Chapter 3</b>	<b>Capacity and journey times</b>	<b>45</b>
	<b>Capacity of light rail services</b>	<b>45</b>
	Projected capacity	45
	Configuration of the light rail vehicles	46
	Concerns about capacity	47
	Committee comment	49
	<b>Journey times</b>	<b>50</b>
	Estimated journey times	50
	Concerns about journey times	51
	Junction optimisation	51
	Committee comment	53
	<b>Additional stop near Wimbo Park</b>	<b>54</b>
	Committee comment	55
<b>Chapter 4</b>	<b>Key impacts</b>	<b>57</b>
	<b>Noise</b>	<b>57</b>
	Concerns	57
	Compliance and monitoring	59
	Impact of the 'Critical State Significant Infrastructure' declaration	63
	Committee comment	64
	Alternative accommodation	64
	Mitigation measures	66
	Committee comment	69
	<b>Damage to property</b>	<b>70</b>
	Committee comment	72
	<b>Randwick stabling yard</b>	<b>73</b>
	Response to Doncaster residents' concerns	75
	Committee comment	77
	<b>Parking and footpath access</b>	<b>77</b>
	Committee comment	81
	<b>Removal of trees</b>	<b>81</b>
	Committee comment	85
	<b>Acknowledgment of the ongoing impacts</b>	<b>86</b>
	Committee comment	87

<b>Chapter 5</b>	<b>Impacts on business owners</b>	<b>89</b>
	<b>Financial impacts</b>	<b>89</b>
	Hoardings and signage	92
	Committee comment	96
	<b>Small Business Assistance Program</b>	<b>97</b>
	Stakeholder concerns	100
	Committee comment	105
	<b>Mental health impacts</b>	<b>107</b>
	Committee comment	109
	<b>Other business support services</b>	<b>110</b>
	Committee comment	113
<b>Appendix 1</b>	<b>Advice from the Clerk of the Parliaments</b>	<b>115</b>
<b>Appendix 2</b>	<b>Zone Occupation Schedule with Duration</b>	<b>121</b>
<b>Appendix 3</b>	<b>Zone Occupation Schedule Original Dates v's Actual Start Date</b>	<b>123</b>
<b>Appendix 4</b>	<b>Small Business Financial Assistance – Ex Gratia Payments by Zone/Category</b>	<b>125</b>
<b>Appendix 5</b>	<b>Submissions</b>	<b>127</b>
<b>Appendix 6</b>	<b>Witnesses at hearings</b>	<b>133</b>
<b>Appendix 7</b>	<b>Minutes</b>	<b>137</b>
<b>Appendix 8</b>	<b>Dissenting statement</b>	<b>189</b>

## Terms of reference

1. That the Public Accountability Committee inquire into and report on the impact of the construction of the CBD and South East Light Rail Project ("the project") on residents and businesses in the vicinity of the light rail route, including:
  - a) the adequacy of the government's response to the financial impact and diminution in social amenity caused by the project on residents and businesses including access to financial compensation and business support services,
  - b) the appropriateness and adequacy of the financial compensation process established by the assessment process and consistency of outcomes,
  - c) the effectiveness of the government's communication with residents and businesses concerning project delays and financial compensation, and
  - d) any other related matters.
2. That the committee report by 25 January 2019.<sup>1</sup>

The terms of reference were self-referred by the committee on Tuesday 22 May 2018.<sup>2</sup>

---

<sup>1</sup> The original reporting date was 1 December 2018 (*Minutes*, Legislative Council, 22 May 2018, p 2557). The reporting date was later extended to 25 January 2018 (*Minutes*, Legislative Council, 13 November 2018, p 3162).

<sup>2</sup> *Minutes*, NSW Legislative Council, 22 May 2018, p 2557.

## Committee details

### Committee members

<b>Rev the Hon Fred Nile MLC</b>	Christian Democratic Party	<i>Chairman</i>
<b>The Hon Matthew Mason-Cox MLC</b>	Liberal Party	<i>Deputy Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Ms Cate Faehrmann MLC*</b>	The Greens	
<b>The Hon Courtney Houssos MLC</b>	Australian Labor Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Shayne Mallard MLC*</b>	Liberal Party	

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

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

### Contact details

<b>Website</b>	<a href="http://www.parliament.nsw.gov.au">www.parliament.nsw.gov.au</a>
<b>Email</b>	<a href="mailto:Public.Accountability@parliament.nsw.gov.au">Public.Accountability@parliament.nsw.gov.au</a>
<b>Telephone</b>	02 9230 3313

## Chairman's foreword

The CBD and South East Light Rail (CSELR) project is a major infrastructure project in Sydney that will connect Circular Quay to Kingsford and Randwick. It aims to improve public transport capacity, and to ease traffic congestion which is costing the economy a substantial amount of money each year. It is a complex and large project, with construction occurring down one of Sydney CBD's most congested streets, and the benefits of the project, once finalised, are potentially significant.

Unfortunately though, serious questions have been raised in relation to the project's timeframes and costs. It is already delayed by at least a year, and although Transport for NSW would like it to be finalised by December 2019, the official completion date is currently March 2020. There may also be a further two month delay, according to the evidence provided by ALTRAC and Acciona.

In terms of costs, unresolved claims for contract modifications, undetermined penalties for delays, and a complex legal dispute between Transport for NSW and Acciona, have raised questions about whether the project will exceed its \$2.1 billion budget. This is understandable, given a liquidity facility fund has had to be established for ALTRAC and the department has had to provide \$100 million to a contractor to keep the project moving.

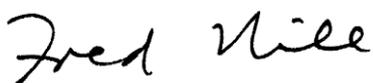
With infrastructure projects of this magnitude, a degree of disruption is to be expected. However, as this inquiry has shown, the impacts of construction have been profoundly experienced by residents and businesses located along the light rail route. Many have experienced excessive noise, dust, vibration and damage to their homes. Some of these issues have been heightened due to construction delays.

The committee acknowledges that the level of noise during works undertaken out of hours has been impinging particularly on residents' lives and that noise has not been adequately monitored. Although alternative accommodation has been offered as a mitigation measure to some residents, the committee understands that this has often been an impracticable option.

The impact of this project on businesses has been particularly significant. It was clear to the committee just how much businesses have struggled since the commencement of construction of the light rail, with some having closed down. It has been especially hard for small businesses that have been impacted by barricades, disruption in foot traffic and the severe loss of trade and goodwill. Not only have they endured significant financial losses, their physical and mental wellbeing has also been negatively impacted. This was particularly distressing for committee members to see, and we thank those who came forward to share with us so honestly the affect this project has had on their personal lives.

There are lessons to be learnt from how this project has been managed. With this in mind, many of the committee's recommendations are aimed at informing how future major infrastructure projects are planned and implemented, particularly in terms of how construction may affect residents, businesses and the wider community. While it has been a tough time for many affected by this project, I personally hope that once completed, this light rail service will deliver its anticipated benefits.

Finally, I would like to thank all those who participated in this inquiry. Your input is greatly valued in assisting the committee's work. I also thank my committee colleagues for their hard work and the committee secretariat for their support. We look forward to seeing this complex project finalised soon.



Revd the Hon Fred Nile MLC  
**Committee Chairman**

## Finding

### Finding 1

87

The committee finds that the delay of the project has contributed to the distress of residents and businesses.

## Recommendations

- Recommendation 1** **39**  
That the NSW Government formally request the Auditor-General to undertake a review into the effectiveness of Public Private Partnership contracts for significant state infrastructure projects, in light of contractual issues that have arisen in relation to the CBD and South East Light Rail project.
- Recommendation 2** **44**  
That the NSW Government ensure that a full investigation is undertaken into the mishandling of human remains on 29 October 2018 in Chalmers Street, Surry Hills, by workers from Acciona Infrastructure Australia.
- Recommendation 3** **49**  
That, once the CBD and South East Light Rail service becomes operational, Transport for NSW:
- closely monitor patronage on the service, to ensure it can respond effectively to future demand
  - publish, on at least a quarterly basis, patronage data.
- Recommendation 4** **54**  
That Transport for NSW publicly release the outcomes of modelling in relation to journey times between Randwick/Kingsford and the Sydney CBD, upon finalisation of the designs for each junction along the CBD and South East Light Rail route.
- Recommendation 5** **56**  
That Transport for NSW investigate the need for, with a view to giving favourable consideration, an additional stop at Wimbo Park in Surry Hills, once the CBD and South East Light Rail project has been finalised.
- Recommendation 6** **64**  
That the NSW Government undertake a review of the exemptions provided to projects declared 'Critical State Significant Infrastructure'.
- Recommendation 7** **69**  
That Transport for NSW review whether the role of the Independent Environmental Representative for the project needs to be expanded or whether a separate independent entity needs to be established specifically to conduct noise monitoring during construction work undertaken out of hours.
- Recommendation 8** **70**  
That Transport for NSW review the effectiveness of its communication strategy for the CBD and South East Light Rail project, taking in to account concerns raised in this report, and report back to the Minister of Transport and Infrastructure on any improvements that can be implemented for future infrastructure projects across New South Wales.

- Recommendation 9** **73**  
 That Transport for NSW, in relation to claims for property damage:
- conduct an urgent review of all claims, which shall include recommendations for compensation for residents whose properties have been found to be adversely impacted by the CBD and South East Light Rail project
  - provide an update to those property owners on the status of their claim as soon as possible
  - work with the residents and contractors to resolve these issues as soon as possible.
- Recommendation 10** **73**  
 That Transport for NSW distribute information to all property owners along the CBD and South East Light Rail route as to the process for claiming property damage, the timeframes for rectification, the escalation process and any other relevant material.
- Recommendation 11** **77**  
 That Transport for NSW arrange, as a matter of urgency, for shields to be installed on the flood lights in the Randwick stabling yard, to ensure that the lights do not stream into homes located along Doncaster Avenue, Randwick.
- Recommendation 12** **85**  
 That Transport for NSW review its revegetation program, with the aim of increasing the number of trees to be replanted along the CBD and South East Light Rail route, ensuring that any trees are replanted as close to the site of removal as reasonably possible.
- Recommendation 13** **85**  
 That the NSW Government ensure significant trees are adequately protected and that the design and development of state infrastructure prioritises their retention.
- Recommendation 14** **106**  
 That the NSW Government revise the guidelines for the Small Business Assistance Program and implement this scheme for all other major infrastructure projects.
- Recommendation 15** **106**  
 That Transport for NSW and the Small Business Commissioner encourage and support businesses to apply for financial assistance under the Small Business Assistance Program, even in circumstances where businesses may not meet eligibility criteria.
- Recommendation 16** **106**  
 That Transport for NSW continue to provide financial assistance under the Small Business Assistance Program until the CBD and South East Light Rail project is completed.
- Recommendation 17** **109**  
 That Transport for NSW provide ongoing mental health support to affected business owners and their families, at no cost to the recipients, and clearly communicate to each business the process for accessing this support.

**Recommendation 18**

**110**

That the NSW Government, in its planning for all future major infrastructure projects, develop effective strategies to address the potential mental health impacts that may be experienced by residents and business owners in the vicinity of construction work.

**Recommendation 19**

**114**

That Transport for NSW, in consultation with business owners, expand the Business Activation Program developed for the CBD and South East Light Rail project, focusing on marketing, communication and other initiatives to attract visitors.

**Recommendation 20**

**114**

That the NSW Government commission and publish the outcomes of an independent review of the effectiveness of financial and non-financial support provided to businesses during the CBD and South East Light Rail project.

## Conduct of inquiry

The terms of reference for the inquiry were self-referred by the committee on 22 May 2018.

The committee received 195 submissions and 5 supplementary submissions, one of which includes survey responses from Surry Hills residents. The committee also received 62 pro-formas.

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

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

### Procedural issues

A significant procedural issue arose during the conduct of this inquiry. During a hearing on 4 October 2018, representatives from Transport for NSW took a number of questions on notice. In response to a question about the costs spent on the project to date, the department claimed commercial confidentiality and declined to answer the question. In response to a separate question relating to Infrastructure NSW's Health Checks and Gateway Reviews associated with the project, Transport for NSW objected to providing the information on the basis of Cabinet confidentiality, challenging the committee's powers to obtain such information.

Subsequently, the committee sought advice from the Clerk of the Parliaments regarding the committee's power to seek information from Transport for NSW on matters in which they claim commercial or Cabinet confidentiality. The Clerk offered three options to the committee to pursue the information sought in the questions on notice. A copy of the advice can be found at appendix 1.<sup>3</sup>

In his advice, the Clerk noted that whilst it is not unusual for witnesses to object to the provision of information on the grounds of public interest immunity, including commercial confidentiality, these claims generally have no application to parliamentary inquiries. In terms of claims of privilege on the basis of Cabinet confidentiality, the Clerk noted that on 21 June 2018, the House reasserted its power to require the production of Cabinet documents.

The Clerk also noted that the documents in question, that is the Health Check Reports and Gateway Reviews, had been the subject of a decision of the NSW Civil and Administrative Tribunal in relation to a request made under the *Government Information (Public Access) Act 2009* (GIPA Act). The Tribunal determined that there was no reasonable grounds for Transport for NSW to refuse a GIPA request in relation to these documents on the basis of Cabinet confidentiality.

In terms of the committee's power to order the production of documents in question, the Clerk advised that committees have two options to pursue this information: via the power to order the production of documents under standing order 208(c), and/or via a summons under section 4 of the *Parliamentary Evidence Act 1901*, which would require a witness to attend and produce documents.

The committee subsequently resolved to write to Transport for NSW to request that it reconsider its refusal to provide the information sought, particularly in light of the NSW Civil and Administrative Tribunal's decision. The committee also recalled witnesses from Transport for NSW to appear again at a further public hearing. In its letter to Transport for NSW, the committee noted that if it failed to produce

<sup>3</sup> Advice from the Clerk of the Parliaments, to committee, 14 November 2018.

a copy of the Health Checks and Gateway Reviews, the committee would order the production of documents under standing order 208(c).

On 28 November 2018, the committee received a letter from the Secretary of Transport for NSW, which enclosed a response to the information the committee had sought in relation to the project's costs. The Secretary also advised that representatives from the department would attend the next public hearing and provide the committee with a redacted copy of the *November 2016 Health Check – In Delivery Report*. The committee later published a redacted version of this document.

After these events, Transport for NSW also provided the committee with the redacted version of another Health Check and Gateway Review report, the *February 2016 Gateway Health Check Report (preliminary draft)*.

The committee views the initial refusal by Transport for NSW to produce the requested documents as unacceptable. The claim that documents are Cabinet in confidence should not be arbitrarily made to avoid accountability and transparency to the Legislative Council or its committees.

# Chapter 1      **The CBD and South East Light Rail project**

This chapter provides background information about the CBD and South East Light Rail (CSELR) project, including details of the route and a timeline for the project. It also explains the contractual arrangements between Transport for NSW and the ALTRAC Light Rail consortium (ALTRAC), including the roles of Acciona Infrastructure Australia (Acciona), Alstom Transport Australia and Transdev Sydney. After highlighting the purported benefits of the project, the chapter will detail the findings of two Auditor-General's reports into procurement, planning and financing of the project.

## **The CBD and South East Light Rail route**

- 1.1      The CSELR project is a new 12 kilometre route with 19 stops extending from Circular Quay along George Street to Central, through Surry Hills to Moore Park, then to Kensington and Kingsford via Anzac Parade and Randwick via Alison Road and High Street. This can be seen in Figure 1 (next page).<sup>4</sup>
- 1.2      According to Transport for NSW, the CSELR route will provide a modern, reliable and sustainable public transport service, connecting businesses and communities along the route, facilitating access to the Sydney CBD, major sporting and entertainment facilities in Moore Park and Randwick, along with the University of New South Wales, TAFE and the health precincts in Randwick.<sup>5</sup>
- 1.3      As one component of a larger redevelopment program for Sydney's transport network, Transport for NSW anticipates significant benefits from the new CSELR, including:
  - approximately 220 fewer buses in the CBD during the morning peak
  - a 97 per cent reliability rate for light rail, compared with buses in the CBD which currently only arrive within two minutes of the timetable 19 to 34 per cent of the time
  - reliable, turn-up-and-go public transport, with services planned for every four minutes between CBD and Moore Park and every eight minutes to and from Randwick and Kingsford between 7am and 7pm.<sup>6</sup>
- 1.4      Combined with the bus network, this project is anticipated to improve public transport capacity across the five key CSELR precincts: the city centre, Surry Hills, Moore Park, Randwick and Kensington/Kingsford.<sup>7</sup>

---

<sup>4</sup>      Submission 39, Transport for NSW, p 4.

<sup>5</sup>      Submission 39, Transport for NSW, p 4.

<sup>6</sup>      Submission 39, Transport for NSW, p 7; Transport for NSW, *Sydney's Light Rail Future*, December 2012, pp 13-16; Media release, Transport for NSW, 'Building for the Future: Light Rail to reduce congestion and revitalise Sydney', 13 Dec 2012.

<sup>7</sup>      Submission 39, Transport for NSW, p 7.

- 1.5 Each light rail vehicle, the Citadis XO5, will be able to carry up to 450 people, equivalent to nine standard buses, with a capacity of up to 13,500 passengers per hour.<sup>8</sup> The vehicles will be 33-metres in length, and configured as 66-metre pairs.<sup>9</sup>
- 1.6 The passenger capacity of the coupled vehicles, based on four people per square metre standing, was 225 per unit (and 450 people per coupled unit). Within the vehicles, just over 20 per cent of the interior is seated, with the remainder as standing room to maximise passenger capacity. There will be specified seating areas for the elderly or people with disability, including an area for wheelchairs.<sup>10</sup>

**Figure 1 Map of the CBD and South East Light Rail precincts**



*Submission 39, Transport for NSW, Appendix 6.2, p 41.*

<sup>8</sup> Submission 39, Transport for NSW, p 7.

<sup>9</sup> Evidence, Mr Mark Coxon, Managing Director, Alstom Transport Australia, 3 October 2018, p 38.

<sup>10</sup> Evidence, Mr Coxon, 3 October 2018, p 38.

## Timeline of the project

- 1.7** The plans to build the light rail service from the Sydney CBD to south-eastern Sydney suburbs, Randwick and Kingsford, were announced by former Premier Barry O'Farrell and Minister for Transport, Gladys Berejiklian, in December 2012.<sup>11</sup>
- 1.8** On 17 May 2013 the Environmental Planning and Assessment Amendment (Light Rail Project) Order 2013 was gazetted by the Planning Minister, Brad Hazzard, to declare the light rail project 'Critical State Significant Infrastructure' under the State and Regional Development State Environmental Planning Policy.<sup>12</sup>
- 1.9** In November 2013 the NSW Government announced the business case details for the project, with an estimated cost of \$1.6 billion, and almost \$4 billion worth of benefits. Procurement for the major construction contracts then followed.<sup>13</sup>
- 1.10** Planning approvals required for the project were obtained by Transport for NSW in June 2014.<sup>14</sup> A State Significant Infrastructure application was approved by the Minister for Planning, Pru Goward, on condition that the CSELR project adhere to specified design principles and standards, including environmental and heritage, urban design, sustainability, community amenity and privacy and other considerations.<sup>15</sup>
- 1.11** In October 2014, the NSW Government announced its preferred bidder - Connecting Sydney which was later renamed to ALTRAC Light Rail (ALTRAC) - to design, construct, operate and maintain the light rail network as part of a Public Private Partnership (PPP) agreement.<sup>16</sup>
- 1.12** The Project Deed was executed on 17 December 2014 with the contract term to run for approximately 19 years – ending in March 2034.<sup>17</sup> The NSW Government also announced that modifications to the project had increased capital costs to \$2.1 billion.<sup>18</sup>
- 1.13** In February 2015, the project and financial agreement of the PPP between ALTRAC and Transport for NSW was signed (referred to as 'financial close').<sup>19</sup>
- 1.14** Construction on the project commenced in October 2015.<sup>20</sup>

<sup>11</sup> Submission 39, Transport for NSW, p 4; Evidence, Mr Brian Brennan, Managing Director, Transdev Sydney, 3 October 2018, p 56; Media release, Transport for NSW, 'Building for the Future: Light Rail to reduce congestion and revitalise Sydney', 13 December 2012.

<sup>12</sup> *NSW Government Gazette, No 223, 17 May 2013, pp 1-2.*

<sup>13</sup> Submission 18, Auditor-General of New South Wales, Attachment 1, pp 25-26.

<sup>14</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 25.

<sup>15</sup> Submission 39, Transport for NSW, Appendix 6.2, pp 17-22.

<sup>16</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 26.

<sup>17</sup> Transport for NSW, *Sydney Light Rail Public Private Partnership: Contract Summary*, 25 August 2015, pp 24 and 19.

<sup>18</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 7.

<sup>19</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 7.

<sup>20</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 7.

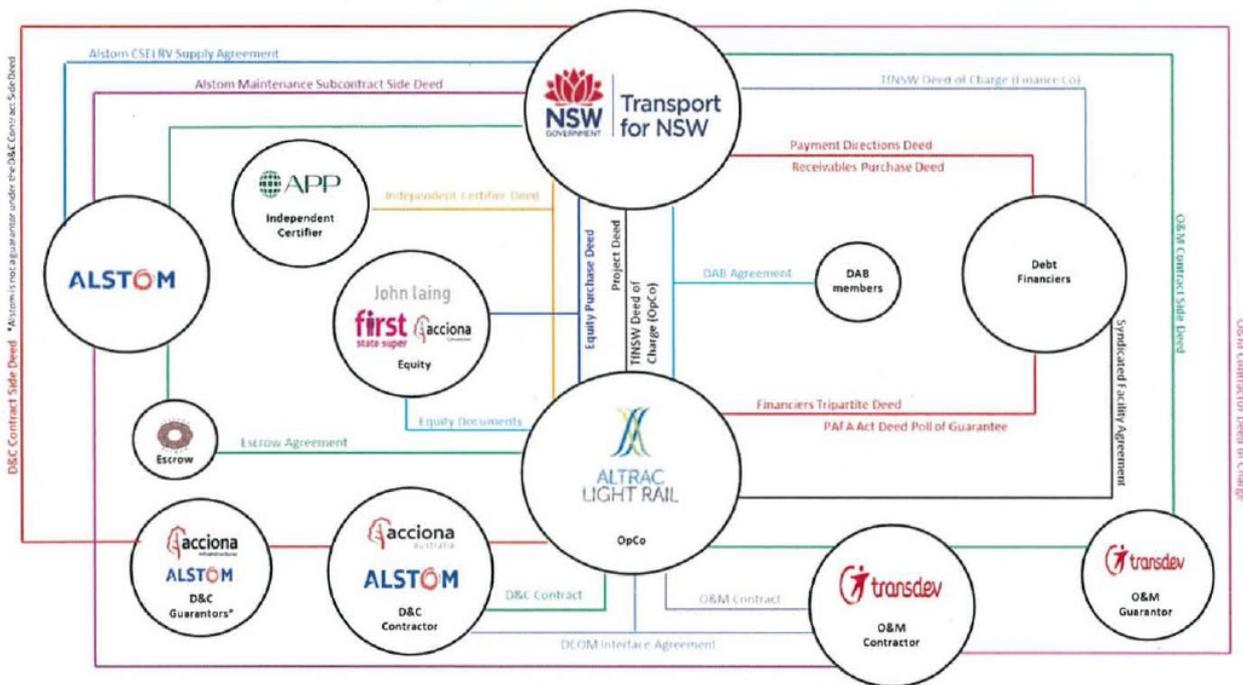
## Key stakeholders

1.15 As noted above, the CSELR Project Deed was entered into in December 2014 between ALTRAC and Transport for NSW. Under this contract, there are several core companies contracted to ALTRAC to undertake certain works:

- Acciona Infrastructure Australia (regarded as a Design & Construct Contractor)
- Alstom Transport Australia (regarded as a Design & Construct Contractor)
- Transdev Sydney (regarded as an Operations & Maintenance Contractor).<sup>21</sup>

1.16 Capella Capital were a key partner supporting the financing structure of the PPP,<sup>22</sup> but no longer have any 'relationship to the contract'.<sup>23</sup> According to the Chairman of ALTRAC, Capella Capital only provides financial advice 'from time to time to deal with some matters regarding finance instructions'.<sup>24</sup> The PPP structure is shown in the diagram below.

Figure 2 Contract structure



Transport for NSW, Sydney Light Rail Public Private Partnership Contract Summary, 25 August 2015, p 23.

1.17 As the PPP consortium lead, ALTRAC has overall responsibility for the project. Acciona is responsible for the design and construction of the light rail network, and Alstom Transport Australia is responsible for the supply and delivery of the light rail vehicles, as well as testing

<sup>21</sup> Evidence, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, 20 August 2018, p 2.

<sup>22</sup> Evidence, Mr James Bramley, Chairman, ALTRAC Light Rail, 4 October 2018, p 25.

<sup>23</sup> Evidence, Mr Stephen Troughton, former Deputy Secretary, Infrastructure and Services, Transport for NSW, 20 August 2018, p 14.

<sup>24</sup> Evidence, Mr Bramley, 4 October 2018, p 25.

and commissioning.<sup>25</sup> Transdev Sydney will then be responsible for operating and maintaining the light rail services - and it currently operates the existing inner west light rail system.<sup>26</sup>

- 1.18** Mr Brian Brennan, Managing Director from Transdev Sydney, advised the committee that Transdev Sydney will be the operator of the light rail vehicles once the design and construction of the project has been completed. He explained that from the completion date, there is a 15 year operating contract in place.<sup>27</sup>
- 1.19** Once the service is operational, Transdev Sydney will then subcontract Alstom Transport Australia to maintain infrastructure and the light rail vehicles throughout the term of the contract.<sup>28</sup> Light maintenance of the vehicles will take place generally at the Randwick stabling yard, whereas heavy maintenance will take place at the heavy maintenance depot in Rozelle, Lilyfield.<sup>29</sup>
- 1.20** Two other parties that have played a key role in the project are Ausgrid and the NSW Environment Protection Authority (EPA). Ausgrid are responsible for operating, maintaining, repairing and building the network assets that are situated along the CSELR route. Its role on the CSELR project has involved approving treatment plans submitted by the contractor, endorsing various detail design works undertaken by the contractor, providing co-located resources to help support delivery and facilitating physical access and arranging network outages that are required by the project.<sup>30</sup> Ausgrid's involvement in the project is discussed in chapter 2.
- 1.21** The EPA's role for the CSELR project was to provide advice to the Department of Planning and Environment in regards to the types of conditions that would be detailed in the environment protection licence, which was granted to Acciona following approval of the development. The EPA is the regulator of this licence and its infrastructure team in the metropolitan region has direct responsibility for the ongoing regulation of the activity with respect to the conditions of the licence and other EPA-administered legislation. The team is also responsible for responding to community complaints and concerns relating to the project and engaging directly across government with other regulators.<sup>31</sup> The EPA's involvement in the regulation of construction noise is discussed in chapter 4.

## Benefits of the CBD and South East Light Rail project

- 1.22** The Sydney CBD and the South East of Sydney are busy transit and destination corridors. In its 2012 Light Rail plan, Transport for NSW indicated that 'a total of 509,000 trips are made into the city centre each weekday, including 205,000 in the morning peak hour'. This number

<sup>25</sup> Evidence, Mr Brennan, 3 October 2018, p 54.

<sup>26</sup> Transport for NSW, Sydney Light Rail Public Private Partnership: Contract Summary, 25 August 2015, p 19; Evidence, Mr Brennan, 3 October 2018, p 54.

<sup>27</sup> Evidence, Mr Brennan, 3 October 2018, p 54.

<sup>28</sup> Evidence, Mr Coxon, 3 October 2018, p 38.

<sup>29</sup> Evidence, Mr Coxon, 3 October 2018, p 47.

<sup>30</sup> Evidence, Mr Richard Gross, Chief Executive Officer, Ausgrid, 5 November 2018, pp 11-12.

<sup>31</sup> Evidence, Mr Mark Gifford, Chief Environmental Regulator, NSW Environment Protection Authority, 5 November 2018, pp 2-3.

was expected to grow to around 242,000 trips by 2031 – representing an 18 per cent increase. Employment was also predicted to grow within the same period by 31 per cent to 415,000 jobs.<sup>32</sup>

**1.23** In its submission to the inquiry, Transport for NSW suggested that congestion across the Sydney CBD currently costs the NSW economy more than \$5.1 billion per year, and without network changes was projected to reach \$8.8 billion by 2021.<sup>33</sup>

**1.24** Light rail, Transport for NSW suggested, would help to ease traffic congestion in the Sydney CBD, and associated challenges with the existing bus network – unpredictable arrival times, clogged roads, lengthy journey times, and limited capacity to create new routes:

Competition for finite road and footpath space in the city is increasing due to additional activity and travel demand ... The radial network, with the majority of commuters travelling to the Sydney CBD, has also contributed to current capacity challenges. It sees multiple bus routes converge on the CBD at key streets including George, Elizabeth, York and Park Streets – creating competition for limited road space. Buses often travel the length of the CBD, even when many commuters have already alighted. In addition, with so many bus routes in the city, a large amount of space is needed for bus stops and layovers.<sup>34</sup>

**1.25** Yet, Transport for NSW was unable to provide specific improvements on travel times to the committee. The South East corridor, which was chosen over the University of Sydney as a preferred transit route, also generates significant travel demand from several major key activity hubs, including:

- sporting precincts at Sydney Football Stadium, Sydney Cricket Ground, Randwick Racecourse
- recreation and entertainment facilities including Fox Studios and the Hordern Pavilion at Centennial Parklands
- the Randwick Education and Health Specialised Centre including the University of NSW and Randwick Precinct Hospitals
- high density centres in Surry Hills, Randwick and Kensington.<sup>35</sup>

**1.26** For major sporting and entertainment events, capacity could also be increased through additional services.<sup>36</sup> Mr Brennan explained that once the CSELR was operational:

... [for] special events, say leaving from Central to Moore Park, for instance, there will be a two-minute service and we anticipate at least one of those every week. That is going to move significant numbers of people as required to major events in those regions. From the point of view of Kingsford and Randwick, there is going to be a four-minute

---

<sup>32</sup> Transport for NSW, *Sydney's Light Rail Future*, December 2012, p 4.

<sup>33</sup> Submission 39, Transport for NSW, p 7.

<sup>34</sup> Submission 39, Transport for NSW, p 7; Transport for NSW, *Sydney's Light Rail Future*, December 2012, p 6.

<sup>35</sup> Transport for NSW, *Sydney's Light Rail Future*, December 2012, p 23.

<sup>36</sup> Submission 39, Transport for NSW, p 7.

service, even off-peak, which will give people great opportunities to use the light rail and to traverse between Kingsford, Randwick and the CBD.<sup>37</sup>

**1.27** Transport for NSW believes that the CSELR service will deliver city bound morning peak capacity increases of more than 10 per cent from Kingsford and 30 per cent from Randwick and would double the morning peak capacity from the CBD to the University of NSW and the Randwick hospital precinct.<sup>38</sup>

**1.28** Ms Margaret Prendergast, Coordinator General of the Transport Coordination Office in Transport for NSW, also explained the benefits for pedestrians in the CBD:

What it has meant for us in the city by being able to remove the buses from the core and move them to the edge of the city is that it is making it more livable, it is making it a far better and easier place to walk. Ninety per cent of journeys are by foot. It has actually enabled us to limit traffic within the city centre. It is now reduced by 11 per cent in the morning peak and about 6 per cent across the whole day. The city is for people and cyclists ...<sup>39</sup>

**1.29** At the outset, the City of Sydney and Randwick City Council were supportive of the CSELR project, on the basis of its proposed benefits to the economy and local communities. Ms Monica Barone, Chief Executive Officer from the City of Sydney Council told the committee that they are contributing \$220 million to the project, in recognition of the 'tangible economic benefits for our small and large businesses, our residents, workers and visitors, and ... the role it plays in creating a sustainable and thriving city'. Ms Barone said 'we believe that the light rail project could be a game changer for Sydney', although she outlined to the committee the Council's concerns regarding the impact of construction work on businesses and residents.<sup>40</sup>

**1.30** Randwick City Council also expressed its early support for the project, stating that the 'Council had strongly advocated for the return of the light rail system to the eastern suburbs ... and has been a supporter of the light rail ever since.<sup>41</sup> Ms Lindsay Shurey, Mayor of the Council, said:

Randwick city was totally behind the light rail project from the beginning. We have been a great supporter of light rail and we have been working with Transport for NSW and ALTRAC really closely to try to get the best outcome. We have actually invested quite a lot of our ratepayers' money into this.<sup>42</sup>

**1.31** Like City for Sydney, Randwick City Council expressed concerns about the impact of construction work, particularly on businesses in Kensington and Kingsford.<sup>43</sup> These impacts are discussed in chapters 4 and 5.

<sup>37</sup> Evidence, Mr Brennan, 3 October 2018, p 63.

<sup>38</sup> Submission 39, Transport for NSW, p 7.

<sup>39</sup> Evidence, Ms Prendergast, 20 August 2018, p 20.

<sup>40</sup> Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney Council, 20 August 2018, p 22.

<sup>41</sup> Submission 87, Randwick City Council, p 1.

<sup>42</sup> Evidence, Ms Lindsay Shurey, Mayor, Randwick City Council, 20 August 2018, p 32.

<sup>43</sup> Submission 87, Randwick City Council, p 60.

## The Auditor-General's findings

**1.32** In November 2016, the Auditor-General released a performance audit report which focused on how well Transport for NSW ensured that planning and procurement for the CSELR project achieved value for money within the parameters set by the NSW Government, including timeframes related to planning, procurement and delivery.<sup>44</sup>

**1.33** The Auditor-General made three key findings:

- that planning and procurement did not ensure the best value outcome for the state - Transport for NSW departed from the Major Project Assurance Framework and its own Investment Gating and Investment System by not requiring a preliminary business case and two early independent gateway assurance reviews
- the costs were higher and benefits lower than the approved business case – the project business case summary estimated the project would cost \$1.6 billion but there were outstanding issues such as a full assessment of the capital costs, a need to ensure economic appraisals were realistic, and finalisation of third party agreements
- probity and due diligence processes met NSW Government requirements, although Transport for NSW had used incorrect assumptions in the tender evaluation process when benchmarking value for money.<sup>45</sup>

**1.34** Commenting on the extent to how the project was affected by the departure from the Major Project Assurance Framework and its own Investment Gating and Investment System, the Auditor-General stated:

By departing from the established process, the CSELR project suffered similar problems to those we reported for other infrastructure projects. Common problems include tight timeframes without justification, project scope defined too narrowly, underestimated costs and overestimated benefits.

TfNSW [Transport for NSW] pursued tight project timelines for the CSELR project without fully documenting its consideration of the impact on costs, risks and benefits, and it presented a business case with an inadequate economic appraisal.<sup>46</sup>

**1.35** The Auditor-General also highlighted the impact of failing to finalise the project's design and scope of works. The capital budget for the work increased by \$549 million to \$2.1 billion, with some of this increase being attributed to scope changes and planning modifications. In fact, the Auditor-General noted that \$517 million of this increase 'was caused by mispricing and omissions in the business case'.<sup>47</sup>

**1.36** Further, the projected benefits decreased from the business case, from \$4 billion to an estimate of \$3 billion in December 2014, due mainly to increases in travel time assumptions flowing from changes in project scope.<sup>48</sup>

---

<sup>44</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 2.

<sup>45</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, pp 3-4.

<sup>46</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 3.

<sup>47</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 4.

<sup>48</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 4.

**1.37** The Auditor-General in the report recommended:

1. For the CSELR project, Transport for NSW should, by December 2016:
  - a) finalise outstanding design and scope issues
  - b) ask the project Advisory Board to confirm that controls over the budget and use of contingency funds are consistent with NSW Government decisions and NSW Treasury guidelines
  - c) update and consolidate information about project costs and benefits and ensure that it is readily accessible to the public
  - d) ensure the Sydney Light Rail Project Director provides six-monthly briefings to the TfNSW Audit and Risk Committee.
2. For all capital projects, Transport for NSW should comply with the Infrastructure Investor Assurance Framework.<sup>49</sup>

**1.38** On 28 November 2018, the Auditor-General released its Transport 2018 Financial Audit Report. The report provided a further update on the CSELR project, noting overall that it 'is delayed and over budget'.<sup>50</sup>

**1.39** In particular, the Auditor-General stated that internal documents and discussions with Transport for NSW confirmed the project was delayed and would not meet its original completion date of March 2019.<sup>51</sup>

**1.40** The Auditor-General also noted that Transport for NSW had not yet officially revised the budget, indicating that the original budget for the project was \$1.6 billion, which was revised upwards by \$500 million in December 2014 to \$2.1 billion. According to the Auditor-General the project also included a contingency fund of \$207 million, which as at 30 June 2018, had been exhausted. Given this, and that Transport for NSW are in a facilitation process to resolve claims made by the contractor, the Auditor-General concluded that 'additional costs to the project are expected'.<sup>52</sup>

**1.41** The Auditor-General noted that the governance of the project includes the CBD and South East Light Rail Advisory Board (the Board). The Auditor-General commented that:

The Board's role is to provide assurance and strategic oversight of the procurement and delivery stages so there is an independent, critical review of how TfNSW is managing the project. During our review of the Board minutes we noted the Board expressed concerns it was not receiving updates on the final forecasted cost on a timely basis.<sup>53</sup>

**1.42** It was further noted that Transport for NSW had disclosed contingent liabilities in relation to the project as at 30 June 2018. However, the Auditor-General observed: 'Management have not

<sup>49</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 4.

<sup>50</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

<sup>51</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

<sup>52</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

<sup>53</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

quantified the liability as they believe it cannot be measured reliably due to uncertainties as to the extent of the future liability'.<sup>54</sup>

- 1.43** Further, the Auditor-General noted that in July 2018 Transport for NSW entered into an agreement with ALTRAC that provided a debt guarantee of up to \$500 million against a borrowing facility provided by two large banks.<sup>55</sup> The Auditor-General also highlighted that Transport for NSW had made an advanced payment of \$100 million to the contractor in October 2017.<sup>56</sup>
- 1.44** These payments, in addition to broader issues related to the project's costs and delays, are discussed in the next chapter.

#### **Committee comment**

- 1.45** The committee notes that since the CSELR project started the Auditor-General has made several observations regarding the project, particularly on the planning and procurement of the project and its financing. It is concerning that issues are arising during the pre-planning stages of this project and other major infrastructure projects across New South Wales, such as the WestConnex project. Not only were concerns highlighted by the Auditor-General early on, there continues to be concerns with the CSELR project that will be discussed later in the report.

---

<sup>54</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

<sup>55</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

<sup>56</sup> Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November 2018, p 36.

## Chapter 2 Management of the project

The first part of this chapter will examine how the CBD and South East Light Rail (CSELR) project is progressing, when it is due to complete and how the contractors involved in the project are taking steps to mitigate delays. It will also look at issues related to the cost of the project, including the budget, financial penalties for delays and contract modifications. The latter part of the chapter will consider the treatment of utilities located along the light rail route and the management of heritage items and artefacts.

### Project timeframes

**2.1** This section will consider when the project is due for completion and how it has been affected by delays to the civil works. It will also set out the progress of work on the project.

#### Completion date

**2.2** The CSELR project has been delayed by at least a year. The original completion date was 16 March 2019.<sup>57</sup>

**2.3** At a hearing in August 2018, Mr Stephen Troughton, the former Deputy Secretary at Transport for NSW, indicated that the forecasted completion date for the project was March 2020.<sup>58</sup> His position was that the department was 'not overly happy' with a completion date of March 2020 and would be working with ALTRAC Light Rail (ALTRAC) to try and bring that date forward.<sup>59</sup>

**2.4** However, in early October 2018, Mr Bede Noonan, the Managing Director of Acciona Infrastructure Australia (Acciona), and Mr James Bramley, Chairman, ALTRAC, both told the committee that the completion date for the project is May 2020.<sup>60</sup> Mr Noonan said that this timeframe was included in the August progress report for the project, which was provided to Transport for NSW.<sup>61</sup> Mr Noonan explained the cause of this additional delay to the project:

The cause of the additional two-month delay is in Anzac Parade at the south end of Anzac Parade where we are being delayed by having overhead wires that need to be brought down and that is part of the project that we are unable to do. It can only be done by Ausgrid.<sup>62</sup>

**2.5** In a subsequent hearing, Mr Troughton advised that this extra two month timeframe to project finalisation was 'rejected' by Transport for NSW, and that the completion date was still officially March 2020:

<sup>57</sup> Evidence, Mr Stephen Troughton, former Deputy Secretary, Infrastructure and Services, Transport for NSW, 20 August 2018, p 8; Answers to questions on notice, ALTRAC Light Rail, 1 November 2018, p 4.

<sup>58</sup> Evidence, Mr Troughton, 20 August 2018, p 8.

<sup>59</sup> Evidence, Mr Troughton, 20 August 2018, p 8.

<sup>60</sup> Evidence, Mr James Bramley, Chairman, ALTRAC Light Rail, 4 October 2018, p 27.

<sup>61</sup> Evidence, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, 4 October 2018, p 5.

<sup>62</sup> Evidence, Mr Noonan, 4 October 2018, p 5.

Transport for NSW has rejected their schedule. I also understand at the time that they had been advising the public that in general they were aiming for March 2020. Currently we are also working with them ... to a December 2019 schedule. Once I have all that information required, I can make a determination on what I think will be the finish date. Currently, we are working towards March 2020.<sup>63</sup>

- 2.6** At that time, Mr Troughton emphasised how the department and consortium were working together to try and achieve an even earlier completion date of December 2019:

We are working with them to understand what is achievable through the many forms of communication we receive from them. Once we have got an agreement on what is achievable and once they have provided me with a program that is accurate and that we can stand by and agree on, I will then provide formal advice. I would like to be providing formal advice that it is December 2019 but I will not do that until I am sure of it ... I will not fall into traps that contractors provide commercial programs to benefit themselves commercially. We will work through it as we do with every project and I will provide the advice when I am comfortable with what I think the finish date is. At the moment I am sticking by March 2020.<sup>64</sup>

- 2.7** In response to a supplementary question on this issue, received on 4 November 2018, Transport for NSW acknowledged that ALTRAC had advised of a forecast completion date of 29 May 2020, but stated:

TfNSW [Transport for NSW] validates each program for compliance with the requirements of the SLR [Sydney Light Rail] Project Deed.

TfNSW considers the majority of the programs provided by ALTRAC to not be compliant and has rejected the latest program.

Given the extent of the non-compliances, TfNSW has little confidence in the current forecast completion date provided by ALTRAC and continues to work with ALTRAC to see how the program can be improved to achieve an earlier than forecast completion date.<sup>65</sup>

- 2.8** Transport for NSW raised concerns over ALTRAC's current delivery program, stating that it does not comply with contractual requirements as it 'contains insufficient information, including about current and planned resourcing and staffing, and also contains unexplained delays and departures made from the previous program'.<sup>66</sup>

- 2.9** In relation to the additional two month delay flagged by Acciona due to the need for Ausgrid to cut and reconnect power supplies, the department added:

... TfNSW has rejected this claim on the basis that TfNSW is not liable for this alleged cause of delay. It is ALTRAC's responsibility under the SLR Project Deed (and in turn the responsibility of the D&C [Design and Construct] Contractor, including Acciona, under the D&C Contract) to liaise with Ausgrid and coordinate Ausgrid's works with their works.

---

<sup>63</sup> Evidence, Mr Troughton, 4 October 2018, p 40.

<sup>64</sup> Evidence, Mr Troughton, 4 October 2018, p 41.

<sup>65</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 8.

<sup>66</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 17.

TfNSW also understands that the majority of the cut overs have now been scheduled with Ausgrid for November 2018 and so the forecast impact to the completion date due to these works will not eventuate.<sup>67</sup>

- 2.10** Mr Noonan and representatives from Transport for NSW appeared before the committee again in late November 2018. During this hearing, Mr Noonan confirmed again that the 'current formal completion date is May 2020'.<sup>68</sup> He also agreed that there was a chance that the project could be finalised later than this, but noted that 'there are proactive discussions occurring, as there should always be, to see if we can mitigate that time [May 2020] and find ways of bringing the project in earlier'. Mr Noonan explained the concerns he had about when Ausgrid would undertake already delayed work along Anzac Parade, as he claimed that this is directly impacting on the project's timeframes.<sup>69</sup>
- 2.11** Mr Rodd Staples, Secretary for Transport for NSW, who appeared at the final hearing, maintained the department's position that the project 'should be completed by March 2020'. In fact, he added: '... with the right alignment between ourselves and the contractor, we still believe there are prospects of part of the project being opened earlier than March 2020'.<sup>70</sup>
- 2.12** Reflecting on evidence from Mr Noonan about Ausgrid and delays to the project, Mr Staples said:

... it is really important at this point to balance the characterisation that was made today about the impact that Ausgrid is having on Acciona's program. There are many, many contributors to the contractor's program, including their own resourcing, their own level of organisation. Interaction with Ausgrid is no doubt a critical one and that happens on a regular basis. But in relation to the particular incident that was referred to by Mr Noonan today, certainly Ausgrid did have resources. They actually attempted about a month before that date to agree on appropriate time lines for early November. The combination of Acciona not having resources available and Ausgrid not having resources available where they could align them was due to happen in early November. It did not occur—so both sides. This is where I go to the point that we need to be very balanced in our consideration ...<sup>71</sup>

### **Schedule of work in each zone and delays**

- 2.13** The original schedule for work on the project set out start and finish dates for each of the 31 zones along the CSELR route. Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, explained that the schedule of works proposed 'concurrent work in multiple zones'.<sup>72</sup>

<sup>67</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 17.

<sup>68</sup> Evidence, Mr Noonan, 29 November 2018, p 7.

<sup>69</sup> Evidence, Mr Noonan, 29 November 2018, p 19.

<sup>70</sup> Evidence, Mr Rodd Staples, Secretary, Transport for NSW, 29 November 2018, p 45.

<sup>71</sup> Evidence, Mr Staples, 29 November 2018, p 45.

<sup>72</sup> Evidence, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, 4 October 2018, p 37.

- 2.14** The original schedule also forecast that the maximum time working in each zone would, for all but four zones, be less than a year. The exceptions to this were zones 4, 19, 20 and 21, which included George Street between Hunter and King Streets, the Olivia Gardens site between Bourke St and South Dowling, Moore Park West and Anzac Parade, and from Moore Park to Lang Road.<sup>73</sup> The original zone occupation schedule with start and end date and duration can be seen in appendix 2.<sup>74</sup>
- 2.15** In terms of the start date for work in each zone, Transport for NSW advised that there has been a delay to the commencement of work in some zones. Ms Prendergast noted that 'there was a revised schedule in January because we actually did not start a lot of the zones until later'.<sup>75</sup>
- 2.16** In fact, of the 31 zones, work started late in 17 zones and in the remaining zones work commenced a little earlier or on time. The original start date for work and actual start date for work is included at appendix 3.<sup>76</sup>
- 2.17** Ms Prendergast explained that certain work had been delayed 'due to the utilities and the other heritage issues' encountered.<sup>77</sup> In response to a supplementary question about which zones have been delayed and to what extent the delays can be attributed to heritage or utility issues, Transport for NSW said:
- Detailed construction staging of fee zones is dependent on a number of constraints, including heritage, environment, utilities and weather.
- Building down one of Sydney's oldest streets, we always expected to encounter challenges including utilities and heritage.
- Under certain circumstances, ALTRAC will be able to make a claim for an extension of time for delays in accordance with the terms of the SLR Project Deed.
- Claims on large infrastructure projects are anticipated and are business as usual. These matters are managed in accordance with the SLR Project Deed.<sup>78</sup>
- 2.18** The treatment of Ausgrid's assets along the route was a particularly contentious issue in the inquiry and is discussed from paragraph 2.85.

### **Mitigation of delays**

- 2.19** ALTRAC discussed the approach to mitigating delays, noting that that it is obliged to consider mitigation measures under the contract. Mr Bramley, when asked about whether there was any issue from Transport for NSW about the works program or concern around lack of mitigation on delays, said:

---

<sup>73</sup> The duration in zone 4 was 378 days, zone 19 was 566 days, zone 20 was 758 days and zone 21 was 618 days (Answers to questions on notice, Transport for NSW, 4 November 2018, pp 21-22).

<sup>74</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, pp 21-22.

<sup>75</sup> Evidence, Ms Prendergast, 20 August 2018, p 11.

<sup>76</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, pp 23-24.

<sup>77</sup> Evidence, Ms Prendergast, 20 August 2018, p 10.

<sup>78</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 17.

There are certainly different views about the level of mitigation that perhaps could and should be undertaken. As you have alluded to, there are contract obligations to mitigate areas. There are some examples that have been provided on how that is achieved. One of the other examples is to work in other areas and go to different spaces where you can get on with the work where you may have been held up or delayed in another area.<sup>79</sup>

- 2.20** Witnesses from Acciona and Alstom Transport Australia also highlighted what action is being taken to mitigate delays in the civil works part of the project. Mr Noonan confirmed that his company has contractual obligations to mitigate delays, although he qualified this by stating: 'We do not have an obligation to mitigate delays in any way that increases our cost though, but we do have an obligation to mitigate delays'. He noted that there are a number of ways to mitigate delays, including by undertaking works prior to full approval of drawings, which he said 'is a very significant risk for a construction contractor to go ahead and construct without having full approval from everybody'.<sup>80</sup>
- 2.21** Mr Mark Coxon, Managing Director, Alstom Transport Australia, detailed how the testing and commissioning phase of the project has been impacted by delays in the civil works being undertaken by Acciona, but he said that they are taking steps to mitigate the delays by 'compressing where we can the testing and commissioning, compressing the installation and then trying to accelerate any of the utility diversions required'.<sup>81</sup>
- 2.22** Mr Coxon emphasised that the project has been a 'dynamic planning process', such that as utility works are identified, scope variations are undertaken, which then lead to an 'iteration of the planning and ... how we mitigate that'. He noted that they continually 'work with our civil partner to see continually how we mitigate potential delays on the civil side'.<sup>82</sup>

### Perceived 'go slow' by Acciona

- 2.23** There were some media reports early in 2018 about Acciona 'going slow' with their construction work on the project.<sup>83</sup>
- 2.24** In relation to whether this was the case, the committee asked Mr Bramley about whether there were enough workers allocated on the project. He responded by stating: 'The information we have from the earlier part of the year does not support the notion of a go-slow. That is the data that we have'.<sup>84</sup>
- 2.25** Transport for NSW were also questioned about the perception of a 'go slow' by Acciona, and whether the department monitors productivity on sites. Mr Troughton stated:

We monitor the amount of workers on sites. Certainly sort of following December through to February we saw a significant drop-off. We saw the productivity rates

<sup>79</sup> Evidence, Mr Bramley, 4 October 2018, p 34.

<sup>80</sup> Evidence, Mr Noonan, 4 October 2018, p 22.

<sup>81</sup> Evidence, Mr Mark Coxon, Managing Director, Alstom Transport Australia, 3 October 2018, p 46.

<sup>82</sup> Evidence, Mr Coxon, 3 October 2018, p 52.

<sup>83</sup> 'Spanish construction company Acciona laying out light track at "go-slow"', *Daily Telegraph*, 15 May 2018; Daniel Piotrowski, 'Inside Australia's light rail disaster', *Daily Mail*, 20 April 2018.

<sup>84</sup> Evidence, Mr Bramley, 4 October 2018, p 33.

decline. Even if you look at ALTRAC's own reports to us that have historical data you will see a significant lack of productivity through those months. I will just go with the stats and say we believe that there was less work undertaken during those periods. You would have to go to Acciona to explain why.<sup>85</sup>

- 2.26** Mr Troughton suggested that workers may have been on holidays, given it was a school holiday period. He explained that this is an opportune time to undertake work:

Interestingly, under this project schools holidays is when we do most of our works because in and around the city we try to minimise impact. It is at a time where we expect work to ramp up. At the time we were notified of a number of areas of work—they were significant pieces of work that were on the critical path in the program—that would not be undertaken at that point. Some of those pieces of work were then delayed three or four months before they could get in as they were on a critical path. As I say, we will work through these, as we do. Again, it comes down to a lot of interpretation of programming and a lot of commercial issues which we are working hard with all parties to resolve.<sup>86</sup>

- 2.27** In evidence provided to the committee by Mr Noonan on 29 November regarding the company's commitment to complete the project he said: 'We have no desire to do anything but complete this project as soon as possible'.<sup>87</sup>

### **Where is work up to?**

- 2.28** As to the progress of work on the project, the committee was advised in October 2018 by Mr Troughton that '15 of the 19 stops are underway; 470 of the 817 poles are in; 12 of the 60 vehicles have arrived; drainage is 83 per cent complete; and intersections are 30 per cent complete'.<sup>88</sup>

- 2.29** His colleague, Ms Prendergast, added that 'works on the stops and finishing touches and system works' in certain zones is all that needs to be completed.<sup>89</sup> Ms Prendergast noted that the 'really heavy duty work', being the civil works on the project such as excavation, paving, track work and utility work, is coming to a close:

We now have 21 kilometres of track completed. Most of the track excavation is done. All that is left is to complete the last three kilometres of that track. It is then we move into some final works—the smart poles, the furniture, the tree planting—and they will be localised works rather than full occupation. And when we talk barriers down, which is what ALTRAC has committed to, that is what we are alluding to: moving the main footprint and coming back in a localised sense and, of course, building the stops.<sup>90</sup>

---

<sup>85</sup> Evidence, Mr Troughton, 4 October 2018, p 54.

<sup>86</sup> Evidence, Mr Troughton, 4 October 2018, p 54.

<sup>87</sup> Evidence, Mr Noonan, 29 November 2018, p 23.

<sup>88</sup> Evidence, Ms Prendergast, 4 October 2018, p 49.

<sup>89</sup> Evidence, Ms Prendergast, 4 October 2018, p 37.

<sup>90</sup> Evidence, Ms Prendergast, 20 August 2018, p 10.

**2.30** Completion of construction will enable barriers to come down in January/February 2019, marking the end of the civil works phase, which Ms Prendergast acknowledged as the 'noisy' and 'disruptive bit':

ALTRAC have announced a barriers down strategy which marks the conclusion of the main civil works, which is the disruptive bit, to be in January-February. There is not another year, because then we move into systems works—stringing cables et cetera, which is less invasive—and the vehicle/driver testing phase.<sup>91</sup>

**2.31** Originally the civil works on the project were to be completed before the installation, testing and commissioning of the CSELR. However, to mitigate delays in the civil work construction, Alstom Transport Australia commenced work on the installation concurrent with some of the civil works being completed.<sup>92</sup>

**2.32** Mr Coxon explained that the installation phase is to be more contained and less disruptive than the civil works. He said:

As those construction works finish we will move in, as we are concurrently, for the installation of our equipment. Those barricades will then come down and we will have what we call discrete hoardings for the installation, which will be much smaller areas, but we will protect where we have to install our equipment. I think when we move to the more installation phase there will be a visual reduction. So the barricades will come down, there will be a lot less noise because it is no longer being constructed, we are installing, and as well there will be no dust, the environmental side will be cleaner.<sup>93</sup>

**2.33** Following installation, testing and commissioning could be undertaken within each of the five light rail precincts (the city centre, Surry Hills, Moore Park, Randwick and Kensington/Kingsford). Mr Troughton explained that each zone could be commissioned progressively:

There is R1, [there] is Randwick, R2, which is High Street, and then we go into Surry Hills and then through the CBD and then, finally, through Kingsford ... The time to commission each zone will depend on how the performance goes and how the vehicles perform. They then go into driver training and the like ...<sup>94</sup>

**2.34** Mr Coxon anticipated that testing in each precinct would occur concurrently over approximately 12 months, with each precinct taking approximately four to six months.<sup>95</sup>

**2.35** According to Mr Coxon, it is necessary to test and commission the Randwick zone first to get the vehicles in and out of the stable, and then the Surry Hills zone, before progressing to testing and commissioning in the city precinct. The Kingsford leg of the light rail route is planned as the final leg. After completing individual precincts, testing and commissioning will then need to be undertaken across the full length of the two lines.<sup>96</sup>

<sup>91</sup> Evidence, Ms Prendergast, 20 August 2018, p 10.

<sup>92</sup> Evidence, Mr Coxon, 3 October 2018, p 48.

<sup>93</sup> Evidence, Mr Coxon, 3 October 2018, p 48.

<sup>94</sup> Evidence, Mr Troughton, 20 August 2018, p 14.

<sup>95</sup> Evidence, Mr Coxon, 3 October 2018, p 42.

<sup>96</sup> Evidence, Mr Coxon, 3 October 2018, p 42.

- 2.36** The process, Mr Coxon explained, was to first commence night-time testing – preferably with police escorts – then to move to day-time testing and commissioning. Mr Coxon explained that at this point it was important to raise public awareness of these activities:

We work with the government to ensure people are aware of the infrastructure and the energisation of the line ... What we are trying to do is make the public familiar with having the vehicles moving at slow speed at first so that when we move into revenue service it is not a surprise to them. So it is a progressive process of making people aware of the vehicles.<sup>97</sup>

- 2.37** Alstom Transport Australia said that the start of full line dynamic testing of the CSELR will commence on 4 February 2020.<sup>98</sup>
- 2.38** According to Alstom Transport Australia, the completion date for each section is May 2019 for the Randwick zone, September 2019 for the Surry Hills zone and February 2020 for the Kingsford zone.<sup>99</sup>

### **Committee comment**

- 2.39** The committee is concerned that there may be further delays to the project. Originally the completion date was March 2019 but now it appears that it will be at least another year before all the work is finalised. While Transport for NSW have maintained that the project will finish by March 2020, its core contractors appear to have a different view. Both ALTRAC and Acciona have informed Transport for NSW that the completion date for the project is May 2020. This is concerning, particularly given the ongoing negative impacts of construction work on residents, businesses and the wider community, as outlined in chapters 4 and 5.
- 2.40** That aside, the committee acknowledges that delays can and will arise in infrastructure projects of this scale, especially where utility risks are unknown and work is being undertaken in a complex and congested area, as seen in Sydney CBD. The committee understands that these issues have impacted the project's timeline, and is pleased to see that stakeholders are working collaboratively to mitigate delays where possible.
- 2.41** Nevertheless, all governments, irrespective of their political persuasions, must do everything they can during the concept, planning and scoping stages of infrastructure projects to ensure all that can be done is done to lock in tightly firm completion dates.

### **Project costs**

- 2.42** This section will consider how much the CSELR project will cost, taking into account penalty clauses for delays and contract modifications. It will also consider the circumstances surrounding the need for a liquidity fund for ALTRAC.

---

<sup>97</sup> Evidence, Mr Coxon, 3 October 2018, p 43.

<sup>98</sup> Answers to questions on notice, Alstom Transport Australia, 29 October 2018, p 5.

<sup>99</sup> Answers to questions on notice, Alstom Transport Australia, 29 October 2018, p 6.

## Project budget

- 2.43** In November 2013, the business case for the CSELR project estimated the project would cost \$1.6 billion.<sup>100</sup> As noted in the Auditor-General's 2016 report, the budget increased by \$549 million to \$2.1 billion by the time Transport for NSW signed the Public Private Partnership (PPP) contract in December 2014.<sup>101</sup>
- 2.44** According to the Auditor-General, a significant portion of the \$549 million increase - \$517 million – was caused by mispricing and omissions in the business case for the project. The remaining portion was attributed to scope changes and planning modifications.<sup>102</sup>
- 2.45** Mr Noonan advised the committee that Acciona's contract is approximately 40 per cent of the overall budget for the project, representing 'about \$870 million'. However, as at 4 October 2018, the company's costs had exceeded this amount and were about \$1.45 billion. Mr Noonan estimated that the cost to complete their construction work on the project would be approximately \$1.8 billion.<sup>103</sup> He said at a later hearing that 'unless we get paid more than \$870 million, with a forecast final of \$1.85 billion, our company loses in the order of \$1 billion'.<sup>104</sup>
- 2.46** Mr Troughton told the committee that his department had not been advised by Acciona of the increase in their costs.<sup>105</sup> When asked to explain why Acciona is estimating that the overall cost of the project is now \$2.9 billion to \$3 billion, Mr Troughton stated:
- I think it is important to understand that what it has cost them and what they are entitled to are far, far different things. The New South Wales taxpayer is not responsible for delayed starts, mismanagement and other issues involved with delivering a project. They are not responsible for mis-bidding. What we do is we take every claim that is put on the table in front of us. We make an assessment of that claim under the contract. We understand the entitlement and for all of the claims that we have received we have made a decision and we have awarded a determination to each of those claims.<sup>106</sup>
- 2.47** Claims under the contract, and the dispute between Transport for NSW and Acciona are discussed from paragraph 2.60 and from 2.134.
- 2.48** Mr Troughton stressed to the committee that there is an ongoing court case involving the NSW Government due to 'a disagreement between where the contract lies on this and until that court case is resolved a final cost will not be known'.<sup>107</sup>
- 2.49** Mr Bramley from ALTRAC did not want to detail his opinion of how much the project has cost. He explained he had limited knowledge of the overall project budget, beyond ALTRAC's contract:

<sup>100</sup> Submission 18, Auditor-General of New South Wales, Attachment 1, p 3.

<sup>101</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 14.

<sup>102</sup> Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 14.

<sup>103</sup> Evidence, Mr Noonan, 4 October 2018, pp 16-17.

<sup>104</sup> Evidence, Mr Noonan, 29 November 2018, p 7.

<sup>105</sup> Evidence, Mr Troughton, 4 October 2018, p 42.

<sup>106</sup> Evidence, Mr Troughton, 4 October 2018, p 42.

<sup>107</sup> Evidence, Mr Troughton, 4 October 2018, p 42.

I have quite a good knowledge of the contract to ALTRAC, including the financial cost and the costs with our subcontractors. But the broader government budget for the project, which would include a number of costs, which I am not aware of or party to, it is difficult for me to comment on that number.<sup>108</sup>

- 2.50** When asked a number of questions related to costs incurred on the project, Mr Bramley was reluctant to provide information on the basis of confidentiality concerns. However, in response to one of the questions he took on notice, Mr Bramley stated: 'ALTRAC has not incurred more than \$2.1 billion in costs to date'.<sup>109</sup>
- 2.51** In October 2018, the committee asked Transport for NSW how much money has been spent to date on the project. At first the department did not answer the question, stating that the information is 'commercial in confidence'.<sup>110</sup> The committee did not accept this objection, and pressed the matter, to be later advised that '\$657 million has been spent to date by the NSW Government on the CSELR'.<sup>111</sup>
- 2.52** Mr Staples, at the final hearing in November 2018, also stressed that while the budget is under constant review, 'at this stage our approved budget remains \$2.1 billion'. He noted that they will need to go through the contractual process and finalise claims, and that they could only update the budget once there is a clear financial position and the forecast is complete on the job. He emphasised that he was unable to provide any further update as it could 'prejudice any outcome in terms of a court process or a negotiation with Acciona'.<sup>112</sup>
- 2.53** The Auditor-General made a number of observations about the cost of the project in its recent audit report for Transport. The Auditor-General noted that the contingency fund of \$207 million had already been used, and that the department have not officially revised the budget, given several matters have not been finalised. This includes disputes relating to modifications and the claim Acciona has made against Transport for NSW.<sup>113</sup> These matters are considered at paragraph 2.60 and 2.134.
- 2.54** Also relevant to the project costs are a liquidity facility of \$500 million provided to ALTRAC, and an additional payment of \$100 million which was advanced by Transport for NSW to the contractor in October 2017.<sup>114</sup> Mr Staples advised that the \$100 million payment 'is on account', and that if the claims under the contract turn out to be less than that amount, Transport for NSW will be able to 'pull that money back through financial instruments'.<sup>115</sup> See paragraph 2.72 for more information about this.

---

<sup>108</sup> Evidence, Mr Bramley, 4 October 2018, p 32.

<sup>109</sup> Answers to questions on notice, ALTRAC Light Rail, 1 November 2018, p 4.

<sup>110</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 3.

<sup>111</sup> Correspondence from Mr Rodd Staples, Secretary, Transport for NSW, to Chairman, 28 November 2018.

<sup>112</sup> Evidence, Mr Staples, 29 November 2018, p 32.

<sup>113</sup> Audit Office of New South Wales, *Transport 2018 Financial Audit* (28 November 2018), p 36.

<sup>114</sup> Audit Office of New South Wales, *Transport 2018 Financial Audit* (28 November 2018), p 36.

<sup>115</sup> Evidence, Mr Staples, 29 November 2018, p 35.

### Penalty clauses for delays

- 2.55** Under the contract, there are penalty clauses that are triggered when delays occur. According to Mr Troughton these 'penalty clauses kick in really in line with the contract and most of them are associated with independent fee zones and liquidated damages associated with each fee zone'.<sup>116</sup>
- 2.56** The former Deputy Secretary confirmed to the committee that there is a cap of \$7.5 million for liquidated damages for delay post March 2019.<sup>117</sup> However, in response to a supplementary question on this issue, Transport for NSW clarified that the \$7.5 million figure relates to an aggregate cap on the total amount of daily fees payable for the occupation of individual fee zones by ALTRAC and/or its contractors 'for a period over and above that specified in the project deed as "base fee zone occupation period"'.<sup>118</sup>
- 2.57** Given this, Transport for NSW advised that "daily fees" are not liquidated damages for delayed or late completion of the project, but are an incentive regime of the kind often included in commercial and legal arrangements for PPP projects'.<sup>119</sup>
- 2.58** In terms of liquidated damages that operate in relation to delayed or late completion of the project, Transport for NSW stated:

TfNSW has the benefit of claiming unliquidated damages not subject to any cap for any breach of the SLR Project Deed by ALTRAC, together with various indemnities from ALTRAC under the Project Deed (and ALTRAC, in turn has the benefit of various indemnities from Acciona under the D&C Contract).<sup>120</sup>

- 2.59** In fact, Transport for NSW told the committee that 'if ALTRAC breaches any of the project agreements, Transport for NSW may sue ALTRAC for (uncapped) damages'. In addition, if the D&C Contractor causes a delay to completion, ALTRAC can claim significant liquidated damages and financial delay costs from the D&C Contractor under the D&C Contract'.<sup>121</sup>

### Contract modifications

- 2.60** The overall cost of the CSELR project is also affected by any modifications to the contract. The Sydney Light Rail (SLR) Project Deed provides for 'modifications', which the deed states are considered as 'variations within the scope of works contemplated by the parties'. Within the deed there are several categories of modifications, including emergency modifications, operations modifications and expansion modifications.<sup>122</sup>

<sup>116</sup> Evidence, Mr Troughton, 20 August 2018, p 9.

<sup>117</sup> Evidence, Mr Troughton, 20 August 2018, p 9.

<sup>118</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 26.

<sup>119</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 26.

<sup>120</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 26.

<sup>121</sup> Answers to questions on notice, Transport for NSW, 18 September 2018, p 8.

<sup>122</sup> Transport for NSW, Sydney Light Rail Public Private Partnership – Contract Summary, 25 August 2015, p 36, <[https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Sydney\\_Light\\_Rail\\_PPP.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Sydney_Light_Rail_PPP.pdf)>

- 2.61** The deed also enables 'augmentations', which are different to a modification, and can be discussed between the parties at any time, with entitlement to any 'costs reasonably and properly incurred'.<sup>123</sup>
- 2.62** Mr Noonan said that there has been 60 requests for contract modifications relating to the project, with the total financial impact estimated to be approximately \$427 million.<sup>124</sup> This amount is separate to the financial impact caused by changes in Ausgrid's Adjustment Guidelines and most of these changes, according to Mr Noonan, could be attributed to modifications requested by the government.<sup>125</sup> Ausgrid's Adjustment Guidelines are discussed from paragraph 2.87.
- 2.63** Mr Troughton clarified that of the 60 modifications, 11 have been withdrawn.<sup>126</sup> He also explained that 'there are eight modifications' requiring resolution. He would not, however, discuss the value of these as he considered the information to be 'commercial-in-confidence'.<sup>127</sup>
- 2.64** Transport for NSW highlighted how modifications and claims on large infrastructure projects are 'anticipated' and considered it 'business as usual'.<sup>128</sup>
- 2.65** In terms of liability for contract modifications, these are determined in accordance with the contract. Mr Coxon from Alstom Transport Australia confirmed that there are ongoing discussions occurring within the contracts about liability for variations.<sup>129</sup> Mr Bramley, ALTRAC, also provided similar evidence on this issue, stating:
- As articulated in the contract summary there are various mechanisms in the contract to deal with the risk sharing attached to delay. There is the concept of relief and compensation events in some circumstances. There is certainly the utilities risk which is shared between the parties. So certainly those commercial discussions are ongoing as between ALTRAC, Transport, Acciona and the other core contractors. As I say, those conversations are ongoing as to where the responsibility and allocation of those costs does sit.<sup>130</sup>
- 2.66** One particularly contentious modification claim in relation to the contract arose in May 2015 as a result of alleged changes to the treatment of utilities located along the light rail route. This is discussed from paragraph 2.85.

---

<sup>123</sup> Transport for NSW, Sydney Light Rail Public Private Partnership – Contract Summary, 25 August 2015, p 37, <[https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Sydney\\_Light\\_Rail\\_PPP.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2017-02/Sydney_Light_Rail_PPP.pdf)>

<sup>124</sup> Evidence, Mr Noonan, 4 October 2018, p 7.

<sup>125</sup> Evidence, Mr Noonan, 4 October 2018, p 7.

<sup>126</sup> Evidence, Mr Troughton, 4 October 2018, p 43.

<sup>127</sup> Evidence, Mr Troughton, 4 October 2018, p 42.

<sup>128</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 5.

<sup>129</sup> Evidence, Mr Coxon, 3 October 2018, 3 October 2018, p 51

<sup>130</sup> Evidence, Mr Bramley, 4 October 2018, p 31.

### Claims under the Building and Construction Industry Security of Payment Act 1999

- 2.67** Relevant to the cost of the project are three claims which Acciona made under the *Building and Construction Industry Security of Payment Act 1999*.
- 2.68** According to Acciona, these claims were worth approximately \$95 million, with two made in March 2018 and one in May 2018.<sup>131</sup> Mr Noonan explained that these claims were made against ALTRAC, with the adjudicator awarding Acciona 95 per cent of the total amount claimed.<sup>132</sup>
- 2.69** As to whether ALTRAC subsequently claimed against Transport for NSW, given the contractual relationships, Mr Troughton stated 'we have not received any claims from ALTRAC under the Security of Payments Act'.<sup>133</sup>
- 2.70** In response to a supplementary question on this issue, Transport for NSW explained that it 'is not a party to the D&C Contract and so was not a party to these adjudications'. As such, the department said that it is not bound by the adjudicators' determinations and 'cannot comment on any legal commercial matters between ALTRAC and the D&C Contractor'.<sup>134</sup>
- 2.71** When Mr Staples appeared before the committee, he pointed out that the *Building and Construction Industry Security of Payment Act 1999* is aimed at ensuring the flow of progress payments down the contractual chain, providing cash flow pending final resolution of contractual disputes. He added that 'a successful adjudication should not be considered to be vindication of the claim. The process is interim, non-binding and as described by the High Court as "brutally fast"'. He added that payments made under this Act are made on account, and that disputes are decided separately.<sup>135</sup>
- 2.72** These claims are relevant to a liquidity fund established for ALTRAC, the consortium responsible for the CSELR. The Auditor-General outlined that in July 2018 Transport for NSW entered into an agreement that provided a debt guarantee of up to \$500 million against a borrowing facility provided by two large banks to the consortium. The borrowing facility has three tranches, and the first tranche of \$100 million was advanced by those lenders to the consortium on 3 July 2018. The second tranche of \$100 million will only be made available once the consortium meets certain construction milestones. The remaining tranche of money cannot be advanced unless certain conditions are met.<sup>136</sup>
- 2.73** Transport for NSW disagreed that this guarantee stemmed from 'a liquidity event that triggered bank recovery'.<sup>137</sup>
- 2.74** Mr Bramley explained why this facility was required in light of the PPP contract structure:

Under the terms of the contract, ALTRAC is responsible for all of the financing during the construction phase of the project and, certainly, given the nature of the contract

<sup>131</sup> Evidence, Mr Noonan, 4 October 2018, pp 7-8.

<sup>132</sup> Evidence, Mr Noonan, 4 October 2018, p 8.

<sup>133</sup> Evidence, Mr Troughton, 4 October 2018, p 42.

<sup>134</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 16.

<sup>135</sup> Evidence, Mr Staples, 29 November 2018, p 29.

<sup>136</sup> Audit Office of New South Wales, *Transport 2018 Financial Audit* (28 November 2018), p 36.

<sup>137</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 6.

being a public-private partnership [PPP], as you will understand, ALTRAC does not receive any revenue until we provide services in accordance with the terms of the contract. So what we saw and what we recognised from an ALTRAC perspective was that, certainly, in order to continue to be able to progress the works, given some of the commercial difficulties and so forth, it was prudent for additional funding to be made available to the project in support of construction.<sup>138</sup>

**2.75** Mr Bramley declined to answer a number of questions related to this guarantee due to confidentiality requirements. He did, however, confirm that ALTRAC has an obligation to repay the money.<sup>139</sup>

**2.76** On whether or not it would have been possible to raise funding without assistance from the government, Mr Bramley stated 'It is possible to raise funding without a government guarantee. However, a guarantee from the NSW Government reduces the cost of the debt and consequentially reduces the costs of the CSELR Project'.<sup>140</sup>

**2.77** At the last hearing for the inquiry in late November 2018, Mr Noonan told the committee that the liquidity facility put in place was to avoid Acciona using the security of payments process further, to 'prosecute the remainder of our claims, which amount to more than \$1.2 million'. He explained that this provided 'liquidity to cash this extraordinary cost overrun because of the non-payment of these disputes and claims'.<sup>141</sup>

**2.78** Mr Noonan highlighted how the establishment of this facility helped, given the limitations of ALTRAC as an entity:

The difficulty for ALTRAC is that they are merely a single-purpose vehicle specifically put in place for this project. The nature of the contract documents have any claim that we make flowing straight through to Transport for NSW. The difficulty under the security of payments Act process is that, as a contractor, we can only claim against our client, which is ALTRAC.<sup>142</sup>

**2.79** He noted that ALTRAC have chosen not to lodge a claim against Transport for NSW, which meant that 'ALTRAC was caught in the position of having adjudication determinations against them, for which they are legally obliged to pay, but they did not choose to go upstream for Transport for NSW'. Mr Noonan said that the liquidity facility enabled ALTRAC 'to not become insolvent'.<sup>143</sup>

**2.80** Separate to this facility was a \$100 million payment advanced to the contractor by Transport for NSW. Mr Staples said that \$100 million had been paid to the contractor as 'goodwill', and in 'recognition that there will be some claims determined with that value'. Mr Staples clarified that he felt this was a reasonable approach to ensure that there was still 'some cash flowing into the project'.<sup>144</sup>

---

<sup>138</sup> Evidence, Mr Bramley, 4 October 2018, p 28.

<sup>139</sup> Evidence, Mr Bramley, 4 October 2018, p 28.

<sup>140</sup> Answers to questions on notice, ALTRAC Light Rail, 1 November 2018, p 1.

<sup>141</sup> Evidence, Mr Noonan, 29 November 2018, p 11.

<sup>142</sup> Evidence, Mr Noonan, 29 November 2018, p 11.

<sup>143</sup> Evidence, Mr Noonan, 29 November 2018, p 11.

<sup>144</sup> Evidence, Mr Staples, 29 November 2018, p 34.

**2.81** In light of concerns about the contractor's ability to deliver the project on time and within budget, the committee asked Mr Staples why such a significant amount of money would be paid to them. Mr Staples said 'because there is no doubt in our mind that they will have some entitlement'. He said that 'as a good model client we have sought to provide the resource that we felt they needed to keep the project moving'. Mr Staples also stressed that payments are 'capped at no more than \$200 million at the moment in terms of funds that could be invested', clarifying that it is invested by the PPP financiers and not by the government.<sup>145</sup>

### **Committee comment**

**2.82** The committee is concerned that the cost of the project is increasing. Early concerns about the budget were identified by the Auditor-General in 2016, who noted that the project's costs had increased by \$549 million to \$2.1 billion due to mispricing and omissions in the business case. The committee is troubled that a discrepancy of this size could occur with one of the state's most significant infrastructure projects.

**2.83** Since that report, other issues have arisen which have cast doubt on whether the project will meet its \$2.1 billion budget. There are claims by Acciona that the costs of construction are much higher than expected. There are also unresolved claims for contract modifications, potential penalties for delays and a court claim between Acciona and Transport for NSW that needs to be resolved.

**2.84** In this context, and in light of a liquidity facility fund having to be established for ALTRAC and \$100 million being paid to the contractor just to keep the project moving, the committee questions whether the costs of the project are being managed effectively. It accepts, however, that this is a complex project, with clearly a contentious dispute on foot between Transport for NSW and a core contractor. On this basis, the committee accepts that at this stage it is difficult for the total costs of the project to be predicted.

### **Treatment of utilities**

**2.85** The management of utilities along the CSELR route was a key issue discussed during the inquiry. Stakeholders discussed the significant impact utility treatments have had on the progress of construction work, resulting in delays to the project.

**2.86** One particularly contentious issue raised in the inquiry focused on allegations made by Acciona that the requirements for utilities changed after they signed the financial contract for the project. These issues are now the subject of a court claim Acciona has made against Transport for NSW. This section will set out some information about the Adjustment Guidelines, which are the standards and protocols applicable for undertaking work on Ausgrid's assets, and then turn to evidence provided by Acciona, Transport for NSW and Ausgrid on these issues.

---

<sup>145</sup> Evidence, Mr Staples, 29 November 2018, p 34.

### Ausgrid's explanation of their Adjustment Guidelines

- 2.87** Broadly speaking, the Adjustment Guidelines set out the standards and protocols that were applicable when developing treatment plans and undertaking work on Ausgrid's assets for the light rail project.<sup>146</sup>
- 2.88** Transport for NSW initially informed the committee that it received the guidelines on 27 February 2015.<sup>147</sup> However, subsequent questioning from the committee revealed they were provided with an initial draft on the 3 February 2015, with further drafts provided on 20, 23 and 24 February 2015.<sup>148</sup> On 27 February 2015, a further draft was again provided to Transport for NSW, and at this time it was also provided to Acciona.<sup>149</sup> This was two days after financial close of the contract between ALTRAC and Transport for NSW.<sup>150</sup>
- 2.89** Ausgrid maintains that the guidelines were drafted in accordance with the requirements set out in the Deed of Adjustment Works to Network Assets between Ausgrid and Transport for NSW, dated 5 February 2015.<sup>151</sup>
- 2.90** Ausgrid said that while it 'continued to discuss the Adjustment Guidelines with Transport for NSW and Acciona, the Adjustment Guidelines were ultimately finalised by Ausgrid without further input from Transport for NSW or Acciona'. Ausgrid noted that after it provided the guidelines to Acciona in February 2015 it also requested feedback or comments, but none were provided.<sup>152</sup> The final version of the guidelines were given to both Transport for NSW and Acciona on 1 May 2015.<sup>153</sup>
- 2.91** Ausgrid explained to the committee that the guidelines developed by Ausgrid supplemented the network standards, which are publicly accessible documents.<sup>154</sup> Mr Richard Gross, Chief Executive Officer, Ausgrid, explained how these guidelines fit within the context of other documents relating to the requirements for utility assets, including network standards, treatment plans and detailed designs:

The network standards are the standards that guide how our assets are adjusted, how our assets are amended or changed. We then produce guidelines, and the guidelines are about interpreting and assisting in the application of the network standards. They are not about changing the standards, they are not about creating new obligations. They are there to assist the interpretation ...

---

<sup>146</sup> Evidence, Mr Richard Gross, Chief Executive Officer, Ausgrid, 5 November 2018, p 11.

<sup>147</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 14.

<sup>148</sup> Answers to supplementary questions, Transport for NSW, 12 December 2018, p 4.

<sup>149</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 3.

<sup>150</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 19.

<sup>151</sup> The name of this document was the '*Adjustment Guidelines for Ausgrid New Work Assets Affected by the CSELR*'. Answers to questions on notice, Ausgrid, 27 November 2018, pp 3 and 15.

<sup>152</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 4.

<sup>153</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 4.

<sup>154</sup> Evidence, Mr Gross, 5 November 2018, p 14.

The treatment plan is the plan associated with a specific set of assets. Whether it be the Grosvenor and George streets intersection, the treatment plans are how you treat those assets at a high level and then the next level is the detailed design.<sup>155</sup>

### **Acciona's claims**

**2.92** Acciona alleges that the updated version of the Ausgrid guidelines provided to them were different to the guidelines agreed upon in the pre-contract phase, such that this impacted on time and costs associated with the work. Mr Noonan explained:

In the pre-contract phase, competitive tender, the agreed treatments for Ausgrid assets as well as other utilities are included in schedule F8 of our contract. This schedule was developed during the tender period, before the contract was entered into, in a series of workshops over a period of almost six months where each and every known identified utility on the SLR route was considered and a treatment agreed for it.<sup>156</sup>

**2.93** Acciona maintained that they had no knowledge that a new version of the Ausgrid guidelines were going to be released after they signed the contract.<sup>157</sup> Acciona's position was that it had to rely on the guidelines provided during the pre-contract phase, given probity requirements prohibited them from discussing utility issues with Ausgrid directly. Mr Noonan explained the probity rules that he believed applied:

That was part of the tender process. Most tender processes that governments run have a probity set of rules that each of the tender participants must sign up to. So we signed up to a set of probity requirements that said that we were not allowed to directly talk to or contact any of the utility and other stakeholders.<sup>158</sup>

**2.94** Further, Mr Noonan argued that the effect of the probity rules was that Acciona and other members of the consortium were prevented from communicating with Ausgrid without the approval and facilitation of Transport for NSW.<sup>159</sup>

**2.95** Given this, Mr Noonan emphasised that Acciona was 'fully reliant on what was given to us by the government'.<sup>160</sup> Further, he said that the new Ausgrid guidelines 'were completely different to what we had developed' and 'would result in a substantial change to the contract scope'.<sup>161</sup> He argued that the changes would 'result in a delay of 865 days—or over two years and four months—and an additional cost of \$426 million, to the civil works only'.<sup>162</sup>

**2.96** Mr Noonan argued that the greatest impact to works on the project has 'occurred as a result of Ausgrid requiring upgrades on their underground pits and conduits'. He provided the following examples:

<sup>155</sup> Evidence, Mr Gross, Ausgrid, 5 November 2018, p 14.

<sup>156</sup> Evidence, Mr Noonan, 4 October 2018, p 3.

<sup>157</sup> Evidence, Mr Noonan, 4 October 2018, p 11.

<sup>158</sup> Evidence, Mr Noonan, 4 October 2018, p 10.

<sup>159</sup> Answers to questions on notice, Acciona, 21 December 2018, pp 5-6.

<sup>160</sup> Evidence, Mr Noonan, 4 October 2018, p 10.

<sup>161</sup> Evidence, Mr Noonan, 4 October 2018, p 3.

<sup>162</sup> Evidence, Mr Noonan, 4 October 2018, p 3.

- dealing with Ausgrid's assets in George Street, where there were 'substantially additional requirements imposed', for example, a pit size that was 4.5 metres by 4 metres needing to be rebuilt to a scale of 10.1 metres by 5.7 metres
- work on the corner of Bridge, George and Grosvenor streets, where Acciona has had to occupy the intersection for 56 weekends to work on Ausgrid's assets, and relocate storm water pipes, gas, telcos and other utilities, which it said is 'a direct result or consequence of the implementation of Ausgrid's guidelines'.<sup>163</sup>

**2.97** Mr Noonan told the committee that 'Ausgrid's new requirements were the root cause of the project not being able to predict time'. In terms of the impact of changing pit sizes, he explained:

The new pit sizes pushed the excavation works into areas which had not been investigated by the government for utilities. We were then discovering utilities that had not been expected. The iterative nature of discovering these previously unknown utilities, finding what they contained, who owned them and how they could be dealt with was excruciating for our team and, coupled with the design approvals process within PPPs, has been the source of massive delays.<sup>164</sup>

**2.98** Mr Noonan acknowledged that Acciona were aware of the network standards applying to utility assets.<sup>165</sup> The concerning issue, he suggested, was that Transport for NSW and Ausgrid had been negotiating Ausgrid requirements well before financial close of the contract in February 2015, and potentially as early as April 2014. He said 'we are now aware that in fact the Ausgrid guidelines that we received on 27 February 2015—their genesis goes back well before October 2014. I think the earliest iteration that we now are aware of goes back to April 2014'.<sup>166</sup>

**2.99** He argued that pursuant to the contract, Acciona was required to comply with the updated version of the guidelines. Mr Noonan stated 'Our contract does require us to comply with a direction from Ausgrid ... and obviously Ausgrid has powers under state government legislation'. Mr Noonan argued that Acciona could not say 'no' to the guidelines.<sup>167</sup>

**2.100** At the final hearing in late November, Mr Noonan claimed that by not getting the Ausgrid guidelines until after the close of the contract, his company stood to lose in order of \$1 billion, unless they get paid \$870 million towards the costs they have incurred. He also argued that Acciona would not have proceeded with the contract had the changes been known earlier:

Unfortunately for us and the people of New South Wales, we were not given the opportunity to convey this information until after the contracts had been signed. This project most likely would not have proceeded if we had been given the opportunity to tell Transport for NSW the cost, time and risk impact of these Ausgrid guidelines. The withholding of these guidelines was a fundamental mistake by Transport for NSW. I have no idea why they decided to withhold such an important piece of information. These guidelines were written by Ausgrid specifically for this project. The effect of these guidelines was to render everything that had been discussed and agreed during the

---

<sup>163</sup> Evidence, Mr Noonan, 4 October 2018, p 3.

<sup>164</sup> Evidence, Mr Noonan, 4 October 2018, p 3.

<sup>165</sup> Evidence, Mr Noonan, 29 November 2018, p 8.

<sup>166</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 5.

<sup>167</sup> Evidence, Mr Noonan, 4 October 2018, p 6.

tender process to be completely null and void. All our assumptions for scope, cost and time for dealing with the Ausgrid assets became irrelevant.<sup>168</sup>

- 2.101** Mr Noonan also suggested that 'Transport for NSW should have provided Acciona with an Ausgrid report that costed the impact of the CSELR project on Ausgrid assets at approximately \$700 million. He said: 'Acciona was not given this report and has still not seen this report. Surely this is another very relevant document to have given tenderers'.<sup>169</sup>
- 2.102** He explained that his company spent over \$10 million to tender for the project, with at least half of that time and money being 'spent understanding the scope of work and risks of dealing with utilities'. He added: 'Receiving these Ausgrid guidelines after contract signing was like Transport for NSW dropping a bomb on us'.<sup>170</sup> Mr Noonan argued that Transport for NSW made 'a very, very significant mistake' by not providing the Ausgrid guidelines prior to final contract signing.<sup>171</sup>
- 2.103** Mr Noonan acknowledged in his evidence that utilities 'are without doubt the most significant risk facing construction companies and projects in Australia'. He questioned whether a PPP contract was the most appropriate structure for the CSELR project, given contactors have no ability to influence utility owners:

The utilities risk on this project was vastly misunderstood by the government, and we as contractors were forbidden by process, as well as practicality, from knowing anything except what the government told us. This utilities risk as well as all the third party agreements being not concluded cannot be properly managed under a PPP form of contract. It is possible to manage utilities such as what we have encountered on SLR. However, it can only be done under a collaborative form of contract where government accepts that contractors have no direct ability to direct or control utility owners.<sup>172</sup>

- 2.104** Although Ausgrid said that they did not receive any feedback from Acciona directly,<sup>173</sup> the impact of the changes to the Ausgrid guidelines on Acciona, both in terms of time and cost, was advised to Transport for NSW formally in May 2015 as a contract modification.<sup>174</sup> As Mr Noonan explained the letter included 'an estimate to the best of our ability ... in this letter of the cost and the time impact of the Ausgrid guidelines'.<sup>175</sup>
- 2.105** According to Mr Noonan, Transport for NSW responded to this letter by requesting Acciona withdraw its claim. This was 'requested on the basis that we were told we were not required to comply with those guidelines and that we were requested to participate in a collaboration process with Ausgrid and Transport to find a more optimal solution to the problem'.<sup>176</sup>

<sup>168</sup> Evidence, Mr Noonan, 29 November 2018, p 2.

<sup>169</sup> Evidence, Mr Noonan, 29 November 2018, p 2.

<sup>170</sup> Evidence, Mr Noonan, 29 November 2018, p 2.

<sup>171</sup> Evidence, Mr Noonan, 29 November 2018, p 3

<sup>172</sup> Evidence, Mr Noonan, 4 October 2018, p 4.

<sup>173</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 4.

<sup>174</sup> Evidence, Mr Noonan, 4 October 2018, p 5.

<sup>175</sup> Evidence, Mr Noonan, 4 October 2018, p 5.

<sup>176</sup> Evidence, Mr Noonan, 4 October 2018, p 5.

### Transport for NSW's response

- 2.106** Transport for NSW put forward its view of Acciona's allegations. The department acknowledged that it received a letter from ALTRAC on 25 May 2015 claiming \$423 million and an extension of time to the delivery program of 865 days. It said that 'these claims related to a document entitled "*CBD and South East Light Rail: Adjustment Guidelines for Ausgrid Network Assets*" which Ausgrid had issued directly to Acciona on 1 May 2015'.<sup>177</sup>
- 2.107** Transport for NSW advised that the guidelines 'were neither endorsed nor approved by Transport for NSW and were issued by Ausgrid without the concurrence of Transport for NSW'. The committee was told that on this basis the department responded to ALTRAC on 26 May 2015 'clarifying that no direction has been issued' in relation to the guidelines, also referencing the fact that on 25 May 2015 Ausgrid had emailed ALTRAC withdrawing the guidelines.<sup>178</sup>
- 2.108** Transport for NSW agreed that it had requested ALTRAC to withdraw its claim on 25 May 2015, which subsequently occurred, subject to what Transport for NSW said were 'certain conditions'. These conditions were then superseded by ALTRAC (and Acciona) unconditionally withdrawing their respective claims on 24 July 2015. Transport for NSW noted that 'As these claims were withdrawn, [Transport for NSW] was not obliged to proceed to assess them in accordance with the SLR Project Deed'.<sup>179</sup>
- 2.109** When Mr Staples appeared before the committee, he made a few observations about this contentious issue. Firstly, he said that the ALTRAC consortium, which includes Acciona, was always aware of the utility risks with the project. He added that the 'treatment of Ausgrid's assets were a key issue for both Transport for NSW and ALTRAC and Acciona during the tender phase, which is why a risk-sharing regime was negotiated' and included in the project deed.<sup>180</sup>
- 2.110** Secondly, Mr Staples said that all tenderers had access to detailed utility information and the network standards were also available on the Ausgrid website. He explained that tenderers were not prohibited from speaking with Ausgrid, although they were required to seek written consent from Transport for NSW, in accordance with the standard tender process.<sup>181</sup>
- 2.111** Earlier in the inquiry, Transport for NSW clarified the probity requirements that applied during the tender process for the CSELR project. It stated: 'None of the consortia tendering for the project ... were forbidden from communicating with Ausgrid in relation to how changes to utilities owned by Ausgrid might be dealt with' as part of the project. Transport for NSW explained that under the probity and procurement processes, tenderers were required to comply with a 'Probity and Process Deed' and the 'Request for Proposal', which allowed:
- prospective tenderers to seek written consent from Transport for NSW to communicate with Ausgrid

---

<sup>177</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 9.

<sup>178</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 9.

<sup>179</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 9.

<sup>180</sup> Evidence, Mr Staples, 29 November 2016, p 28.

<sup>181</sup> Evidence, Mr Staples, 29 November 2016, p 28.

- communication to occur between utility companies and contractors at workshops arranged by Transport for NSW on the requirements for utility service treatment works.<sup>182</sup>

**2.112** Transport for NSW specifically noted that Acciona was present at the meetings and workshops with Ausgrid representatives.<sup>183</sup> The committee was advised that of the 11 interactive sessions or workshops held in relation to utilities associated with the project, prior to ALTRAC being awarded the contract, there were four sessions where Ausgrid representatives were present.<sup>184</sup>

**2.113** A third point made by Mr Staples was that the guidelines 'are not contractual documents', agreeing with Ausgrid's evidence that the guidelines provide an interpretation to assist with the implementation of the network standards.<sup>185</sup>

**2.114** While Mr Staples acknowledged that Transport for NSW received the guidelines on 3 February 2015, he explained that the 'Ausgrid guidelines, irrespective of date of issue, did not change Acciona's contractual obligations to comply with the network standards'. Mr Staples also outlined that Acciona was contractually obliged to engage with Ausgrid 'in a collaborative process post contract during design phase to develop treatment plans and to obtain Ausgrid's approval of those plans'.<sup>186</sup>

**2.115** Transport for NSW made a few other observations about this issue:

- that the draft document was disclosed to tenderers prior to signing the project deed, and the deed required a collaborative process to be undertaken between Ausgrid and the successful tenderer on the development of treatment plans for Ausgrid's assets
- the draft guidelines, if agreed, would not have changed the process of developing and agreeing to treatment plans, as the plans always needed to comply with Ausgrid's requirements.<sup>187</sup>

**2.116** Mr Staples also emphasised another key point about this matter. Despite Acciona receiving the guidelines on 27 February 2015, the company subsequently agreed to amend their contract with ALTRAC almost a month later, on 25 March 2015. This incorporated the final deed signed by Transport for NSW and Ausgrid, and set out Ausgrid's requirements regarding its assets. He said that 'if they had any issues with the Ausgrid guidelines then they should not have signed that deed. They should have raised that issue at that time. If they felt they had been misrepresented, that was the time to put a misrepresentation claim in'.<sup>188</sup>

**2.117** Mr Staples also highlighted the significance of a letter it received from ALTRAC subsequent to the signing of the amended deed in March 2015. The letter, dated 20 April 2015, refers to Ausgrid's Adjustment Guidelines and notes that the guidelines 'were not finalised or agreed during the proposal period and were never incorporated into the project agreements as a set of guidelines or otherwise'. It also stated:

<sup>182</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 2.

<sup>183</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 2.

<sup>184</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 12.

<sup>185</sup> Evidence, Mr Staples, 29 November 2016, p 28.

<sup>186</sup> Evidence, Mr Staples, 29 November 2016, p 29.

<sup>187</sup> Answers to supplementary questions, Transport for NSW, 12 December 2018, p 4.

<sup>188</sup> Evidence, Mr Staples, 29 November 2016, p 31.

We consider that the draft Guidelines have no contractual standing and do not form part of the contractual requirements set out in the Deed. Rather, the Deed provides for the obligations of the parties in relation to the scope and responsibilities ... for the Adjustment Works.<sup>189</sup>

- 2.118** In this letter, however, ALTRAC also stated that after a preliminary review of the draft guidelines it was apparent that 'the approach taken by Ausgrid to the treatment of utilities is inconsistent with the initial treatment plans that were collaboratively developed with Ausgrid during the proposal period'. It ends by stating 'We are concerned that the draft Guidelines is substantially wider than that envisaged in the Deed'.<sup>190</sup>
- 2.119** However, Transport for NSW argued that the guidelines were discussed subsequently at meetings with Ausgrid and ALTRAC on 27 March 2015, 1 April 2015 and 15 April 2015. According to the department, ALTRAC undertook to provide Ausgrid and Transport for NSW with a markup of the guidelines identifying it and Acciona's concerns but this was 'ultimately never provided'.<sup>191</sup> As noted earlier, however, Acciona made a formal claim in May 2015 against the department for a contract modification due to the impact of changes to the guidelines (see paragraph 2.104).
- 2.120** Mr Staples acknowledged these issues are now relevant to a dispute before the court, saying 'it is best left to the court to make a determination about Acciona's claim' (see from paragraph 2.134).<sup>192</sup>
- 2.121** Mr Staples also pointed out that even though Acciona claimed they were given the draft guidelines after financial close of the contract, the original contract, which set out the scope for the design and construction, was signed in December 2014, and then the financial contract was signed in February 2015. He explained:

What happens, and it is like a normal design and construct contract, is that if there was no finance, that would have been it. But because there is financing, there is a process for the financiers to go through and do their final due diligence, tick off some conditions precedent in relation to this, and that ran through until late February. So that is finance, being equity and debt. That is not unusual. Sometimes they are done a couple of days apart and sometimes they are done a couple of months apart depending on the nature of the contract. It is actually relatively academic that it was the financial close around the time that the Ausgrid guidelines were provided, because Acciona signed up to its contract obligations in December 2014.<sup>193</sup>

- 2.122** In terms of Acciona's claims that it should have been provided with the Ausgrid report which costed the removal and replacement of assets in George Street, Mr Staples said that the report 'is irrelevant because it involved moving all utilities out of George Street which is not what was planned or has occurred'.<sup>194</sup> Further, in response to a supplementary question about this report,

---

<sup>189</sup> Correspondence from Mr Glenn Bentley, OpCo Representative, ALTRAC Light Rail Partnership, to Mr Jeff Goodling, Transport for NSW's Representative, 20 April 2015.

<sup>190</sup> Correspondence from Mr Glenn Bentley, OpCo Representative, ALTRAC Light Rail Partnership, to Mr Jeff Goodling, Transport for NSW's Representative, 20 April 2015.

<sup>191</sup> Answers to supplementary questions, Transport for NSW, 12 December 2018, p 16.

<sup>192</sup> Evidence, Mr Staples, 29 November 2016, p 29.

<sup>193</sup> Evidence, Mr Staples, 29 November 2016, p 50.

<sup>194</sup> Evidence, Mr Staples, 29 November 2018, p 28.

Transport for NSW noted that this report was provided to tenderers (including Acciona as part of the consortium), although it did not actually include any costing or figures of \$600-\$700 million. The department reiterated that the report was not relevant as the work did not progress in the way the report anticipated.<sup>195</sup>

**2.123** When asked whether the utilities risks associated with the project were misunderstood, Transport for NSW replied:

Transport for NSW (TfNSW) undertook utilities investigations and disclosed the outcome of those investigations to tenderers. TfNSW also disclosed detailed utilities information about Ausgrid pits and other utilities, including detailed surveys, to tenderers (including ALTRAC) during the tender phase of the project. It was transparent to tenderers to what extent utilities investigations have been undertaken or not. The Project Deed contains detailed provisions regarding the allocation of risk for utilities and these provisions were specifically negotiated with the successful tenderer.<sup>196</sup>

**2.124** Reflecting on Acciona's claims that they will lose \$1 billion on the project, Mr Staples highlighted the responsibility of government to make sure that they only pay claims under the contract, including variations, which he noted will not necessarily reflect the costs of the contractor. He added that it is the responsibility of the contractor to 'manage its workforce, to manage its design process, to manage its construction program, and all of those things are very, very critical to what the final costs of the contractor are'. He said that 'the focus for the government should be: what is their entitlement?'.<sup>197</sup>

### **Ausgrid's evidence**

**2.125** Ausgrid also provided evidence about the purpose of the Adjustment Guidelines and how they were distinct from Schedule F8, an attachment to the contract. This is relevant to Acciona's claims that the utility treatments were included in Schedule F8 to the contract.

**2.126** Ausgrid said that the Adjustment Guidelines are a 19 page concept level document setting out the standards and protocols that are applicable to develop the treatment plans and undertake the necessary adjustment works for Ausgrid assets. By comparison, Schedule F8 is a 142 page document which provides technical information for all utilities which may be impacted by the CSELR project, including Ausgrid assets. Ausgrid said that this document also includes potential treatment proposals for each of those utilities – subject to development of future treatment plans and collaboration with utility owners. In this regard, Ausgrid said that the documents 'serve different purposes'.<sup>198</sup>

**2.127** Representatives from Ausgrid disagreed with some of the evidence provided by Transport for NSW. In relation to evidence from Mr Troughton about the guidelines being withdrawn, Mr Gross said 'It is not our understanding that they were rejected'.<sup>199</sup> Ausgrid said that as far as they

<sup>195</sup> Answers to supplementary questions, Transport for NSW, 12 December 2018, p 12.

<sup>196</sup> Answers to supplementary questions, Transport for NSW, 4 November 2018, p 4.

<sup>197</sup> Evidence, Mr Staples, 29 November 2018, p 38.

<sup>198</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 15.

<sup>199</sup> Evidence, Mr Gross, 5 November 2018, p 25.

are aware 'Ausgrid has no record of withdrawing the Adjustment Guidelines on 25 May 2015 or at any time'.<sup>200</sup>

**2.128** Ausgrid also told the committee that they were not aware of any notification provided to them about when financial close of the PPP contract occurred.<sup>201</sup>

**2.129** In relation to whether Ausgrid communicated to Acciona that new guidelines were being developed, before financial close, Mr Armstrong from Ausgrid stated 'It is not our role'. He clarified the role Ausgrid played at stakeholder meetings: 'We were party to some meetings on behalf of Transport, but we were there to provide support to Transport pre-signing of the Acciona contract'.<sup>202</sup>

**2.130** When the committee asked why the guidelines were released after the contract was signed, and not earlier when Acciona and other contractors were working through the specifics of the project, Mr Gross highlighted how some of the construction work was at that stage unknown:

... To develop the treatment plans you need to know where the rail is going, and the concrete bridge of where the rail is actually in the road. That was not known. Once that is known you can then go through and look at the standards, develop the plans and develop the detailed design.<sup>203</sup>

**2.131** Mr Trevor Armstrong, Chief Operating Officer, Ausgrid, suggested some of the treatments for the utilities changed after the location of the track and nature of the track slab were determined.<sup>204</sup> Mr Noonan disagreed with this evidence, stating that the design was finalised in the tender process, including the Aesthetic Power Solution (APS) track. Mr Noonan contended that the changes arose as a direct result of amendments to Ausgrid's guidelines.<sup>205</sup>

**2.132** Ausgrid rejected any notion that there were deliberate attempts to keep critical information from Acciona. Mr Armstrong specifically denied that there is any 'conspiracy' in this regard, maintaining the position that the 'guidelines were produced to interpret and assist the network standards, which were publically available through the whole process'.<sup>206</sup>

**2.133** Throughout Ausgrid's evidence, it was stressed that the network standards were the key document which everyone had to comply with. Mr Gross stated:

To be clear the network standards which were there prior to the contract and after the contracts through the duration of this have not materially changed. They are the

---

<sup>200</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 11.

<sup>201</sup> Answers to questions on notice, Ausgrid, 27 November 2018, p 17.

<sup>202</sup> Evidence, Mr Trevor Armstrong, Chief Operating Officer, Ausgrid, 5 November 2018, p 18.

<sup>203</sup> Evidence, Mr Gross, Chief Executive Officer, Ausgrid, 5 November 2018, p 19.

<sup>204</sup> Evidence, Mr Armstrong, 5 November 2018, p 22.

<sup>205</sup> Evidence, Mr Noonan, 29 November 2018, p 22. See also the answers to questions on notice provided by Acciona, 21 December 2018, pp 5 and 7, where Mr Noonan discusses the APS system and its interaction with the track alignment and Ausgrid assets, and how this was an issue included in the negotiations through the tender process for the project.

<sup>206</sup> Evidence, Mr Armstrong, 5 November 2018, p 17.

standards that guide how Ausgrid's assets are adjusted. The guidelines are there to assist in the interpretation of the standards.<sup>207</sup>

### Court case

- 2.134** As discussed earlier, the dispute between Transport for NSW and Acciona about the alleged impact of the Ausgrid guidelines is relevant to the current court case between the parties. Acciona has commenced court proceedings against Transport for NSW claiming they were misled into entering into a contract with ALTRAC.<sup>208</sup>
- 2.135** On this matter, Mr Noonan explained that while Acciona can pursue variations to the contract under the contracting regime, they have had 'to go down the misleading or deceptive conduct route' in relation to getting some compensation for changes to schedule F8.<sup>209</sup>
- 2.136** The committee heard that the dispute between the department and Acciona is unusual. Mr Staples expressed his view about the 'unusual circumstance in this particular project', given Transport for NSW's capital program spend is in the order of \$50 billion. He acknowledged that the department has disputes with clients, but said that 'there is nothing, nothing at all, that compares with these circumstances'. Explaining why the matter is so 'unusual', Mr Staples said:

The fact that we have received a misrepresentation claim at all, given that we are involved in pre-procurement processes with contractors on a regular basis. We have a lot of expertise and experience across Roads and Maritime Services, Transport for NSW, Sydney Trains and Sydney Metro. We do that on a regular basis with the market and with industry. We go through industry briefings, we go through expression of interest processes, we go through tender processes, we have interactives with tenderers, we bring utilities authorities such as Ausgrid to the table to interact on a regular basis and we enter into contracts all the time. Our contracts are worth tens of millions and hundreds of millions and billions of dollars. We do not get misrepresentation claims. This is extremely unusual, and that is what I mean by that.<sup>210</sup>

- 2.137** While contentious issues between the parties are outlined above, Mr Staples made several comments about the court case. In particular, he noted that the basis of the claim has changed over time:

I think you also need to remember that the basis of the misrepresentation claim over the period since we received it earlier this year has changed. The original premise was that we had somehow misled Acciona in 2014 because we had access to Ausgrid guidelines, which we clearly did not.

It was not until they went on a fishing expedition through the legal process that they subsequently found out when we did receive them and they have sought to turn that into a claim. The premise of their misrepresentation claim has changed over the period of time.<sup>211</sup>

<sup>207</sup> Evidence, Mr Gross, 5 November 2018, p 19.

<sup>208</sup> Evidence, Mr Staples, 29 November 2018, p 29.

<sup>209</sup> Evidence, Mr Noonan, 29 November 2018, p 10.

<sup>210</sup> Evidence, Mr Staples, 29 November 2018, p 30.

<sup>211</sup> Evidence, Mr Staples, 29 November 2018, p 31.

**2.138** In terms of the timing of the claim Acciona has made, Mr Staples reflected:

... more than three years after Acciona made this amendment, and at that time they ought to finish their civil construction works for this project and are exposed to significant liquidated damages under their contract with ALTRAC, Acciona commenced its court proceedings against Transport for NSW claiming they were misled into entering into their contract with ALTRAC for the very same risks that we had mitigated for that contract.<sup>212</sup>

**2.139** Mr Staples cautioned the committee about the different views expressed during the inquiry. He said that 'it is ultimately the court that will determine some of the differences at this point'.<sup>213</sup>

**2.140** Relevant to these issues and the media attention surrounding the court case, Mr Noonan expressed concerns about the reputational damage Acciona has experienced. He noted that although Acciona has not received formal notification as such, it is likely that his company will be unable to bid for future government contracts in New South Wales, particularly in light of the time and money it takes to bid on projects and the reputational damage Acciona has experienced through 'extremely damaging' media reports. He said that they 'have no desire to do anything but complete this project as quickly as possible'.<sup>214</sup>

### **Contract management issues**

**2.141** Aside from the 'unusual' circumstances of the dispute between Acciona and the department, Mr Staples also reflected on what they could have done differently when managing the project. He said that third party agreements could have been sorted out in a more timely manner, and that 'there is a question mark to be made around how we have managed the contractor through the course and whether or not we should have been more aggressive in our dealings with the contractor early on'.<sup>215</sup>

**2.142** In fact, contract management was an issue raised in the November 2016 gateway review report for the project, which was a progress report prepared by Infrastructure NSW for project assurance. The committee was provided with a copy of this report, and the previous gateway health check report, from February 2016.<sup>216</sup>

**2.143** The February 2016 report made a few observations about how the project was progressing:

- that for a PPP, there was 'unusually' a large number of unresolved scope issues
- that scope issues have contributed to a large amount of 'open' modifications which needed to be reduced
- certain planning conditions for the project needed to be finalised

---

<sup>212</sup> Evidence, Mr Staples, 29 November 2018, p 29.

<sup>213</sup> Evidence, Mr Staples, 29 November 2018, p 29.

<sup>214</sup> Evidence, Mr Noonan, 29 November 2018, p 8.

<sup>215</sup> Evidence, Mr Staples, 29 November 2018, p 30.

<sup>216</sup> Transport for NSW, *Gateway Health Check Report – Preliminary Draft* (February 2016).

- there were a wide variety of third party stakeholders, with many having little understanding of the impacts of introducing scope changes into PPP contracts, with the need for urgent stakeholder engagement to improve this
- certain design aspects needed to be finalised, for example, on Devonshire Street in Surry Hills.<sup>217</sup>

**2.144** Transport for NSW noted that following this report, it continued to closely monitor and work with ALTRAC regarding the sequencing of construction work and activities, particularly in Surry Hills. It also focused on clarifying and reducing scope uncertainty, and stakeholder engagement. Further, the department said that the project team continued to manage any claims and modifications in accordance with the project deed.<sup>218</sup>

**2.145** The November 2016 report also tracked how the project was progressing in several areas. For service delivery, affordability and value, and risk management, the rating was recorded as 'weak'. The report stated that in the absence of immediate remediation measures the completion of the project was highly unlikely to be achieved either on time or on budget.<sup>219</sup>

**2.146** Mr Staples stated that the November 2016 report 'determined that there were some significant aggressive behavior on the part of the contractor in the way they were approaching issues and claims with Transport and that Transport for NSW were clearly being helpful, and compared to standard practice, were probably being more helpful than usual'. He felt that the report showed that the contractor was having difficulty with delivery and an 'adversarial relationship' was developing between the two parties. Mr Staples added:

... with experience on managing a number of large-scale contracts ... clearly the contractor, because it is a design and construction contract, not just a construction only contract, is clearly struggling to get its design program finalised. The pathway to a successful project is to get the design process completed in a timely manner, and that relies heavily on a competent designer that can navigate the uncertainties and resolve the issues in a constructive and proactive way, whether it be within Ausgrid or whether it be within Transport, depending on the nature.<sup>220</sup>

**2.147** The report encouraged Transport for NSW to determine all outstanding claims, but noted that 'it is highly likely this strategy will raise a dispute between the parties and this scenario should be anticipated'. Mr Staples reflected on this advice, suggesting that to bring matters to a head the department had to determine claims, and due to insufficient information, 'then you determine the claims at either very low values or zero, depending on the nature'. Mr Staples explained that this was the catalyst for the security of payments process:

... once we decided to essentially determine the claims with little or zero value, that produced the dispute resolution process. I think it actually served its purpose and we followed the recommendation of this report and that provided a path forward for a number of months. It did not deliver the outcome, but I think at that point in time it set the right direction.<sup>221</sup>

<sup>217</sup> Transport for NSW, *Gateway Health Check Report – Preliminary Draft* (February 2016), pp 3-4

<sup>218</sup> Answers to questions on notice, Transport for NSW, 12 December 2018, p 7.

<sup>219</sup> Infrastructure NSW, *Health Check – In Delivery Report* (v1.0, 24 November 2016), p 3.

<sup>220</sup> Evidence, Mr Staples, 29 November 2018, pp 41-42.

<sup>221</sup> Evidence, Mr Staples, 29 November 2018, p 43.

- 2.148** The security of payment claims made by Acciona, which are relevant to this, were discussed earlier, see paragraph 2.67. Transport for NSW also noted that following this report it commenced a resolution process with ALTRAC and Acciona in an effort to mitigate any delays and ensure the project was on track for completion by its due date. The department focused on addressing key areas which were identified as weak by Infrastructure NSW, focused on finalising third party agreements, and was advised by ALTRAC that both Acciona and ALTRAC had reviewed their teams on the project, which led to Transport for NSW instigating a stakeholder engagement process.<sup>222</sup>
- 2.149** Mr Staples disagreed that the report showed that Transport for NSW had not been very successful in managing the contract. He suggested that the project could have been in a worse position than what it was now if it did not take the remediation measures suggested by the report. While he acknowledged that project timeframes had extended, he did not think that it was a fair characterisation to say that the project was 'not on time or on budget'. Mr Staples emphasised just how much work on the CSELR has been achieved, with only 99 metres of track to lay, 18 or 19 stops completed, 90 per cent of drainage work complete, 40 per cent of paving work complete and five of the 10 substations having power.<sup>223</sup>

#### **Committee comment**

- 2.150** The committee was very troubled by the conflicting evidence given in relation to the impact of changes to Ausgrid's Adjustment guidelines. It was difficult to reconcile the evidence provided by witnesses from Transport for NSW, Acciona and Ausgrid, and it was not clear why the changes took place or why the updated guidelines were provided to Acciona immediately after financial close of the contract in February 2015.
- 2.151** That aside, the committee accepts that the guidelines were produced to clarify network standards in relation to the treatment of utility assets. How the updated guidelines affected the contractual obligations of the parties will ultimately be resolved as part of the court case currently on foot between Acciona and Transport for NSW. In light of these proceedings, and without wanting to prejudice matters, the committee makes no further comment about these issues.
- 2.152** On a separate matter, the committee was interested in Mr Noonan's comments regarding the appropriateness of the PPP contract for this project. In light of project delays and rising costs, complexities associated with the contract structure, and the utility risks and lack of power contractors have to influence utility owners, the committee believes it would be useful for the government to review whether the PPP contract was indeed the most appropriate contract structure for this type of infrastructure project.
- 2.153** The committee therefore recommends that the NSW Government formally request the Auditor-General to undertake a review of the effectiveness of PPP contracts for significant state infrastructure projects, in light of contractual issues that have arisen in relation to the CSELR Project.

---

<sup>222</sup> Answers to questions on notice, Transport for NSW, 12 December 2018, p 9.

<sup>223</sup> Evidence, Mr Staples, 29 November 2018, pp 47-48.

---

### Recommendation 1

That the NSW Government formally request the Auditor-General to undertake a review into the effectiveness of Public Private Partnership contracts for significant state infrastructure projects, in light of contractual issues that have arisen in relation to the CBD and South East Light Rail project.

---

## Management of heritage items and artefacts

- 2.154** Given the particular landscape of the Sydney CBD precinct, heritage items and artefacts have been discovered along the CSELR route during construction. This section discusses the protocols for the removal of these items. It also examines one incident where human remains were found at a site on Chalmers Street in Surry Hills.
- 2.155** Transport for NSW said that it had always expected to encounter challenges, such as heritage issues, given they were building down one of Sydney's oldest streets.<sup>224</sup> In this regard, Ms Prendergast advised that they have been very mindful of heritage impacts along the CSELR route and how heritage items are managed.<sup>225</sup>
- 2.156** Ms Prendergast told the committee that they have found a number of artefacts along the route and have sought to 'commemorate, preserve and use them in education so that we can share them and share their stories'.<sup>226</sup> She went on to explain some of the types of items that they have found:
- A World War II bunker is in High Cross Park; we have got a former sandstone road in zone 29 in Anzac Parade; we found another one in zone 31; we found colonial-era culverts and drains at Lilyfield; in Ward Park we found pub and house footings near that park, which are nineteenth century; shop footings in Devonshire Street; and we found the first warehouse and Chinese merchant and coffee house business in Alfred Street. We found a very significant heritage find in the stabling yard itself with Aboriginal artefacts, which were the first sign of innovation.<sup>227</sup>
- 2.157** Finding and preserving heritage items and artefacts takes time and has been one of the reasons the project has been delayed. Ms Prendergast acknowledged this, noting that heritage issues have caused delays in some of the zones.<sup>228</sup> The delays to the project are discussed at paragraph 2.2.
- 2.158** Mr Bramley also highlighted that one of the reasons that some of the zones have taken longer than expected is due to finding heritage artefacts during construction,<sup>229</sup> explaining that 'every

---

<sup>224</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 17.

<sup>225</sup> Evidence, Ms Prendergast, 4 October 2018, p 60.

<sup>226</sup> Evidence, Ms Prendergast, 4 October 2018, p 61.

<sup>227</sup> Evidence, Ms Prendergast, 4 October 2018, pp 60-61.

<sup>228</sup> Evidence, Ms Prendergast, 20 August 2018, p 10.

<sup>229</sup> Evidence, Mr Bramley, 4 October 2018, p 34.

time we find something underground that was not envisaged, investigations and safety procedures must be followed, which takes additional time'.<sup>230</sup>

**2.159** Similarly, Mr Noonan stated that the 'discovery of heritage items also caused significant delays to work'.<sup>231</sup>

**2.160** One issue that arose during the inquiry was an incident involving the discovery of human remains and how Acciona's workers dealt with this issue.

**2.161** On 29 October 2018, the *Sydney Morning Herald* reported that bones had been uncovered by workers on Chalmers Street, Surry Hills, with a spokeswoman from ALTRAC quoted in the article saying that the bones were 'respectfully removed by heritage experts and analysis by a forensic anthropologist [at] the University of Sydney confirmed the bones to be human'.<sup>232</sup>

**2.162** A number of days later, on 2 November 2018, a video was released showing a construction worker inappropriately removing the human remains, with the *Sydney Morning Herald* reporting that 'disturbing footage has emerged that shows a construction worker cracking jokes about the bones as he dug them up and tossed them out of the hole'.<sup>233</sup>

**2.163** During a hearing, Mr Noonan was questioned in regards to the incident.<sup>234</sup> Mr Noonan explained that during excavation work at about midnight, remains were found, and at this time the supervisor on site reported it to the site engineer who ordered that they stop work, and contacted the project engineer to discuss what to do next. Mr Noonan said that a conversation was had amongst the three workers that 'things had to be left as they were', however there was a fragile cement pipe sitting above the bones and the workers were concerned that the 'bones would be damaged because the pipe in the weak soil was going to collapse'. Consequently, a decision was made to remove the bones so that the pipe would not cause any damage to them.<sup>235</sup>

**2.164** Mr Noonan acknowledged that his workers had made an incorrect decision by removing the bones and agreed that the manner in which they were removed was disrespectful:

They did make a mistake by deciding to remove the bones but the mistake they made was believing it to be the right course of conduct for each of them. When they did so, the supervisor jumped in the hole. He made a second mistake. In taking the bones out of the hole, he clearly did not handle them respectfully. That is the truth, that is a matter of fact, and it is what the video shows. After that, there was no further work ... The breakdown of the mistakes, in the first instance, was removing the bones out of the hole but the mistake being made there was done innocently and believing it to be the

---

<sup>230</sup> Evidence, Mr Bramley, 4 October 2018, p 24.

<sup>231</sup> Answers to questions on notice, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, p 8.

<sup>232</sup> Jenny Noyes, 'Grisly find to further delay late-running Sydney light rail project', *Sydney Morning Herald*, 29 October 2018, p 1.

<sup>233</sup> Jenny Noyes, 'Footage shows Sydney light rail project worker joking, tossing human bones', *Sydney Morning Herald*, p 1.

<sup>234</sup> Mr Noonan confirmed that the events of the incident as described at the hearing was reported to Mr Noonan from each of the three workers having been interviewed independently and Mr Noonan had not spoken with them directly (Evidence, Mr Noonan, 29 November 2018, p 14).

<sup>235</sup> Evidence, Mr Noonan, 29 November 2018, pp 13-14.

right thing to do. The second mistake was the supervisor in his handling of those bones, absolutely.<sup>236</sup>

**2.165** Mr Noonan further explained that 'immediately at seven o'clock in the morning, the process of notifying the archaeologist, notifying the police, all occurred throughout that day in our normal process'. Mr Noonan confirmed that the relevant authorities were all notified during that same day and he was not aware of any follow-up from those parties, commenting that if 'any of them were to follow up further, we would cooperate fully, as we did at the time'.<sup>237</sup>

**2.166** When questioned about the initial statement that the remains were 'respectfully removed by heritage experts', Mr Noonan told the committee that they had not made that statement in the media, that it was ALTRAC who provided the statement and he had no knowledge as to what extent Acciona contributed to that information.<sup>238</sup> Mr Noonan went on to make a distinction between two events - the bones being initially removed by the worker and then later removed from the site by a heritage expert. On this basis, he felt that the media article was technically correct by referring to the later removal by experts.<sup>239</sup>

**2.167** In terms of who filmed the footage, Mr Noonan stated that they had not yet established who took the footage, however they suspected that it was a contractor of Acciona who had since gone overseas.<sup>240</sup> Mr Noonan went on to say that although it is reasonable for a video to be taken, the employee should have followed the correct process in notifying Acciona and not the media:

Sorry, it is quite reasonable for an employee to take a video. The proper process would be for that video to come to us so that we can deal with it immediately. If dealing with it required us to go to the authorities we would do that straight away.<sup>241</sup>

**2.168** Mr Noonan told the committee that the worker who had mishandled the remains was stood down for approximately 10 days whilst an investigation took place. The investigation found that the action this worker took did not justify a dismissal. Mr Noonan noted, however, that the worker 'has been severely reprimanded and he has been allowed to continue to work'. As part of this investigation, Mr Noonan said that a 'just and fair culture review' was undertaken and any repeat behaviour or previous incidents of this nature would have been considered. In this regard, Mr Noonan expressed the view that he did not believe there was a systematic issue across the work sites.<sup>242</sup>

**2.169** Representatives from Transport for NSW were also questioned in regards to this incident during a public hearing. Mr Staples was extremely disappointed and disgusted in what had occurred:

We were completely disgusted by what we saw in the video. I remain completely disgusted and appalled that anything like that would be done by any contractor and nothing that anyone can say to me, having seen that video, can change that. I can tell

<sup>236</sup> Evidence, Mr Noonan, 29 November 2018, p 14.

<sup>237</sup> Evidence, Mr Noonan, 29 November 2018, pp 14-15.

<sup>238</sup> Evidence, Mr Noonan, 29 November 2018, p 18.

<sup>239</sup> Evidence, Mr Noonan, 29 November 2018, p 17.

<sup>240</sup> Evidence, Mr Noonan, 29 November 2018, p 14.

<sup>241</sup> Evidence, Mr Noonan, 29 November 2018, p 18.

<sup>242</sup> Evidence, Mr Noonan, 29 November 2018, p 15.

you that as a leadership group in Transport, we saw that as a reflection of us. They are our contractor. When I think across Transport for NSW and the work we do with Indigenous communities around their heritage, things we do elsewhere across Sydney with other heritage items, I think that that was not reflective of the intent that we have. I am not saying we get it perfect every other time either, by the way, but this was a complete outlier. I cannot think of my time in transport where I have been more disappointed in the behaviour of the contractor.<sup>243</sup>

- 2.170** Mr Staples went on to say that he thought the incident 'reflects an overall attitude and focus on the quality of the work that is going on with this job in respect of the leadership and culture that has been demonstrated', however, he also recognised that it is not a reflection of the whole workforce, particularly the 'individual construction workers that turn up day in and day out doing the hard work on the ground'.<sup>244</sup>
- 2.171** Further, Mr Staples recognised the individual who took the video and congratulated them on putting their hand up and doing something about it, commenting that this would have been very difficult, given the mateship on construction sites and also the risk to their job.<sup>245</sup> Mr Staples also expressed the view that 'in an organisation where the culture is right the worker would feel comfortable in reporting that directly to their managers or have a process within the organisation to do that'.<sup>246</sup>
- 2.172** In relation to the initial statement in the media, Mr Staples noted that the only way that ALTRAC would have made that statement would have been from information provided by Acciona.<sup>247</sup> Further, Mr Staples said that 'there is no doubt that the statement that was made compounded the issue'.<sup>248</sup>
- 2.173** In terms of the actions taken following the incident, Mr Staples commented that he was not convinced that Acciona has 'followed through and put enough action in place at this point of time', indicating that Transport for NSW 'will continue to discuss that with them'.<sup>249</sup>
- 2.174** Mr Staples also indicated that Acciona has commenced a notice of claim for the time and costs associated with the delays caused by this incident. Mr Staples noted that by Acciona not following the correct process in removing the human remains they now have to go through an assessment process with the Department of Planning and Environment before being able to go back on site, which has already gone on for some weeks. Mr Staples said that Acciona 'will claim that they have not been able to work on that site for those weeks, and they will look to push that back to government and say that is governments fault'.<sup>250</sup>
- 2.175** However, at a hearing Mr Noonan said that he was unaware of Acciona making a claim against the contract for delays caused by this particular incident, noting that he was 'unaware if we are

---

<sup>243</sup> Evidence, Mr Staples, 29 November 2018, p 52.

<sup>244</sup> Evidence, Mr Staples, 29 November 2018, p 52.

<sup>245</sup> Evidence, Mr Staples, 29 November 2018, p 53.

<sup>246</sup> Evidence, Mr Staples, 29 November 2018, p 54.

<sup>247</sup> Evidence, Mr Staples, 29 November 2018, p 53.

<sup>248</sup> Evidence, Mr Staples, 29 November 2018, p 55.

<sup>249</sup> Evidence, Mr Staples, 29 November 2018, p 53.

<sup>250</sup> Evidence, Mr Staples, 29 November 2018, p 54.

even entitled to make a claim'.<sup>251</sup> Following this, in an answer to a question taken on notice, Mr Noonan noted that the discovery of bones entitles the 'Design & Construct' contractor to a 'relief event' under the contract, and while the contractor has issued a written notice on 20 November 2018 stating that a 'relief event' had likely occurred, the contractor 'has not issued Claim Particulars and has not claimed time or cost in relation to this event'.<sup>252</sup>

- 2.176** In regards to the correct protocol that should be followed in these circumstances, Ms Prendergast noted that human remains discovered during construction must be managed in accordance with the *Heritage Council of NSW Skeletal Remains: Guidelines for Managements of Human Remains*, which was part of the conditions of approval for the Sydney Light Rail project.<sup>253</sup> During a hearing she read out what the plan stipulates:

Ensure that no further disturbance occurs. Do not handle any of the findings so as to prevent further misplacement. Inform the project site manager, who will inform the project archaeologist. Report the finding immediately to the NSW Police and the New South Wales Coroner's office. A special forensic anthropologist will be consulted to determine the nature of the remains. If the remains are suspected to be Aboriginal, OEH [Office of Environment and Heritage], or from a community group, they are also to be advised. An investigation will be undertaken in consultation with the Department of Planning and Environment and in accordance with the appropriate guideline—which in this case is Skeletal Remains-Guidelines for Management of Human Skeletal Remains—Works will not recommence in the area unless authorised by the Department of Planning and Environment and/or NSW Police.<sup>254</sup>

- 2.177** Acciona acknowledged in their response to questions on notice that this protocol applies. It also confirmed that there is also a requirement to lodge a Human Remains Management Plan to the Department of Planning and Environment to enable the recommencement of works in the vicinity of the find. Acciona noted that this document was submitted to the Department of Planning and Environment on 21 December 2018.<sup>255</sup>

### **Committee comment**

- 2.178** The committee were appalled by the disrespectful handling of human remains discovered by Acciona's workers. It is clear that the workers on site did not follow the appropriate protocol and the remains were not 'respectfully' removed as was reported in the media.
- 2.179** The committee believes this situation was made worse by the conflicting messages reported in the media. We do not accept that the statements were technically correct, as Mr Noonan argued. Indeed, it is our view that the statements made in the media were clearly an inaccurate representation of what occurred.
- 2.180** The committee commends the worker who took the video for having the courage to expose this type of inappropriate behaviour. Like Mr Staples, we question whether there is an underlying cultural issue within the organisation that deterred this individual from feeling

<sup>251</sup> Evidence, Mr Noonan, 29 November 2018, p 24.

<sup>252</sup> Answers to questions on notice, Acciona Infrastructure Australia, 21 December 2018, p 8.

<sup>253</sup> Answers to questions on notice, Transport for NSW, 12 December 2018, p 13.

<sup>254</sup> Evidence, Ms Prendergast, 29 November 2018, p 54.

<sup>255</sup> Answers to questions on notice, Acciona Infrastructure Australia, 21 December 2018, p 3.

comfortable in bringing this issue to the attention of his superiors. Unfortunately though, we did not receive sufficient evidence to make further comments on whether or not this is the case.

- 2.181** The committee considers that it would be inappropriate for Acciona to include in their claim any delays in time that can be attributed to the assessment process being undertaken by the Department of Planning, given mishandling of the remains is what triggered this process. We note that Transport for NSW will likely take steps to ensure that this issue is considered when determining the claim.
- 2.182** While Transport for NSW indicated that it will continue to discuss matters surrounding this issue with Acciona, the committee believes that it is necessary for the government to undertake a full investigation into the mishandling of these remains, and we therefore make this recommendation.

---

### **Recommendation 2**

That the NSW Government ensure that a full investigation is undertaken into the mishandling of human remains on 29 October 2018 in Chalmers Street, Surry Hills, by workers from Acciona Infrastructure Australia.

---

## Chapter 3 Capacity and journey times

This chapter will focus on the projected capacity of the CBD and South East Light Rail (CSELR) service and estimated journey times. It will outline some concerns from inquiry participants on both of these matters and discuss factors such as the configuration of light rail vehicles and optimisation of intersections along the route.

The latter part of this chapter will detail a related patronage issue, on whether an additional stop should have been included in Surry Hills, near Wimbo Park, to allow for demand in this location.

### Capacity of light rail services

**3.1** The NSW Government maintains that the CSELR will increase public transport capacity between the city and Kingsford/Randwick. This section will discuss the projected capacity of light rail services, the configuration of the light rail vehicles themselves, and concerns held by stakeholders about whether the forecasted capacity is accurate.

#### Projected capacity

**3.2** As outlined in chapter 1, Transport for NSW support the need for light rail due to congestion in Sydney CBD and challenges with the existing bus network. In particular, it supported the need for a light rail route between Kingsford/Randwick and the CBD, given forecasted growth in the number of passengers commuting along these corridors, and the location of major key activity hubs, such as sporting precincts and recreation and entertainment facilities.

**3.3** Transport for NSW stated that each light rail vehicle will be able to carry up to 450 people, which is equivalent to nine standard buses, and the capacity will be up to 13,500 passengers per hour, which is up to 6,750 in each direction. It noted that the system can also grow to meet future demand in growth by operating at increased frequency.<sup>256</sup>

**3.4** Based on 6,750 passengers per hour per direction, Mr Brian Brennan, the Managing Director of Transdev Sydney, the company that will be operating the light rail service, explained that there would be approximately '21 to 22 trams in service with three spares', which would use '50 of the 60 that have been purchased'. He clarified that this is based on the configuration of two light rail vehicles coupled together (discussed further below).<sup>257</sup>

**3.5** In terms of the frequency of services, Mr Brennan advised the committee that it will be 'eight minutes on both of the branches and four minutes on the trunk'. He clarified that this means a four minute service from Moore Park to Circular Quay between seven in the morning to seven in the evening, and then eight minutes between Moore Park and Randwick/Kingsford.<sup>258</sup>

**3.6** Transport for NSW also told the committee that a combined bus and light rail network will deliver city bound morning peak capacity increases of more than 10 per cent from Kingsford

<sup>256</sup> Submission 39, Transport for NSW, p 7.

<sup>257</sup> Evidence, Mr Brian Brennan, Managing Director, Transdev Sydney, 3 October 2018, pp 56-57.

<sup>258</sup> Evidence, Mr Brennan, 3 October 2018, p 63.

and 30 per cent from Randwick, and a doubling of morning peak capacity from the CBD to the University of New South Wales and the Randwick Hospital Precinct.<sup>259</sup>

### **Configuration of the light rail vehicles**

**3.7** The vehicles that will be used on the light rail route are the Citadis XO5's. Mr Mark Coxon, Managing Director, Alstom Transport Australia, the company responsible for providing the vehicles, explained that the configuration includes a 33 metre long vehicle which will be coupled together into two vehicles.<sup>260</sup>

**3.8** Mr Coxon said that the capacity of the two coupled vehicles is 450 people, which is based on 'four people per square metre standing'.<sup>261</sup> In terms of what this means for standing and seating, he clarified:

On the vehicle itself there are seating areas and there are standing areas. Typically on a light rail vehicle, because the journeys are quite short, people often elect to stand. Therefore, to maximise capacity you have a standing environment and you have a seated environment. Just over, I think, 20 per cent of the capacity is seated. The rest of that is standing.<sup>262</sup>

**3.9** While Mr Coxon said that the vehicles have 'the potential to go to six people per square metre', in this instance Alstom Transport Australia responded to technical specifications imposed by the government, which were based on the need for four people per square metre:

We have basically addressed a tender specification that required 9,000 people per hour per direction and we felt that was the best solution and the customer, in this case ALTRAC and the government, selected that solution. It can increase. We have cities around the world where we will go to six people per square metre but it was felt I think in Australia that would be too cramped and the four is the right configuration.<sup>263</sup>

**3.10** Four people per square metre, as noted by Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW, 'is a common standard ... used, particularly in Europe'.<sup>264</sup> As to jurisdictions that operate at a higher standard, Alstom Transport Australia told the committee that 'high density cities in countries such as Japan and Hong-Kong operate above 4p/m<sup>2</sup> on a usual basis'.<sup>265</sup>

---

<sup>259</sup> Submission 39, Transport for NSW, p 7.

<sup>260</sup> Evidence, Mr Mark Coxon, Managing Director, Alstom Transport Australia, 3 October 2018, p 38.

<sup>261</sup> Evidence, Mr Coxon, 3 October 2018, p 39.

<sup>262</sup> Evidence, Mr Coxon, 3 October 2018, p 39.

<sup>263</sup> Evidence, Mr Coxon, 3 October 2018, p 39.

<sup>264</sup> Evidence, Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW, 4 October 2018, p 58.

<sup>265</sup> Answers to questions on notice, Alstom Transport Australia, 2 November 2018, p 6.

### Concerns about capacity

- 3.11** Several inquiry participants questioned whether the light rail service between the city and Kingsford/Randwick will offer increased capacity to transport passengers.<sup>266</sup>
- 3.12** Mr John Bellamy, from the Sydney Light Rail Action Group, argued that the project would cut peak hour public transport capacity by up to 75 per cent. He contended that the light rail vehicles will not have 'sufficient capacity to carry the existing number of passengers per hour and the service will be full from commencement'.<sup>267</sup>
- 3.13** Mr Peter Egan, a civil engineer and member of the same action group as Mr Bellamy, echoed these concerns. He suggested that the department's projected benefits in terms of capacity are problematic as they do not compare like for like. He said that the 'analysis ran off the road in the first instance when they used the crush load capacity for the metro and light rail versus the operational capacity of the double-deckers and the buses'.<sup>268</sup>
- 3.14** In his submission, Mr Egan asserted that the 'nominal capacity' of about 466 passengers on Sydney light rail, based on 4p/m<sup>2</sup> in standing areas, is nearly twice the operational capacity. He contended that 'nominal capacity' makes no allowance for wheelchairs, prams, bags, bicycles and other large items. He also said that it 'makes no allowance for the usability of "standing" space, or the desirability of bringing ... strangers to each other, into such close proximity that they are in continual body contact with other passengers'.<sup>269</sup>
- 3.15** In Mr Egan's opinion, the vehicles will hold about 240 passengers, which he said is 'about 53 per cent of the 450 that the government has been using ...'.<sup>270</sup> Ms Rosemary Mackenzie, also a member of the Sydney Light Rail Group, referred to a study undertaken on behalf of Randwick City Council which looked at this issue.<sup>271</sup>
- 3.16** The report commissioned by Randwick City Council included an analysis of capacity requirements for future public transport commuter services along the Anzac Parade corridor, as part of the Council's residential growth strategy. In the January 2017 report produced by EMM, the author stated:

It is a significant concern that the proposed Light Rail system capacity will actually be lower than the capacity of the existing peak hour bus services which are currently using Anzac Parade and Todman Avenue and the future corridor public transport system will effectively be operating at full capacity from the commencement of operations in 2019. This will require a significant number of existing peak hourly bus services (mainly the existing express bus service) to be retained if the system is to provide adequate public

<sup>266</sup> See for example, Submission 17, Name suppressed, p 1; Submission 8, Name suppressed, p 1; and Submission 51, Ms Jane and Katey Grusovin, pp 4-5.

<sup>267</sup> Evidence, Mr John Bellamy, Founding member, Sydney Light Rail Action Group, 20 August 2018, p 66.

<sup>268</sup> Evidence, Mr Peter Egan, Transport Analyst, Sydney Light Rail Action Group, 20 August 2018, p 68.

<sup>269</sup> Submission 83, Mr Peter Egan, p 4.

<sup>270</sup> Evidence, Mr Egan, 20 August 2018, p 68.

<sup>271</sup> Evidence, Ms Rosemary Mackenzie, Lawyer, Sydney Light Rail Action Group, 20 August 2018, pp 69-70.

transport capacity for all the relevant areas of Randwick LGA [local government area] in the future.<sup>272</sup>

**3.17** Further, the report said that if bus services are not maintained within the light rail system, 'future peak hour passenger crowding levels on the Anzac Parade public transport system will significantly worsen in comparison to current levels'.<sup>273</sup>

**3.18** An addendum to the report, dated 2 March 2018, clarified that the capacity per tram would be approximately 380 persons:

An analysis of maximum passenger crowding rates has been undertaken in the original report. The proposed 66 m long Randwick Light Rail tram vehicles can have 466 persons/143 m<sup>2</sup> area available to passengers = 3.3 persons per m<sup>2</sup>, which is about 25% higher than the average of the previously identified maximum crowding levels (which were defined as crush capacity) for either Sydney trains or buses.

Realistically, the maximum practical crowding level for the proposed 66 m long Randwick trams is probably about 80% of the maximum stated capacity of 466 persons and is about 380 persons per tram. Once an operating tram gets above this level of crowding (which is 2.65 persons per m<sup>2</sup>), there is going to be a tendency for passengers to wait on the platform and hope the next tram is less crowded rather than try to force their way on.<sup>274</sup>

**3.19** Ms Mackenzie suggested that buses will still be needed given the shortfall in capacity at the time the light rail service will commence.<sup>275</sup> Referring to the EMM report, she added that 'it is going to require between 26 and 29 buses per hour to support this light rail'.<sup>276</sup>

**3.20** Some inquiry participants were not clear on whether buses would still operate along the CSELR route once light rail commences.<sup>277</sup> Others felt that these corridors were already well serviced by buses, such that a light rail service is not required.<sup>278</sup>

**3.21** While the NSW Government maintains that the CSELR is needed to help ease the congestion of buses travelling along these busy corridors and into the city, it also emphasised that buses will complement light rail services along the route.

**3.22** Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, highlighted to the committee how bus services will complement the CSELR, and how

<sup>272</sup> EMM, *Anzac Parade corridor future Light Rail station and system capacity analysis* (20 January 2017), p 33.

<sup>273</sup> EMM, *Anzac Parade corridor future Light Rail station and system capacity analysis* (20 January 2017), p 33.

<sup>274</sup> EMM, *Anzac Parade corridor future Light Rail station and system capacity analysis*, Addendum Report (2 March 2018), p 14.

<sup>275</sup> Evidence, Ms Mackenzie, 20 August 2018, p 70.

<sup>276</sup> Evidence, Ms Mackenzie, 20 August 2018, p 70.

<sup>277</sup> Submission 8, Name suppressed, p 1; Submission 36, Mrs Mary Richard, p 4; Submission 52, Mr John Boyle, p 6; Submission 53, Ms Adnil Ramos, p 1; Submission 77, Ms Cat Wright, p 2; Submission 98, Name suppressed, p 1.

<sup>278</sup> Submission 184, Name suppressed, p 2; Submission 6, Name suppressed, p1; Submission 17, Name suppressed, p 1; Submission 44, Name suppressed, p 7; Submission 51, Ms Jane and Katey Grusovin, p 1; Submission 52, Mr John Boyle, pp 1-14; Submission 77, Ms Cat Wright, p 2; Submission 83; Submission 91, Ms Vivian Ward, p 3; Submission 96, Ms Maria Bradley, p 1.

the department will consider patronage data to ensure it develops the network to respond to demand:

The redesign of the bus network will occur next year in line with actual Opal patronage data—knowing where people are coming from and knowing that we have had incredible growth in south-east bus services—and the provision of bus services to complement light rail is flexible and can be adapted to actual demand as well as land-use changes. The high-capacity buses, of which there is only a very small percentage in the area—that is articulated buses and 14.5 metre buses—will be prioritised for the express services. The solution has always been light rail plus bus.<sup>279</sup>

### Committee comment

- 3.23** The committee acknowledges that there are concerns in the community about whether the CSELR project will actually increase or decrease the capacity for commuters to travel into the city. We note that there are concerns that the vehicles will be full at the time of commencement, such that buses will still be required along the route.
- 3.24** The committee accepts that this project was always predicated on the basis that buses will complement light rail services. This project is part of a broader plan aimed at addressing congestion issues the Sydney CBD is currently experiencing.
- 3.25** The CSELR route is a busy corridor, and its capacity, if fully realised, to transport people between the CBD and Kingsford and Randwick will help to drive improvements in reliability and sustainability of the overall network. There will also be the capacity to increase services if future demand requires it.
- 3.26** These benefits are potentially significant – and will likely be realised to a greater extent by community members once services become operational. This was indeed the case for the light rail service in the inner west, which has now become a valued and highly utilised mode of transport.
- 3.27** To ensure services meet patronage demands, the committee recommends that Transport for NSW closely monitor patronage on the CSELR service once it becomes operational, to ensure it can respond effectively to future demand. Furthermore, we recommend that Transport for NSW publish, on at least a quarterly basis, patronage data on the CSELR service.

---

### Recommendation 3

That, once the CBD and South East Light Rail service becomes operational, Transport for NSW:

- closely monitor patronage on the service, to ensure it can respond effectively to future demand
  - publish, on at least a quarterly basis, patronage data.
- 

<sup>279</sup> Evidence, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, 4 October 2018, p 39.

## Journey times

- 3.28** Another key issue raised by inquiry participants related to journey times along the CSELR route. There were concerns that the estimated journey time has increased since the project began. This section will outline what the projected journey times are, what stakeholders are concerned about and how journey times will depend on junction optimisation.

### Estimated journey times

- 3.29** Transport for NSW said that planning documents for the project estimated that the end-to-end journey time of the CSELR from Kingsford/Randwick to Circular Quay would be 34-38 minutes, although it considered this 'indicative only'. The department noted that traffic signaling designs and modelling are occurring which will affect the journey time (discussed below).<sup>280</sup>

- 3.30** By comparison, the department outlined the journey time for buses between Randwick and Martin Place between 2013 to 2018:

From 2013 to 2018 the average journey time from Randwick to Martin Place has increased from 30 to 34-35 mins on bus routes 373 and 377. By 2031, about 780,000 trips will be made to the city centre each weekday, 150,000 more than in 2013.<sup>281</sup>

- 3.31** However, Transport for NSW stressed that the light rail service is necessary as 'existing infrastructure cannot keep pace – Sydneysiders need better transport options and a fully integrated system'. It maintained that light rail will provide increased capacity and reliable journey times from the South East to the CBD.<sup>282</sup>

- 3.32** As Ms Prendergast asserted: 'Light rail will provide a more reliable journey time with less variability than the current bus service'.<sup>283</sup> Mr Brennan also agreed that the purpose of the project was to help address unreliable journey times on the existing network and traffic congestion.<sup>284</sup>

- 3.33** Transport for NSW contended that traffic signaling detailed designs are being finalised and that as traffic movements changed over time, detailed modelling must be undertaken closer to the light rail becoming operational, particularly to ensure the latest network demands are considered. It said that this is standard practice for transport projects. It added: 'We need to balance the needs of the new light rail with existing road users, and up-to-date traffic modelling will ensure that we get that balance right'.<sup>285</sup>

---

<sup>280</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 3.

<sup>281</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 3.

<sup>282</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 3.

<sup>283</sup> Evidence, Ms Prendergast, 4 October 2018, p 38.

<sup>284</sup> Evidence, Mr Brennan, 3 October 2018, p 57.

<sup>285</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 3.

### Concerns about journey times

- 3.34** Concerns related to the estimated journey time arose in the Auditor-Generals report on the CSELR project.
- 3.35** The Auditor-General noted that the project's benefits had reduced, due in part to the estimated journey time. Although, the report acknowledged that the 'final benefits the CSELR project will realise remain uncertain', as journey times may change when traffic priority arrangements are finalised. The report said:
- TfNSW [Transport for NSW] advised it expected to release an update of the modelling in October 2016. This will then be subject to ongoing updates due to design finalisation and other dependencies, such as development proposals and bus plan changes.
- The PPP project deed currently specifies journey times up to 38 minutes from Circular Quay to both Randwick and to Kingsford. Journey times may be revised to reflect operational performance once full services start. Any reductions in traffic priorities that RMS [Roads and Maritime Services] deems necessary will limit TfNSW's ability to achieve service frequencies.<sup>286</sup>
- 3.36** Some participants queried why the NSW Government has not released recent modelling in relation to journey times.<sup>287</sup> One submission author argued that 'tram journey times are longer than the buses they replace'.<sup>288</sup> Others were equally concerned about whether the estimated journey times are accurate.<sup>289</sup>
- 3.37** A representative of the Sydney Light Rail Action Group questioned whether the estimated journey time is still currently 38 minutes, and noted that the Auditor-General's report recommended that information be publicly released about the proposed benefits of the project.<sup>290</sup>
- 3.38** The recommendation made by the Auditor-General was that, by December 2016, Transport for NSW 'update and consolidate information about project costs and benefits and ensure that it is readily accessible to the public'.<sup>291</sup> The committee is unclear whether this occurred.

### Junction optimisation

- 3.39** Relevant to journey time are how junctions are optimised and whether light rail vehicles are given priority over other road users.

<sup>286</sup> Report included in Submission 18, Auditor-General of NSW, p 17.

<sup>287</sup> Submission 51, Ms Jane and Katey Grusovin, p 1; Submission 54, Mr John Bellamy, p 3; Submission 96, Ms Maria Bradley, p 1; Submission 9, Mr Larry Vincent, p 1.

<sup>288</sup> Submission 52, Mr John Boyle, p 6.

<sup>289</sup> Submission 51, Ms Jane and Katey Grusovin, pp 1-2; Submission 54, Mr John Bellamy, p 1; Submission 154, Name suppressed, p 2;

<sup>290</sup> Evidence, Mr Bellamy, 20 August 2018, p 67.

<sup>291</sup> Report included in Submission 18, Auditor-General of NSW, p 4.

**3.40** Mr Stephen Troughton, former Deputy Secretary, Infrastructure and Services, Transport for NSW advised that ALTRAC Light Rail is responsible for providing the design for the 67 junctions along the CSELR route. He outlined the process that applies:

So they [ALTRAC] design the junctions. They will then submit that to RMS for review, and then a number of software programs will be used and probably because there are 67, there are interphases. They will split it up into certain sections and they will link those signals basically through a process of iteration using complex algorithms.<sup>292</sup>

**3.41** The process involves consideration of whether signals are phased to give priority to different users. Ms Prendergast told the committee that about 30 per cent of the intersections have had the designs completed.<sup>293</sup> Mr Troughton also confirmed that in terms of signaling priority, light rail vehicles are considered 'a high priority'.<sup>294</sup>

**3.42** The committee took evidence about the need to consider each intersection's 'personality', as they are all unique. As Mr Brennan stated 'all the junctions have different variables within them. They are called personalities for a reason, because each junction is different'.<sup>295</sup>

**3.43** The department explained that detailed traffic modelling closer to light rail operations is essential to ensure the latest network demands are considered. Transport for NSW said: 'This work is expected to be completed soon, meaning end-state traffic modelling can be undertaken, including further headway, journey time and speed zone analysis'.<sup>296</sup>

**3.44** Mr Troughton outlined how important it is for the whole of the network to be carefully considered when designing junctions:

You have to get a balance on the whole of the network. It is not about looking at a specific intersection. It is about looking at the whole of the network. You could over prioritise a signal at one place but that would have a significant effect, potentially, two to three kilometres away. It is about network balance.<sup>297</sup>

**3.45** In terms of whether the light rail vehicles will 'clog' intersections, as some stakeholders were concerned about, Mr Brennan responded:

There has been some media speculation about the fact that a 67-metre tram will actually clog the road junctions. But we feel as an operator that if we were carrying a 40, a 50 or a 67 metre it is only a matter of a number of other seconds that it would take to get through the junction.<sup>298</sup>

---

<sup>292</sup> Evidence, Mr Stephen Troughton, former Deputy Secretary, Infrastructure and Services, Transport for NSW, 4 October 2018, p 56.

<sup>293</sup> Evidence, Ms Prendergast, 4 October 2018, p 56.

<sup>294</sup> Evidence, Mr Troughton, 4 October 2018, p 57.

<sup>295</sup> Evidence, Mr Brennan, 3 October 2018, p 58.

<sup>296</sup> Answers to supplementary questions, Transport for NSW, 18 September 2018, p 3.

<sup>297</sup> Evidence, Mr Troughton, 4 October 2018, p 57.

<sup>298</sup> Evidence, Mr Brennan, 3 October 2018, p 56.

**3.46** On this issue, he added: 'The priority will be given there to ensure that we do not clog up those road junctions'.<sup>299</sup> In fact, the committee heard how there may be an opportunity along the route for 'advanced loops'. As Mr Brennan explained:

... one of the features of the CBD and South East Light Rail which the inner west light rail does not have is the opportunity for advanced loops and, indeed, for it to not stop. There is great opportunity there to traverse the junctions with a 67-metre tram in a very efficient way and carry a lot of passengers into the CBD.<sup>300</sup>

**3.47** In terms of these loops, Mr Brennan added that 'on the approach to the junction, the effects of the junction recognise that a tram is on approach and then takes the necessary action to ensure that it can go through the junction'.<sup>301</sup>

**3.48** As to whether a tram going through each way will be synchronised, Mr Brennan said: 'It will depend on where the sequencing is, what is the optimum way to do it. On occasions they will, but not every time, no'.<sup>302</sup>

**3.49** One of the important considerations also discussed was enforcement of when 'people are clogging the junction', for example, vehicles that have gone through red lights or vehicles that are blocking an intersection. On this issue, Mr Brennan said:

... people need to be aware that it will be policed and there will be consequences. I accept you cannot have police out there all the time or some level of enforcement but at the end of the day it needs to be taken as a serious part of the opportunity to further improve the tram running.<sup>303</sup>

**3.50** As to how the detailed designs and traffic modelling is progressing for intersections along the CSELR route, Transport for NSW said on notice:

Work to complete the individual Personalities for the 56 TCS Plans required for the 63 signalised intersections along the SLR [Sydney Light Rail] route is expected to be completed in mid-2019. These Personalities will also be tested with the light rail vehicles as part of the testing and commissioning phase of the SLR Project.<sup>304</sup>

### **Committee comment**

**3.51** The committee understands that there are community concerns about journey times between Kingsford and Randwick and the CBD. We understand that some inquiry participants feel there is an unnecessary level of secrecy related to what current modelling is showing, and whether the time is less or more than 38 minutes.

**3.52** We accept evidence from Transport for NSW that the modelling in relation to journey times is continuing, given demands and pressures on the network have continued to change since the

<sup>299</sup> Evidence, Mr Brennan, 3 October 2018, p 57.

<sup>300</sup> Evidence, Mr Brennan, 3 October 2018, p 56.

<sup>301</sup> Evidence, Mr Brennan, 3 October 2018, p 62.

<sup>302</sup> Evidence, Mr Brennan, 3 October 2018, p 67.

<sup>303</sup> Evidence, Mr Brennan, 3 October 2018, p 65.

<sup>304</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 17.

project's inception. We acknowledge that two critical factors relevant to the overall journey time are signal priority for light rail vehicles and junction optimisation. However, the committee accepts that with these significant matters still not finalised at this stage, of what has been a lengthy project, it is understandable that there is public disquiet.

- 3.53** The committee was interested to learn about the 'personalities' of each intersection, and how careful planning needs to be undertaken to ensure the needs of all road users and pedestrians are balanced carefully along each point in the network. The committee recognises that this is a complex process, one in which multiple stakeholders must work effectively together.
- 3.54** The committee understands that negotiations regarding signal prioritisation are continuing to take place between relevant government departments and agencies, in particular Transport for NSW, Roads and Maritime Services and the NSW Police Force.
- 3.55** The department has suggested that light rail vehicles will be given signal priority at intersections along the route, although we note that this has not been formally determined as such. Once the design for each junction has been finalised, we recommend that Transport for NSW publicly release the outcomes of modelling in relation to journey times between Randwick/Kingsford and the Sydney CBD.

---

#### **Recommendation 4**

That Transport for NSW publicly release the outcomes of modelling in relation to journey times between Randwick/Kingsford and the Sydney CBD, upon finalisation of the designs for each junction along the CBD and South East Light Rail route.

---

- 3.56** The committee notes the benefits of the CSELR and believes it is a good solution to ease the increasing traffic congestion in the Sydney CBD. The committee looks forward to seeing the project finalised.

#### **Additional stop near Wimbo Park**

- 3.57** There were some concerns expressed during the inquiry about the CSELR route not including a second stop in Surry Hills, near Wimbo Park. Some stakeholders were of the view that there is a demand for a stop to be placed in this location.
- 3.58** The committee noted that Ms Jenny Leong MP, Member for Newtown, put forward a petition in the Legislative Assembly of New South Wales on this issue, calling for the government to commit to building a second light rail station at this location.<sup>305</sup> The City of Sydney also confirmed that it had advocated strongly for a second stop at Wimbo Park.<sup>306</sup>

---

<sup>305</sup> Hon Jenny Leong MP, Member for Newtown, *Petition to add a second light rail stop in Surry Hills* (11 May 2017), < <https://www.parliament.nsw.gov.au/la/papers/DBAssets/taledpaper/webAttachments/70948/Under%20500%20petition%20on%20Light%20Rail%20station%20in%20Surry%20Hills.pdf> >

<sup>306</sup> Evidence, Mr Kim Woodbury, Chief Operating Officer, City of Sydney Council, 20 August 2018, p 27.

- 3.59** When Transport for NSW was questioned as to why this additional stop was not included in the plans, the committee was told that 'a stop at Wimbo Park was not justified as it is approximately 400 metres from the Ward Park stop, which sufficiently caters for the expected number of customers within the catchment area'.<sup>307</sup>
- 3.60** The location and configuration of stops for the route were outlined in the 2013 Environmental Impact Statement and consulted on. Transport for NSW stated that a 'comprehensive assessment process was applied which included assessment of the catchment area, environmental constraints, average distance between potential stop locations and potential patronage'.<sup>308</sup>
- 3.61** Ms Prendergast, from Transport for NSW, advised the committee that the location has been 'future proofed' so that there is the potential to add a stop there, subject to patronage modelling. She said: 'We have future proofed it and the pain would not be significant because all the conduits and all the things that are necessary are in. It would be a far simpler build. But at the moment the patronage modelling does not show that there is enough to warrant a second stop'.<sup>309</sup>
- 3.62** Transport for NSW said that it will monitor Opal data and customer feedback after the CSELR is operational to determine future needs.<sup>310</sup> However, some inquiry participants argued that the stop should be built now, to minimise future disruption to residents and improve accessibility.
- 3.63** One of Ms Leong's constituents contended that if the NSW Government is 'future proofing the location', it should 'immediately modify the Wimbo Park site and install a platform and stop now, while construction is occurring'.<sup>311</sup> Another individual said:

A Light Rail Stop should be installed now at the future-proofed Olivia Gardens/Wimbo Park site in order to prevent future disruption and to provide some compensation to residents. Once bus services are reduced, this additional stop is vital for the less-able of all ages living in the Eastern part of Surry Hills who will be especially intimidated by the steep climb to Ward Park (one of the highest points in Surry Hills) or the long trek to the next stop on the other side of Moore Park.<sup>312</sup>

### Committee comment

- 3.64** In light of stakeholder feedback, the committee calls on the NSW Government to reconsider whether an additional stop is needed at Wimbo Park. While we understand that this location has been 'future proofed', to allow a stop to be installed if required in the future, the committee questions whether it would have been more appropriate to include it in the project's original scope.

<sup>307</sup> Answers to questions on notice, Transport for NSW, 18 September 2018, p 9.

<sup>308</sup> Answers to questions on notice, Transport for NSW, 18 September 2018, p 10.

<sup>309</sup> Evidence, Ms Prendergast, 20 August 2018, p 17.

<sup>310</sup> Answers to questions on notice, Transport for NSW, 18 September 2018, p 10.

<sup>311</sup> Supplementary submission 57a, Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP), p 5.

<sup>312</sup> Supplementary submission 57a, Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP), p 23.

- 3.65** Unfortunately though, the project has already gone on for a significant amount of time, negatively impacting residents and businesses. The committee does not wish to see the project extended for longer to undertake work on constructing an additional stop. The priority must be to finalise the work already being undertaken, particularly in light of the delays already experienced on the project.
- 3.66** The committee recommends, however, that Transport for NSW investigate the need for, with a view to giving favourable consideration, an additional stop at Wimbo Park in Surry Hills, once the CSELR project has been finalised.

---

**Recommendation 5**

That Transport for NSW investigate the need for, with a view to giving favourable consideration, an additional stop at Wimbo Park in Surry Hills, once the CBD and South East Light Rail project has been finalised.

---

## Chapter 4 Key impacts

This chapter and the next considers the impact of the CBD and South East Light Rail (CSELR) project on business owners, residents and the broader community. This chapter will focus on residents' concerns regarding construction noise, specifically night works, and the effectiveness of respite accommodation and mitigation measures. It will also outline concerns regarding property damage and the process for claiming remediation. It will then look at broader community concerns regarding the loss of parking and footpath accessibility, and finally the removal of trees along the CSELR route. Chapter 5 will focus on the impacts of the project on businesses.

### Noise

- 4.1 The committee received a large number of complaints about excessive noise and vibration caused by construction work along the light rail route. This section looks at the nature of these concerns, and what measures are being taken to monitor noise and vibration levels and ensure compliance with requirements. It will also consider measures to mitigate noise impacts, including the alternative accommodation program which is aimed at providing residents with some respite from construction noise.

#### Concerns

- 4.2 The excessive noise produced from the construction of the CSELR project was voiced by many inquiry participants, in particular by those residents whose homes are beside the construction works.<sup>313</sup>
- 4.3 Residents along the CSELR route described the noise as constant, often exceeding normal limits and resulting in sleep deprivation. One inquiry participant said that the noise their family had endured was 'relentless', with work during the night completing at 5.00 am and starting again at 7.00 am, leaving their 'household without a respite time for resting and or catching up on sleep'.<sup>314</sup>
- 4.4 Another individual described the excessive noise and dust issues in their home, which they said has continued 'for endless hours, days, weeks and months and years':

The noise and screeching from dumping of materials from metal tray trucks or loading of same. The continual beeping of reversing mobile plant. The constant endless hammering from rock breaking activities was endlessly irritating and caused me on

<sup>313</sup> Evidence, Ms Annette Keay, affected resident, 3 October 2018, p 10; Submission 7, Name suppressed, p 1; Submission 11, Mr Paul Corrandini, p 1; Submission 15, Name suppressed, p 1; Submission 21, Vivo Café, p 1; Submission 33, Name suppressed, p 1; Submission 42, Name suppressed, p 1; Submission 47, Name suppressed, p 2; Submission 48, Name suppressed, p 2; Submission 48a, Name suppressed, p 1; Submission 52, Mr John Boyle, p 4; Submission 53, Ms Adnil Ramos, p 1; Submission 57, Jenny Leong MP, p 3; Submission 57a, Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP), pp 2-11; Submission 67, Ms Narelle Clark, p 1; Submission 70, Mr Eddie Fazal, p 1; Submission 87, Randwick City Council, pp 3-17; Submission 151, Name suppressed, p 1; Submission 185, Ms Samantha Markwick, p 1.

<sup>314</sup> Submission 48, Name suppressed, p 2.

numerous occasions to measure the noise levels at the rear of my home and at the perimeter of the construction site, all of which were above acceptable levels ...<sup>315</sup>

**4.5** Mr John Boyle told the committee that residents are 'stressed and sleep-deprived and are now at their wits' end as a consequence' of the 'constant commotion, loud banging and screeching noises of the construction work, that is severely impacting their lives, without any relief'. Mr Boyle added that 'this insufferable all-night work has been carried out, nightly, along Anzac Parade, until around 2am, since last June and it is totally unacceptable, and unreasonable that residents' should have to endure such appalling, harmful disturbance, impacts and damage to their health, for even one more night'.<sup>316</sup>

**4.6** Ms Lindsay Shurey, Mayor, Randwick City Council, also commented on the significant impact the noise was having on the residents in her local area:

As I said, many of the residents do not come to us, but the ones that do tell us that the night-time noise of the construction is appalling. The breaches of the noise—the work—is constant. They are told that the noise will stop at 12 o'clock at night, but at 4 o'clock in the morning they are still taping sounds which are unbelievable. And this has been going on for such a long time. I couldn't live there and I know that any of you would have difficulty. I am sure they are going mental.<sup>317</sup>

**4.7** Ms Shurey further commented on the impact it was also having on students living alongside the CSELR route who were studying for their HSC:

We do have residents whose children are going through the HSC. It is becoming impossible for their children to study. It is really impacting on the future lives of these children. The noise is constant. Days are going on and they are not getting any sleep. It is really impacting on them.<sup>318</sup>

**4.8** Mr Andrew Jordan, a Kensington resident, told the committee that his home had become 'unlivable due to the workers being allowed to work 120 hours a week ... from Sunday night through to Tuesday afternoon non-stop for the last two months'. Mr Jordan advised that 'this has led to excessive sleep deprivation due to the noise levels', arguing that 'sleep deprivation is actually considered a form of torture'.<sup>319</sup>

**4.9** In addition, Mr Jordan claimed that the contractors had breached the contract and the *Construction Noise and Vibration Management Plan* in place for the project. He alleged that noise monitoring does not occur continuously, that the maximum noise level of 75 decibels is repeatedly exceeded and that residents are only given one night respite where it clearly states in the contract that two nights respite is required.<sup>320</sup> Mr Jordan went on to explain the level of noise that he has experienced during the night by comparing this to the sound of a lawnmower:

---

<sup>315</sup> Submission 15, Name suppressed, p 1.

<sup>316</sup> Submission 52, Mr John Boyle, p 4.

<sup>317</sup> Evidence, Ms Lindsay Shurey, Mayor, Randwick City Council, 20 August 2018, p 36.

<sup>318</sup> Evidence, Ms Shurey, 20 August 2018, p 38.

<sup>319</sup> Evidence, Mr Andrew Jordan, affected resident, 3 October 2018, p 2.

<sup>320</sup> Evidence, Mr Jordan, 3 October 2018, pp 2 and 10-12.

A lawnmower at the same distance makes 65 decibels. We are talking about 85 to 90 decibels after midnight when you are trying to sleep. That is four times-plus louder than a lawnmower and everyone knows how loud they are. I would have liked to have done a demonstration of just what is 75 and 85 decibels in this room right now but it would be dangerous to people, hearing that noise level. It is that bad.<sup>321</sup>

- 4.10** Most of the concerns the committee received focused on construction noise, but other residents noted that it is not just the noise from machinery that is having an impact. One said that 'on various nights more than twenty trucks will be parked outside our houses with men making a lot of noise and leaving their coffee cups, half eaten sandwiches, gloves, and other rubbish on our street'.<sup>322</sup> Similarly, Ms Cat Wright, who has had to deal with overnight works for over two years, advised that she has to listen to 'workmen literally working only a few metres from my window and my bed'.<sup>323</sup> A Kensington resident also experienced workers 'sitting on the fence of my front yard' speaking with loud voices and laughing at the early hours of the morning.<sup>324</sup>

### Compliance and monitoring

- 4.11** The contractors involved with the CSELR project are required to comply with the relevant Transport for NSW Project Deed requirements, the Minister's Conditions of Approval for the Project, the Revised Environmental Management Measures, and all applicable legislative and licensing requirements. The *ALTRAC Light Rail Construction Noise and Vibration Management Plan* was developed specifically to manage and control noise impacts associated with construction and comply with the various requirements.<sup>325</sup>
- 4.12** This plan details the hours in which construction works are to be undertaken. Generally, the approved hours of work, with the exception of the CBD precinct, are:
- 6.00 am to 6.00 pm, Mondays to Fridays
  - 8.00 am to 5.00 pm on Saturdays
  - at no time on Sundays or public holidays.<sup>326</sup>
- 4.13** Within the CBD precinct the only exception to the above hours is that from Mondays to Fridays construction work can be carried out from 6.00 am to 10.00 pm inclusive.<sup>327</sup>
- 4.14** For 'particularly noisy or annoying activities' the plan stipulates that these will take place within the hours of '8.00 am to 12.00 pm and 2.00 pm to 5.00 pm Monday to Friday and 8.00 am to 12.00 pm Saturdays'. However, the plan also notes that 'the nature of the project means evening

<sup>321</sup> Evidence, Mr Jordan, 3 October 2018, p 10.

<sup>322</sup> Submission 42, Name suppressed, p 1.

<sup>323</sup> Evidence, Ms Cat Wright, affected resident, 3 October 2018, p 3.

<sup>324</sup> Submission 48, Name suppressed, p 3.

<sup>325</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) p 9.

<sup>326</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) p 21.

<sup>327</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) p 21.

and night work will also be required, particularly in the city centre but also in other precincts especially in areas around road intersections'.<sup>328</sup>

**4.15** According to the plan, construction works are permitted outside of the approved hours under the following circumstances, if:

- temporary road closures and other measures are required by the Police and other regulatory authorities for the safe delivery of material/ equipment
- works have the potential to disrupt commuter services and road networks
- works are required to be completed to maintain health and safety, avoid loss of life or injury and to prevent environmental damage.<sup>329</sup>

**4.16** The plan also determines that 'where construction works are required to be conducted outside of approved hours, the noisiest activities associated with night-time works are to be scheduled to be completed before midnight and the night-time construction works limited to two consecutive nights followed by two consecutive nights of respite (i.e. no works), unless outlined in the *Out of Hours Work Protocol*'.<sup>330</sup>

**4.17** Mr James Bramley, Chairman, ALTRAC Light Rail (ALTRAC), informed the committee that 'there are certainly limits and so forth about noise' under the planning approvals, method statements and construction obligations as part of the contract, and ALTRAC 'are implementing the works in accordance with those requirements'.<sup>331</sup>

**4.18** In relation to out of hours works, Mr Bramley acknowledged that 'the latest time that work can be done in standard hours, by my recollection is 10.00 pm in the city and it is slightly earlier in the suburbs', confirming that when work is required outside of those hours it is subject to further approvals.<sup>332</sup> Mr Bramley explained that they are constrained by a number of different stakeholders and influences when making the decision to conduct night works, including Roads and Maritime Services and the broader community.<sup>333</sup> Mr Bramley later confirmed the conditions that must be met for night works to be permitted and how frequently night works occur:

Works are only permitted to be conducted outside of standard hours where one or more conditions of the Environmental Protection Licence (EPL 20699) are satisfied. In accordance with the EPL, work has occurred most nights at various locations since commencement of works.<sup>334</sup>

---

<sup>328</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) pp 43-44.

<sup>329</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) p 44.

<sup>330</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) p 44.

<sup>331</sup> Evidence, Mr James Bramley, Chairman, ALTRAC Light Rail, 4 October 2018, pp 29-30.

<sup>332</sup> Evidence, Mr Bramley, 4 October 2018, p 29.

<sup>333</sup> Evidence, Mr Bramley, 4 October 2018, p 29.

<sup>334</sup> Answers to questions on notice, Mr James Bramley, Chairman, ALTRAC Light Rail, 1 November 2018, p 2.

**4.19** According to Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia (Acciona), the decision to conduct night work is made with all relevant stakeholders and is not something that benefits the contractors in terms of cost:

The process to work at night is a decision made jointly with Transport and more than anything else it is actually to minimise the impact of the project on all possible stakeholders—residents, businesses, traffic users and so forth. It is obviously not a decision taken lightly. From our point of view it is a far more expensive way of going about the work. Obviously we pay significant overtime for that process. There is no overtime work that is undertaken just for the benefit of us.<sup>335</sup>

**4.20** During a hearing, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, advised that Transport for NSW insists that ALTRAC and Acciona monitor noise, with all works 'undertaken in line with the Construction Environmental Management Plan'. Ms Prendergast informed the committee that 'we monitor compliance at all times', explaining that 'the environmental compliance team and the Department of Planning and Environment go out, often at night, to check on the noise compliance' and 'if there is a spike in complaints they do special exercises'.<sup>336</sup>

**4.21** Further to this, as required under the Minister's Conditions of Approval an Environmental Representative is appointed by Transport for NSW and approved by the Secretary of the Department of Planning and Environment, and is responsible for:

- overseeing the implementation of environmental management plans and monitoring programs as required
- advising Transport for NSW on its compliance obligations against relevant licences and approvals
- ensuring environmental auditing is undertaken in accordance with all relevant Environmental Management Systems
- recommending to Transport for NSW any reasonable and feasible steps to be taken to avoid or minimise unintended or adverse environmental impact
- review/endorse documents and plans as required, out of hours works applications and compliance reporting
- acting as the principal point of advice in relation to environmental performance.<sup>337</sup>

**4.22** The Environmental Representative is required to be independent of the design and construction personnel and is employed for the duration of construction, or as otherwise agreed by the Secretary.<sup>338</sup> At each stage of the CSELR project, Transport for NSW nominated one Environmental Representative and an alternate Environmental Representative, and they were

<sup>335</sup> Evidence, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, 4 October 2018, p 9.

<sup>336</sup> Evidence, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, 4 October 2018, pp 38 and 45-46.

<sup>337</sup> SYDTRAC D&C, *Construction Environmental Management Plan* (rev 2, November 2016), pp 45-46.

<sup>338</sup> *Infrastructure Approval, Section 115ZB of the Environmental Planning & Assessment Act 1979*, signed by Hon Pru Goward MP, Minister for Planning, 4 June 2014, < [https://majorprojects.accelo.com/public/770b8d29e56c266488c9c2719b185d61/Instrument of Approval\\_Signed.pdf](https://majorprojects.accelo.com/public/770b8d29e56c266488c9c2719b185d61/Instrument%20of%20Approval_Signed.pdf)>

approved by the Secretary's delegate. The Department of Planning and Environment provided the committee with the names and qualifications of the appointed representatives across each stage of the project, who were appointed from either Healthy Buildings International or Australian Quality Assurance & Superintendence (AQUAS).<sup>339</sup>

**4.23** In terms of auditing, Mr Stephen Troughton, former Deputy Secretary, Infrastructure and Services, Transport for NSW, explained that ALTRAC is 'responsible, under the contract, for meeting the conditions' and as the whole project has been outsourced to ALTRAC they are obligated to organise any independent auditing to ensure compliance is met under the various requirements and legislation.<sup>340</sup>

**4.24** The NSW Environment Protection Authority also audits 'Acciona's compliance with its environment protection licence through site inspections, review of responses to complaints and Annual returns',<sup>341</sup> and advised that it has 'undertaken independent noise monitoring on two occasions'.<sup>342</sup>

**4.25** When questioned on whether noise monitoring is undertaken during all night works, Mr Bramley could not confirm that it is being undertaken every single time, however, did confirm 'that auditing of those plans and compliance with those plans, is undertaken by ALTRAC and independent parties on a regular basis'.<sup>343</sup> Mr Bramley later provided the number of noise monitoring events as at 1 November 2018:

Of the approximately 700 attended noise monitoring events conducted since commencement of works, over 450 were undertaken at night. In addition, a further 27 "unattended" monitoring events were conducted where the monitoring equipment was set up at a stakeholder's premises to measure construction noise.<sup>344</sup>

**4.26** When asked the same question, Mr Noonan advised that Acciona do monitor noise but 'it is not continuous' and is conducted in specific areas 'depending on how much activity is happening at any point in time', noting that this is deemed normal and reasonable practice in these circumstances.<sup>345</sup>

**4.27** The committee tried to ascertain whether there has been any formal action taken by relevant authorities in relation to breaches of noise requirements.

**4.28** Mr Noonan told the committee that 'there have been no penalty notices or fines received from the EPA [NSW Environment Protection Authority] in relation to noise'. On notice however, Acciona explained details of two breaches that had been recorded relating to notification requirements:

---

<sup>339</sup> Correspondence from Mr Bahar Yildirim, Senior Ministerial Liaison Officer, Department of Planning and Environment, to secretariat, 17 December 2018.

<sup>340</sup> Evidence, Mr Stephen Troughton, former Deputy Secretary, Infrastructure and Services, Transport for NSW, 4 October 2018, p 46.

<sup>341</sup> Answers to supplementary questions, NSW Environment Protection Authority, 30 November 2018, p 1.

<sup>342</sup> Answers to questions on notice, NSW Environment Protection Authority, 30 November 2018, p 1.

<sup>343</sup> Evidence, Mr Bramley, 4 October 2018, p 30.

<sup>344</sup> Answers to questions on notice, Mr Bramley, 1 November 2018, p 4.

<sup>345</sup> Evidence, Mr Noonan, 4 October 2018, pp 9-10.

- On 24 February 2017, the EPA issued Acciona Infrastructure Australia (AIA) with a formal warning for failing to provide appropriate notification to residents on Alison Road, Randwick about out of hour's works on 24 to 25 January 2017.
- On 23 May 2017, the EPA issued AIA with an official caution for failing to notify affected receivers of works that occurred from 11 pm to 5 am at the Devonshire Street / Elizabeth Street intersection.<sup>346</sup>

**4.29** These same breaches were disclosed by Transport for NSW, along with a third instance being an advisory letter issued on 5 May 2017 relating to the failure to investigate a vibration complaint within two hours.<sup>347</sup>

**4.30** However, Mr Mark Gifford, Chief Environmental Regulator, NSW Environment Protection Authority, told the committee that there were more instances of regulation action related to the project:

At this stage the EPA [NSW Environment Protection Authority] has undertaken what I will call regulatory action, so seven regulatory actions.<sup>348</sup> Four of those were advisory letters, one a warning letter, one a show cause letter, and another an official caution. They were for matters that went to not complying with conditions of the environment protection licence.<sup>349</sup>

**4.31** By comparison, according to Mr Gifford, since the environment protection licence<sup>350</sup> was issued in April 2017, which sets out conditions required for the development, the NSW Environment Protection Authority have received 83 complaints<sup>351</sup> from members of the public and their office has conducted 17 inspections. Mr Gifford said that noise complaints have been 'a major issue' that the department have had to respond to, however noted that it is 'unsurprising that there are community concerns' given the level of construction for a major infrastructure project such as this.<sup>352</sup>

### **Impact of the 'Critical State Significant Infrastructure' declaration**

**4.32** As this project is considered 'Critical State Significant Infrastructure', the NSW Environment Protection Authority noted that this prevents the issuing of Environment Protection Notices,

<sup>346</sup> Answers to questions on notice, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, 2 November 2018, p 1.

<sup>347</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, pp 14-15.

<sup>348</sup> Answers to questions on notice received from NSW Environment Protection Authority noted that there have been a total of six regulatory actions taken against Acciona Infrastructure Australia (Answers to questions on notice, NSW Environment Protection Authority, 30 November 2018, p 1).

<sup>349</sup> Evidence, Mr Mark Gifford, Chief Environmental Regulator, NSW Environment Protection Authority, 5 November 2018, p 6.

<sup>350</sup> The environment protection licence was issued to Acciona Infrastructure Australia following the approval of the development and the conditions of this licence cannot be inconsistent with the development approval (Evidence, Mr Gifford, 5 November 2018, p 2).

<sup>351</sup> From the commencement of construction to 8 November 2018, the NSW Environment Protection Authority has also received eight complaints relating to dust and four complaints relating to air quality (answers to supplementary questions, NSW Environment Protection Authority, 30 November 2018, p 4).

<sup>352</sup> Evidence, Mr Gifford, 5 November 2018, pp 7-8.

such as a Prevention Notice or Clean up Notice, however advised that this does not interfere with the NSW Environment Protection Authority's ability to enforce the conditions of the environment protection licence.<sup>353</sup>

**4.33** The committee also received evidence from members of the public who expressed concern that the declaration of the project as 'Critical State Significant Infrastructure' prevented proper enforcement of conditions of approval. Ms Margaret Hogg, Committee Member, Saving Sydney Trees, stated: 'We look to scrutiny and review of awarding state significant critical infrastructure and the exclusion of the public in its execution'.<sup>354</sup>

**4.34** Mr Jordan also reflected on this issue:

The next thing I want is I want the light rail project stripped of its critical infrastructure tag. This critical infrastructure tag was a Trojan horse to let the project get away with blue murder and not be held accountable for what it is and to work and not pay compensation to small businesses and residents.<sup>355</sup>

### **Committee comment**

**4.35** In light of the concerns expressed by members of the public, the committee recommends that the NSW Government undertake a review of the exemptions provided to projects declared 'Critical State Significant Infrastructure'.

---

### **Recommendation 6**

That the NSW Government undertake a review of the exemptions provided to projects declared 'Critical State Significant Infrastructure'.

---

### **Alternative accommodation**

**4.36** As part of the *Construction Noise and Vibration Management Plan*, ALTRAC is required to offer alternative accommodation as respite for residents who are impacted by work involving high levels of noise over three consecutive nights. ALTRAC is also required to offer alternative accommodation to residents in the Surry Hills and South East Suburb areas, where high impact noisy works are planned to go beyond midnight.<sup>356</sup>

**4.37** In addition to this, Transport for NSW offer a supplementary program for alternative accommodation, 'whereby, under approved circumstances, a resident can stay at an alternative location and claim back up to \$200 per bedroom'. Transport for NSW advised that the following set of criteria must be met to claim under this program:

---

<sup>353</sup> Answers to supplementary questions, NSW Environment Protection Authority, 30 November 2018, p 1.

<sup>354</sup> Evidence, Ms Margaret Hogg, Committee Member, Saving Sydney Trees, 20 August 2018, p 62.

<sup>355</sup> Evidence, Mr Jordan, 3 October 2018, p 11.

<sup>356</sup> Submission 39, Transport for NSW, p 9.

- the property fronts the CSELR route
- the property is the principal place of residence
- scheduled out of hours works are predicted to be highly intrusive, for example that the noise exceeds 30dBA at the property above any background level after 10.00 pm, as per Transport for NSW's monitoring
- works are scheduled on more than three nights in a calendar week (Monday to Sunday)
- case-by-case offers can be made where particular circumstances are identified around affected residents.<sup>357</sup>

**4.38** Ms Prendergast acknowledged that noisy works are 'obviously the biggest impact on residents and businesses located along the alignment' and explained that 'works are undertaken with planning conditions, and scheduling tries to minimise any impact'. Ms Prendergast advised that 'since last November we have offered residents an additional 8,000 offers of alternative accommodation where we know there are noisy works happening' and have also 'worked with ALTRAC to work out where can we do more day-time works than night-time works'.<sup>358</sup>

**4.39** However, in terms of the alternate accommodation that has been offered by ALTRAC and Transport for NSW, residents reported a number of concerns to the committee. One resident spoke of being informed of night works the afternoon before the works would take place, stating that this is 'too short notice to organise any real respite from the noise'.<sup>359</sup> Similarly, Mr Jordan commented that he didn't know where you could get a decent hotel room in Sydney at a cost of \$200 a night with only 30 minutes notice.<sup>360</sup>

**4.40** Another resident claimed: 'We continually leave our homes to get away from the noise. Only once has accommodation been offered and it seems the rules mean they can work all night as long as they don't go for more than two consecutive nights. Of course that's what they do. We are secondary to the construction site'.<sup>361</sup>

**4.41** The Vivo Café highlighted that residents who have been impacted by the noise 'lack any true alternative accommodation'. It went on to explain that the respite program offered by Transport for NSW 'requires residents to pay up front and then potentially wait months for reimbursement'.<sup>362</sup>

**4.42** Similarly, Randwick City Council commented that the offer of subsidised alternative accommodation has 'been taken up with varying degrees of satisfaction', indicating that feedback it has received from residents is that it is 'inadequate and the process is difficult and leaves residents out of pocket for extended periods'.<sup>363</sup>

<sup>357</sup> Submission 39, Transport for NSW, p 10.

<sup>358</sup> Evidence, Ms Prendergast, 4 October 2018, pp 37-38.

<sup>359</sup> Submission 42, Name suppressed, p 1.

<sup>360</sup> Evidence, Mr Jordan, 3 October 2018, p 11.

<sup>361</sup> Submission 44, Name suppressed, p 3.

<sup>362</sup> Submission 21, Vivo Café, p 10.

<sup>363</sup> Submission 87, Randwick City Council, pp 3 and 60.

- 4.43 During a hearing, Ms Shurey, Mayor of Randwick City Council, told the committee that it has only been recently that alternative accommodation has 'been made evident to our residents', suggesting that the application process has not been provided on a 'transparent basis', where residents would know how to apply or what the criteria is.<sup>364</sup>
- 4.44 Further, Ms Shurey advised that 'one of the problems was that residents had to take the accommodation, pay for the accommodation first and then put in a claim for it', however went on to say that after meeting with the Transport Minister, Andrew Constance, he recommended that residents go through his office to 'arrange for money to be available up front so people were not out of pocket'.<sup>365</sup>
- 4.45 In this regard, Transport for NSW advised that it 'has also implemented a new system involving the services of The Hotel Network, which makes it easier and faster for residents to recoup expenses for accommodation', where residents are typically reimbursed 'within 48 hours'.<sup>366</sup>

### Mitigation measures

- 4.46 The *ALTRAC Light Rail Construction Noise and Vibration Management Plan* documents a number of noise mitigation measures to 'reduce and control potential construction noise impacts'. Some of these include the use of fencing and barriers, shutting down noisy equipment when not in use, loading and unloading away from areas of sensitive receivers, minimising the reversing of equipment and conducting high level noise activities during the day where possible.<sup>367</sup>
- 4.47 Transport for NSW advised that it works closely with all partners to the CSELR project to 'improve stakeholder outcomes in relation to work programs', and also outlined some of the strategies that have been implemented to reduce the impact of construction, including:
- changing the construction start and/or end times
  - reducing the number of night shifts
  - accommodating changes to construction compounds to improve sightlines or access
  - undertaking high intensity works during the day or very early in the evening wherever possible
  - roads and lanes closed to enable significant works to occur during the day.<sup>368</sup>
- 4.48 In terms of the level of noise once the CSELR is operational, Transport for NSW advised that 'noise modelling has been undertaken to estimate noise levels when the light rail system is operational' and 'where the predicted operational noise levels exceed the project's operational noise criteria (set by the planning approval), ALTRAC is expected to identify and implement

---

<sup>364</sup> Evidence, Ms Shurey, 20 August 2018, p 36.

<sup>365</sup> Evidence, Ms Shurey, 20 August 2018, p 38.

<sup>366</sup> Submission 39, Transport for NSW, p 10.

<sup>367</sup> ALTRAC Light Rail D&C JV, *ALR Construction Noise and Vibration Management Plan* (Revision O, November 2018) pp 45-46.

<sup>368</sup> Submission 39, Transport for NSW, p 13.

reasonable and feasible mitigation measures in consultation with the affected property owners'.<sup>369</sup>

**4.49** In this regard, the committee heard about mitigation measures for operational noise and vibration, for when light rail services are running along the route.

**4.50** Ms Prendergast indicated that a noise and vibration program had been established which involves 'the assessment of over 2,000 properties' and the implementation of a number of treatments based on the level of impact. Ms Prendergast explained how the assessment is made based on the level of noise impact:

The level of the impact of the operational noise and vibration is determined in categories A to D, with A being the lowest, and the level of impact translates to those ratings and the treatments we offer in regard to those ratings. Some of the treatments include fresh air and ventilation, window or door seals, replacement of windows or doors with acoustic components such as glazed windows—double glazing, as you may know—or indeed mechanical ventilation systems. But treatments are graduated in regard to what the level of impact is.<sup>370</sup>

**4.51** According to Ms Prendergast the 'noise and vibration treatments are not for during construction, they are for operations' and if residents are dissatisfied with the treatments being proposed there is an escalation process in place. Ms Prendergast advised that 'work has now been completed on more than 559 properties of those 2,020, and 1,220 treatments have been resolved', with all treatments expected to be completed 'over the course of the next year'.<sup>371</sup>

**4.52** Mr Noonan from Acciona also provided evidence about this program. He said that all property owners who have been impacted by operational noise along the CSELR route have been invited to participate in the operational noise mitigation program, with Acciona completing 'acoustic work on 567 properties' as at 2 November 2018, with work still continuing.<sup>372</sup>

**4.53** Mr Noonan also provided details relating to the escalation of claims should property owners disagree with proposed mitigation measures:

Those property owners who wish to contest the criteria and/or the proposed operational noise treatment for their property may do so by escalating the matter with AIA [Acciona Infrastructure Australia], who will, if their claim exceeds the defined compliance, refer the matter to TfNSW [Transport for NSW] for a determination or mediation.<sup>373</sup>

**4.54** Despite this process being in place, the committee received evidence from inquiry participants who were concerned that the mitigation measures were insufficient for operational noise and that communication regarding the process has not been forthcoming.

<sup>369</sup> Submission 39, Transport for NSW, p 10.

<sup>370</sup> Evidence, Ms Prendergast, 4 October 2018, p 38.

<sup>371</sup> Evidence, Ms Prendergast, 4 October 2018, pp 38 and 48.

<sup>372</sup> Answers to questions on notice, Mr Noonan, 2 November 2018, p 9.

<sup>373</sup> Answers to questions on notice, Mr Noonan, 2 November 2018, p 9.

- 4.55** Ms Jenny Leong MP, Member for Newtown, argued that communication in regards to mitigation measures has been insufficient and caused much confusion amongst residents, who believed they would receive treatments prior to construction commencing:

One final issue that warrants highlighting to the committee is the failure to adequately communicate with residents, particularly public housing tenants about the availability of noise mitigation measures. Our office attended several Neighbourhood Advisory Board meetings where TfNSW staff explained the available measures to public housing residents on Devonshire St. It was our understanding from those meetings (and that of the tenants) that noise mitigation products would be fitted to windows before the construction began. When this did not happen, our office followed up and was informed that these products would only be fitted once the Light Rail was in operation.<sup>374</sup>

- 4.56** One individual, who was dissatisfied with the process to have mitigation measures installed in their home, reflected on the lack of communication from Transport for NSW throughout the process, and the fact that treatments are only intended to address 'operational noise':

To combat the noise TfNSW are offering varying window treatments and ventilators as we are now expected to keep all windows and doors shut. They did the initial report in May 2016. Requests for air conditioning have been met with insults ... When we asked for the matter to be escalated, it sat for 1 year with nothing done. They lied about escalating the matter and let it sit. They then advised they were only committing to adding noise treatments after operation starts, meaning you have to put up with construction unless they get to you earlier. The work is still not complete. We continually leave our homes to get away from the noise.<sup>375</sup>

- 4.57** A number of other residents also provided evidence in relation to mitigation treatments they had received and their level of satisfaction regarding the process for obtaining these measures. Ms Narelle Clark, a Surry Hills resident, was disappointed that double glazing was placed only on the front windows and not along the side of their house, where disruptions also occurred in the bedrooms.<sup>376</sup>

- 4.58** Along similar lines, a Surry Hills resident had acoustic glass and seals fitted to their windows and doors, as they were told that once the light rail was operational 'it will be so much noisier in the evening and nights'. This individual said that these mitigation measures 'do not return to us the "Amenity" which has been taken away from us' and explained that they raised this with Acciona in February 2017, and then escalated this to Transport for NSW in November 2017, and 'to this day we have had no hearing nor result'.<sup>377</sup>

- 4.59** Mr Norman Heavener stated that he was offered the installation of an air filter, however when 'they determined a wall that they would have to go through has asbestos ... It became too hard'.<sup>378</sup>

---

<sup>374</sup> Submission 57, Jenny Leong MP, p 4.

<sup>375</sup> Submission 44, Name suppressed, p 3.

<sup>376</sup> Submission 67, Ms Narelle Clark, p 2.

<sup>377</sup> Submission 82, Name suppressed, p 1.

<sup>378</sup> Submission 69, Mr Norman Heavener, p 2.

### Committee comment

- 4.60** It is clear to the committee that noise has been a major impact to residents whose homes are situated along the CSELR route. As described by inquiry participants, the 'excessiveness' of noisy works, with limited respite, has caused much angst, distress and frustration among the community. This has been heightened by the delay of the project, in which residents have had to endure construction noise for much longer than was originally expected, often at night, given work has had to be compacted to mitigate delays to the project.
- 4.61** The committee understands that ALTRAC and Acciona have responsibilities to manage and monitor noise levels, but we question how effectively this is occurring in light of the volume of community concerns we have received. It was also surprising to learn that the NSW Environment Protection Authority has not been involved in these issues to a greater extent, and that very few warnings have been issued in relation to potential breaches.
- 4.62** The committee notes that at each stage of the project an Independent Environmental Representative has been appointed, however the committee did not receive any evidence in regards to the effectiveness of this role in auditing and monitoring compliance of the contractors. The committee is also unsure how much independent noise monitoring has been conducted by the Independent Environmental Representative throughout the construction phase of the project.
- 4.63** In light of community concerns about the lack of compliance and monitoring of noise levels, the committee believes that Transport for NSW should review whether the role of the Independent Environmental Representative for the project needs to be expanded or whether a separate independent entity needs to be established specifically to conduct noise monitoring during construction work undertaken out of hours.

---

### Recommendation 7

That Transport for NSW review whether the role of the Independent Environmental Representative for the project needs to be expanded or whether a separate independent entity needs to be established specifically to conduct noise monitoring during construction work undertaken out of hours.

---

- 4.64** The committee commends Transport for NSW for providing alternative accommodation as respite to affected residents. However, concerns raised by residents, particularly the effectiveness of communication regarding the program's requirements and eligibility, and the process for claiming payment, has rendered these alternative accommodation arrangements impracticable for some residents.
- 4.65** We note that mitigation measures are underway to provide treatments to homes that will be impacted by the operational noise of the CSELR. Again, concerns were raised regarding the communication of the process, with much confusion amongst residents as to when they would receive the treatments.
- 4.66** The committee believes that some of the concerns raised by residents regarding respite accommodation and mitigation measures could be alleviated with improved communication initiatives. These strategies should be clear and easily accessible and provide relevant

information about such programs upfront to impacted parties. In light of this, the committee recommends that Transport for NSW review the communication strategy it had for this project, taking in to account the concerns raised in this report, and report back to the Minister of Transport and Infrastructure on any improvements that can be implemented for future infrastructure projects across New South Wales.

---

### **Recommendation 8**

That Transport for NSW review the effectiveness of its communication strategy for the CBD and South East Light Rail project, taking in to account concerns raised in this report, and report back to the Minister of Transport and Infrastructure on any improvements that can be implemented for future infrastructure projects across New South Wales.

---

## **Damage to property**

**4.67** Another issue raised by inquiry participants was the physical damage being caused to homes and other buildings as a direct result of construction work on the project. There were also concerns about the adequacy of processes put in place for people to claim compensation for this damage.

**4.68** The comments below highlight some of the concerns received by the committee in relation to damage to residents' homes:

- '... the whole house shook with the cracking sound making the experience terrifying as one can feel and hear the roof, walls, windows and ground moving. The walls of the house developed cracks and those old cracks in there, deepen'.<sup>379</sup>
- "That contempt—that is how I felt when I walked out of my house after that weekend and looked at all the damage. I thought, "This building stood here for maybe up to 100 years and overnight they damaged it". You can see where they have dragged machinery along the wall, let alone the cracks and the bits falling off it. I thought, "Where's the respect?"".<sup>380</sup>
- "The dumping and compaction activities caused the house to shake and rattling was experienced on every level of the house ... I believe that these activities have created cracks in my fireplace mantle, tiled walls, plaster walls, around skirtings' of which were not present when the pre-construction report was undertaken, between brick work and wooden window frames, and have widened a crack in brick work, which was present at the time of the post construction inspection. Wooden floors creak loudly attributable to movement in the subfloor areas'.<sup>381</sup>
- 'My property has damage and is cracked from all the demolition and compacting. I'd like this repaired. There is dust constantly coming into the house from the construction site. We've been living with construction for years now'.<sup>382</sup>

---

<sup>379</sup> Submission 48, Name suppressed, p 2.

<sup>380</sup> Evidence, Ms Wright, 3 October 2018, p 10.

<sup>381</sup> Submission 15, Name suppressed, pp 1-2.

<sup>382</sup> Submission 57, Jenny Leong MP, p 3.

**4.69** Ms Leong advised that while residents 'had been told that compensation for damage or disruption was available, they had found it to be purely hypothetical and impossible to access without taking legal action'.<sup>383</sup> For example, one resident explained how they had spent months trying to have the damage to their property fixed only to be told that the project was not responsible:

My house sustained damage in September/October 2016. The damage was caused by heavy vibrations caused by compacting work at the Olivia Gardens site. When I contacted Acciona they sent a team to inspect the damage and I was told the damage is only cosmetic, not structural. I then requested Acciona to organise the repair, but after numerous chasing over many months, I received a letter with convoluted and illogical statements rejecting any responsibility for the damage.<sup>384</sup>

**4.70** Another resident reported a similar experience, stating that after notifying the 'Light Rail Office' of the damage to their home, an engineer inspected the house and agreed that the cracks on the walls nearest the light rail works had only occurred since construction commenced near the property. Furthermore, this person advised that the engineer 'then promised to report back within the month but he never contacted me', commenting that this was 'another disappointing experience with the CBD and SE light rail'.<sup>385</sup>

**4.71** Ms Wright, a Randwick resident, presented many photos to the committee of sections of the art deco building she lives in, where it had been damaged due to construction. Ms Wright explained that the damage, which occurred several months ago, 'has not been fixed and has deteriorated'.<sup>386</sup>

**4.72** Submission author 15 indicated that the residents in their street had formed together to try and achieve a satisfactory result in relation to the damage caused to their homes:

All permanent residents in my street (Parkham Street) have experienced some discomfort or damage, and due to the lack of response and/or acknowledging responsibility from the construction partners, the residents have since rallied together as a group in a hope that a combined effort may have a more satisfactory result. This also shows how the damages are not to just one home but the whole street. There is little to no trust held in responses that have been made to some property owners (not all) that damage will be reassessed at the end of construction. Nothing in writing to them. There is still no recognition of liability they have caused.<sup>387</sup>

**4.73** The damage to properties along Parkham Street, Surry Hills, was discussed at a hearing, with Ms Prendergast saying that the department was aware of some damage to these properties and have addressed 'everyday issues', such as cleaning and fixing doors in these homes, and were currently 'going through a process to resolve claims'. Ms Prendergast added that they were committed to reviewing claims under the formal process and would use 'whatever expertise we

---

<sup>383</sup> Submission 57, Jenny Leong MP, p 2.

<sup>384</sup> Submission 57, Jenny Leong MP, p 3.

<sup>385</sup> Submission 42, Name suppressed, p 1.

<sup>386</sup> Evidence, Ms Wright, 3 October 2018, p 3.

<sup>387</sup> Submission 15, Name suppressed, p 2.

need to undertake that review', however noted that they will be relying on the pre-construction dilapidation surveys.<sup>388</sup>

- 4.74** In this regard, Ms Prendergast explained that there is a formal process to assess property damage. This includes the 'requirement for pre-work surveys, known as dilapidation surveys or pre-construction surveys, and while safety matters are dealt with in real-time or soon after they are established, the complete rectification is left until the end of the construction process'.<sup>389</sup> In addition, Ms Prendergast advised that there is a 'very strong escalation process' in place, whereby if Acciona is unable to resolve a claim for damage, it is then referred to Transport for NSW and an independent mediator for assessment.<sup>390</sup>
- 4.75** Mr Noonan confirmed that 'dilapidation Surveys were offered to all owners of buildings along the alignment', and property owners who consented to the survey had them completed with the results posted to each owner.<sup>391</sup> However, Mr Noonan commented that 'no doubt there will be people who believe their houses have been damaged, which may not have had dilapidation reports, or even if there were dilapidation reports they may not have gone to the extent of where the damage has now occurred'.<sup>392</sup>
- 4.76** In terms of claiming for damage, Mr Noonan explained that as per their procedures all damage claims are initially responded to within two hours of receipt by the property team, with inspections to gather evidence regarding the cause of the damage undertaken as soon as practicable. Mr Noonan said that 'where construction related damage has occurred, remedial works have been undertaken', although on 2 November 2018, at a hearing, he noted that the majority of inspections had determined that the cause was due to pre-existing damage, a lack of ordinary building maintenance or seasonal changes causing seasonal subsidence. In terms of damage that may have been caused by vibration, Mr Noonan stated that 'to date no evidence has been discovered to support those claims'.<sup>393</sup>

### **Committee comment**

- 4.77** The committee was surprised to hear from Mr Noonan that the majority of claims for property damage by owners have not been supported, given the significant amount of work undertaken for this project in close proximity to homes and other buildings.
- 4.78** From the evidence it is clear that the process for claiming damage takes a substantial amount of time, with property owners seemingly waiting months for any response. The committee believe that this attributes again to a lack of communication around the process.
- 4.79** The committee notes the evidence received from Transport for NSW that complete rectification of damage will occur once construction is completed and that there is an escalation process

---

<sup>388</sup> Evidence, Ms Prendergast, 29 November 2018, pp 35 and 37.

<sup>389</sup> Evidence, Ms Prendergast, 4 October 2018, p 38

<sup>390</sup> Evidence, Ms Prendergast, 29 November 2018, p 35.

<sup>391</sup> Answers to questions on notice, Mr Noonan, 2 November 2018, p 6.

<sup>392</sup> Evidence, Mr Noonan, 4 October 2018, p 14.

<sup>393</sup> Answers to questions on notice, Mr Noonan, 2 November 2018, p 6.

should property owners be dissatisfied with the outcome. We do not believe that this is well known in the community, and therefore our recommendations address these issues.

---

### Recommendation 9

That Transport for NSW, in relation to claims for property damage:

- conduct an urgent review of all claims, which shall include recommendations for compensation for residents whose properties have been found to be adversely impacted by the CBD and South East Light Rail project
  - provide an update to those property owners on the status of their claim as soon as possible
  - work with the residents and contractors to resolve these issues as soon as possible.
- 

### Recommendation 10

That Transport for NSW distribute information to all property owners along the CBD and South East Light Rail route as to the process for claiming property damage, the timeframes for rectification, the escalation process and any other relevant material.

---

## Randwick stabling yard

**4.80** At the commencement of the CSELR project, the NSW Government announced that within the Randwick Precinct a purpose-built stabling yard would be used to store light rail vehicles overnight and undertake interior cleaning, light maintenance or repair work.<sup>394</sup> The yard would be the main management and control base for the CSELR, with regular activity occurring at the facility on a 24 hour basis, seven days a week.<sup>395</sup>

**4.81** The facility has been built adjacent to the current Royal Randwick racecourse site and is located on a parcel of land that backs properties facing Doncaster Avenue.<sup>396</sup> The site is triangular in shape, with a boundary length of approximately 400 metres and a street front to Alison Road of approximately 135 metres. Due to the location of the yard to Doncaster Avenue properties and the future operational use, strategies to reduce the impact of light rail vehicle movement within the stabling yard were included in the project's *Environmental Impact Statement*.<sup>397</sup>

---

<sup>394</sup> Transport for NSW, *CBD and South East Light Rail Project: Environmental Impact Statement Volume 1A, Parts A to C and Volume 1B: Parts D to E* (Volume 1A, Part B, Chapter 5, November 2013), p 69.

<sup>395</sup> Transport for NSW, *CBD and South East Light Rail Project: Environmental Impact Statement Volume 1A, Parts A to C and Volume 1B: Parts D to E* (Volume 1A, Part B, Chapter 5, November 2013), p 82.

<sup>396</sup> Transport for NSW, *CBD and South East Light Rail Project: Environmental Impact Statement Volume 1A, Parts A to C and Volume 1B: Parts D to E* (Volume 1A, Part B, Chapter 5, November 2013), p 69.

<sup>397</sup> Transport for NSW *CBD and South East Light Rail Project: Environmental Impact Statement Volume 1A, Parts A to C and Volume 1B: Parts D to E* (Volume 1A, Part B, Chapter 5, November 2013), p 83.

- 4.82** An acoustic noise wall was to be constructed on the site boundary which faces Doncaster Avenue, with this wall used to mitigate potential construction and operational impacts to residents, including light spill from the yard.<sup>398</sup>
- 4.83** There were concerns from a number of individuals about the impact of construction and future operational use of the Randwick stabling yard.<sup>399</sup> One individual, Ms Diana Argirellis, appeared at a hearing and voiced her frustration and distress in regards to the impact the construction of the stabling yard has had on both her and other Doncaster Avenue residents since 2015. The case study below details their experience.

#### **Case study: Doncaster Avenue residents**

Ms Diana Argirellis spoke on behalf of residents of Doncaster Avenue, Randwick, describing the everyday reality of living adjacent to the Randwick stabling yard and the negative impact construction of the yard has had on her property and the wellbeing of her family.

Ms Argirellis spoke of numerous evenings where construction had resulted in her and her family being woken to find their home vibrating and shaking, leaving her children 'screaming and petrified'. She also commented on the dust coming in to homes on the street, stating that it 'has been unbearable and is still an ongoing issue'. She feared the structural damage that may be occurring from the vibrations to her property.

Ms Argirellis told the committee that prior to the construction of the CSELR many of the residents along Doncaster Avenue sought respite at the back of their houses from the noise generated by heavy traffic out the front, however the location of the stabling yard has driven people inside their homes in order to seek respite from the noise, vibration and dust from construction work.

When the site becomes operational residents will be subjected to the sound of tram bells when entering and exiting the yard, the running of air conditioning units on the vehicles and cleaning and maintenance activities. Ms Argirellis raised concerns that respite for residents will be limited as 'these noises will occur at all hours of the night, every night, forever more'.

In terms of mitigation treatments they have received, Ms Argirellis described the acoustic noise wall that was put in place as an imposing concrete wall that 'radiates summer heat and glare' into residents backyards. Residents were also offered an air filter, in which Ms Argirellis commented was a 'ridiculous unit to be installed on our wall to draw fresh air in, with locking up our windows, doors and vents'. Ms Argirellis did not accept this offer, stating 'It did nothing. They were making us live like lab rats. Who has to live with their windows and doors closed and to have air drawn in from this unit?'

Ms Argirellis told the committee that after heavy rains and flooding in the stabling yard there was a 'questionable and late design change of the yard' that meant raising the stabling yard ground by two metres, which she advised 'rendered the acoustic wall useless'. A further impact from this change was that the 11 metre flood lights that were installed in the yard now streamed into their homes. Ms Argirellis

<sup>398</sup> Transport for NSW, *CBD and South East Light Rail Project: Environmental Impact Statement Volume 1A, Parts A to C and Volume 1B: Parts D to E* (Volume 1B, Part D, Chapter 15), p 54.

<sup>399</sup> Submission 69, Mr Norman Heavener, pp 1-2; Submission 87, Randwick City Council, pp 5-7; Submission 154, Name suppressed, p 1; Submission 194, Ms Shawna Koh, pp 1-2.

said that these lights will be operational on a 24 hour basis and have already impacted on their sleep quality significantly, describing them as 'stadium lighting'. Ms Argirellis indicated that at community meetings with Acciona and Transport for NSW the request to put shields around the flood lights has been ignored, with residents being told that the lights meet requirements and there would be 'no mitigation'.

Ms Argirellis advised that she could not understand why their homes were never mitigated prior to the commencement of works, and was frustrated, alongside her neighbours, with the lack of consultation undertaken by Acciona and Transport for NSW:

'The last meeting that we had, a lot of my neighbours stood up and walked out. They actually declared that they did not want to have any further meetings with Acciona because it is ... all lip service. All our requests fall on deaf ears. We are just handled. We are being handled, and nothing. We keep asking for our homes to be mitigated. We keep asking to be kept informed with what is going on, but it is one lie after another. Like one of my neighbours says, "They handle us with the left while the right hand is doing something else.'

Ms Argirellis urged the committee to address the issues faced by residents on Doncaster Avenue. She asked for their homes to be soundproofed, for the installation of blinds, air-conditioning and ventilation, and to ensure their homes are repaired from damage caused by the CSELR project. She explained that they are not against the project, they just want to have 'the life that we had prior to any sort of construction', adding that their lives have been permanently changed.<sup>400</sup>

### Response to Doncaster residents' concerns

- 4.84** Randwick City Council detailed their response to concerns raised by residents from Doncaster Avenue. In April 2018, the Mayor and Ward Councillors met with residents to hear their concerns after receiving written complaints regarding the adequacy of the acoustic wall, the height of the light towers and the resulting light spillage into residents' property. It noted that residents' concerns were still ongoing.<sup>401</sup>
- 4.85** Ms Shurey acknowledged that these residents needs have not been taken into account, commenting that 'these people are in a terrible place – a really terrible place'.<sup>402</sup> She explained that it was the Council's recommendation that the stabling yard be built on the corner of Wansey Road and High Street and not along the residential street of Doncaster Avenue. Ms Shurey detailed the problems with the site that was chosen:

The problem is that because of the site that was chosen and the flooding issues—it is a flood area—the ground had to be raised up by almost a metre so infrastructure could be put underneath to deal with the flooding. So now the lights of the stabling yard—

<sup>400</sup> Evidence, Ms Diana Argirellis, affected resident, 3 October 2018, pp 4, 7 and 12. This case study is not taken verbatim from the witness, but is an accurate reflection of how the witness presented her story to the committee.

<sup>401</sup> Submission 87, Randwick City Council, p 5.

<sup>402</sup> Evidence, Ms Shurey, 20 August 2018, p 37.

which go 24/7, by the way—are almost a metre over the top of the wall. So the wall gives no relief for the light spill.<sup>403</sup>

**4.86** Ms Shurey explained that residents are being spoken to on an individual basis regarding some mitigation options, for example the installation of permanent blinds and air conditioning, however in terms of the flood lights coming into their home, she was of the opinion it cannot be fixed, stating 'their lives have been ruined forever'.<sup>404</sup>

**4.87** Acciona's response to issues associated with the stabling yard was also explored by the committee. Mr Noonan advised that the issues associated with the lights are permanent, and that the design meets requirements:

... it is a permanent issue, rather than a construction issue—and I do not know if something has been investigated to see if there is a relatively simple fix for that. But it is the reality, as I am sure you can imagine, of a designer requirement, a lighting requirement within the yard, and also we have restrictions on, I think, lux levels outside of the yard. My understanding is that the lux levels to the residents is within our requirements under the contract. It does not change the fact that I can imagine there are still residents who have a higher light level than previously.<sup>405</sup>

**4.88** During the hearing, Mr Noonan committed to reviewing the issue and providing the committee with further details on notice. In his response, Mr Noonan explained that both the acoustic noise wall and lighting design in the yard are compliant with the requirements of the Department of Planning and Environment, and the lights themselves have been designed in accordance with Australian Standards.<sup>406</sup>

**4.89** He further advised that although the installation of shields around the flood lights in the yard would be technically possible, it would be an extensive process given there are over 100 light fittings in the yard. Mr Noonan indicated that detailed design on each light is needed to determine whether such shields would impact on operational light levels for the stabling yard operations. On whether or not a shield could be extended to the acoustic wall, Mr Noonan acknowledged that whilst this may be effective, it would result in the existing wall being extended many metres above its current height.<sup>407</sup>

**4.90** When questioned on the concerns raised by Doncaster residents, Ms Prendergast understood the impact the stabling yard was having on the people living in close proximity to the yard, and explained that these properties will be offered treatments as per the formal process.<sup>408</sup>

**4.91** Ms Prendergast advised that treatments to mitigate noise and vibration impacts along Doncaster Avenue were originally assessed by specialists as the 'lowest category of impact'.<sup>409</sup> From this assessment, Ms Prendergast said that residents were offered a certain level of treatment, and if

---

<sup>403</sup> Evidence, Ms Shurey, 20 August 2018, p 37.

<sup>404</sup> Evidence, Ms Shurey, 20 August 2018, p.37

<sup>405</sup> Evidence, Mr Noonan, 4 October 2018, p 20.

<sup>406</sup> Answers to questions on notice, Mr Noonan, 2 November 2018, pp 11-13.

<sup>407</sup> Answers to questions on notice, Mr Noonan, 2 November 2018, p 12.

<sup>408</sup> Evidence, Ms Prendergast, 4 October 2018, p. 51.

<sup>409</sup> Evidence, Ms Prendergast, 4 October 2018, p. 38.

dissatisfied their matters would be escalated.<sup>410</sup> She indicated that the issues associated with the properties on Doncaster Avenue are now being reviewed by Transport for NSW, with a request made by the Minister to review the originally proposed treatments, and should residents not be satisfied an independent mediator will be involved.<sup>411</sup>

### Committee comment

- 4.92** The committee acknowledges the frustration and despair experienced by residents along Doncaster Avenue, with the Randwick stabling yard built right alongside the back of their properties. It is clear that these residents have had little respite during the construction of the site and will be forced to tolerate the noise and lighting from the yard once the CSELR is operational.
- 4.93** The committee believes that the mitigation measures offered to residents located along Doncaster Avenue were insufficient. We were surprised to learn that they were assessed as being impacted at the lowest level. The committee welcomes Transport for NSW's review of the treatments being offered and we urge the department to be sympathetic to the concerns of these residents and provide adequate mitigation treatments.
- 4.94** The most urgent issue that needs to be addressed immediately is the stabling yard's lights. It would undoubtedly be extremely difficult to live and sleep in your home if you are subject to constant lighting that is similar to the lighting of a sports stadium. In the committee's view this issue can be fixed and we question why this has not already been done. While it may be a costly or difficult exercise, the committee recommends that Transport for NSW urgently arrange for shields to be installed on the flood lights in the stabling yard, to ensure that the lights do not stream into homes located along Doncaster Avenue, Randwick.

---

### Recommendation 11

That Transport for NSW arrange, as a matter of urgency, for shields to be installed on the flood lights in the Randwick stabling yard, to ensure that the lights do not stream into homes located along Doncaster Avenue, Randwick.

---

### Parking and footpath access

- 4.95** In addition to complaints about noise, dust, vibration and damage to homes, concerns were also expressed about reduced parking and footpath access.
- 4.96** The committee heard of many car spots that had been removed as a result of the CSELR that would not be returned post construction.<sup>412</sup> For example, Randwick City Council indicated that

---

<sup>410</sup> Evidence, Ms Prendergast, 4 October 2018, p 51.

<sup>411</sup> Evidence, Ms Prendergast, 4 October 2018, p 51.

<sup>412</sup> Evidence, Ms Bidy Oquist, affected resident, 3 October 2018, p 14; Submission 8, Name suppressed, p 1; Submission 11, Mr Paul Corradini, p 1; Submission 13, Name suppressed, p 1; Submission 32, Mr Tim Ritchie, p 1; Submission 33, Name suppressed, p 1; Submission 38, Name suppressed, p 1;

'along the alignment passing through Kingsford and Kensington approximately 800 parking spaces have been permanently removed'.<sup>413</sup>

- 4.97** The Australian Hotels Association also noted over 100 car spaces lost as a result of the project along Devonshire Street, Surry Hills, that would not be returned once construction is completed, and noted the impact this has had on businesses:

Many of the patrons who attend venues in this area do so for food and entertainment and therefore drive. The removal of these parking spaces has resulted in direct financial losses for these venues, which have been observed when parking spaces are removed or altered to loading zones or other restrictions.<sup>414</sup>

- 4.98** Ms Annette Keay, a Randwick resident who lost parking out the front of her property, commented that 'parking in the area is at a premium' and that this was 'only going to get worse once the light rail is up and running and more commuters will access the day parking'. Ms Keay suggested that 'more resident or timed parking would assist with this problem'.<sup>415</sup>

- 4.99** In 2016, GTA Consultants undertook a review of the number of car spots that would be removed due to the CSELR project. The table below represents the anticipated car spots to be removed along the light rail route in Surry Hills, Kensington, Kingsford and Randwick.<sup>416</sup>

**Table 1 Car Parking Provisions along the CSELR route**

Kerbside Use	Surry Hills [3]	Kensington	Kingsford [4]	Randwick	Total
Car Share, Hospital, Mail Zone	2	1	0	4	7
Disability Parking	5	0	0	1	6
Loading Zone	13	0	6	0	19
Taxi Zone	0	0	5	2	7
Short Stay Parking (≤1P)	71	96	105	62	334
Long Stay (Restricted)	39	8	23	57	127
Long Stay (Unrestricted)	12	103	195	198	508
<b>Total</b>	<b>142</b>	<b>208</b>	<b>334</b>	<b>324</b>	<b>1008</b>

*GTA Consultants, Parking Offsets and Management Strategy (Issue B, 11 July 2016), p 12.*

- 4.100** In its submission, Transport for NSW acknowledged the disruption to traffic and parking along the CSELR route and emphasised that access, as much as possible, would be maintained:

Construction along the route involves excavation, utility works, track laying, paving, reroute of traffic lanes and kerbside finishing works. It is a complex project that has involved significant traffic and parking changes and construction in close proximity to

Supplementary submission 57a, Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP), pp 1-3, 5-6, 9, 20, 22-23; Submission 77, Ms Cat Wright, p 1; Submission 82, Name suppressed, p 1; Submission 87, Randwick City Council, pp 24-25, 47-50; Submission 133, Name suppressed, p 1; Submission 154, Name suppressed, p 3; Submission 185, Ms Samantha Marwick, p 1.

<sup>413</sup> Submission 87, Randwick City Council, p 24.

<sup>414</sup> Submission 20, Australian Hotels Association, pp 2-3.

<sup>415</sup> Evidence, Ms Annette Keay, Affected resident, 3 October 2018, p 2.

<sup>416</sup> GTA Consultants, *Parking Offsets and Management Strategy* (Issue B, 11 July 2016), p 12.

residences and businesses along the route. A key premise has been to ensure that, as much as reasonably possible, access for residents, businesses and the community is maintained throughout construction.<sup>417</sup>

**4.101** Further, Transport for NSW advised that since 2013 it 'has been engaging stakeholders across the route about parking impacts' and has worked with local councils 'to ensure alternative parking is made available to offset parking removal along the light rail route'. This has included the:

- creation of more timed parking
- reconfiguration of kerbside space by introducing angled parking in the side streets of Surry Hills and the South East
- transfer of land on Rainbow Street, Randwick, to enable the construction of a multi-story carpark
- production of flyers outlining alternative parking areas for businesses to distribute to their customers<sup>418</sup>
- maximisation of loading zone availability and the development of new initiatives and solutions to support freight and delivery activity along the light rail route.<sup>419</sup>

**4.102** Mr Alan Bright, Manager, Strategic Planning, Randwick City Council, informed the committee that the council had implemented its own parking mitigation program to implement angle parking in the streets off Kingsford, Kensington and Randwick town centres, and through this program has increased the number of car spots to 297.<sup>420</sup> In its submission, Randwick City Council noted that 'this has not however, managed to replace the total number of car parking spaces lost'.<sup>421</sup>

**4.103** Another concern raised by inquiry participants was the safety of the footpaths during construction of the project. Randwick City Council advised the committee that it had received concerns from residents regarding the way footpaths are left by the contractors involved in constructing the light rail:

Council has received correspondence by residents concerned as to how safety and risk are managed by the contractors. Footpaths and road surfaces are left in substandard condition resulting in risks to public safety. Road surface construction and degradation, absence of lighting and worksite tidiness are mentioned as being below acceptable community and work standards.<sup>422</sup>

**4.104** The City of Sydney also noted numerous concerns which have been raised with Transport for NSW regarding the 'safety outside the construction compounds in George Street, including

<sup>417</sup> Submission 39, Transport for NSW, p 4.

<sup>418</sup> Submission 39, Transport for NSW, p 24.

<sup>419</sup> Submission 39, Transport for NSW, p 5.

<sup>420</sup> Evidence, Mr Alan Bright, Manager, Strategic Planning, Randwick City Council, 20 August 2018, p 35.

<sup>421</sup> Submission 87, Randwick City Council, p 24.

<sup>422</sup> Submission 87, Randwick City Council, p 27.

uneven footpaths, missing pavers and missing utility lids which cause trip and fall hazards for footpath users'.<sup>423</sup>

**4.105** Changes to footpaths to enable construction work to occur has also impacted on safety, with several individuals expressing concerns about decreased visibility and sightlines.

**4.106** Ms Bidy Oquist, a Surry Hills resident who travels across Devonshire Street by foot or car almost every day, commented that 'the constantly changing routes are frustrating, time consuming and frequently dangerous because of the inability to gain a clear view of pedestrians, cyclists and oncoming traffic'. Ms Oquist added that 'parents are reluctant to allow young children to walk on their own if the route includes any part of the construction zone' as 'they have serious safety concerns about poorly constructed and constantly changing pedestrian pathways'.<sup>424</sup>

**4.107** Ms Keay also noted the number of times her and her children have almost been hit by cyclists directly out the front of her home, due to the gate now opening on to the footpath with 'very poor visibility', commenting that 'it is not a council problem, the police do not police it, so whose responsibility is it and how can we make it safe again?'.<sup>425</sup>

**4.108** Along similar lines, Mr Greg Tannos, owner of Optical Illusions, stated that he is 'losing a lot of my older patients' as it is 'difficult to find access into streets [and] difficult to walk the footpaths'. Mr Tannos also questioned who is now responsible for the maintenance of the footpaths:

It used to be a paver would be lifted, and the council would have liability. They would go and fix that paver. Who is responsible for the mess now? I was told three to four months—the footpaths, going to work on that. That is six months. It has to be at least another year to go, from what I can see of it. It is just digging up, patching up holes in the place, holes tilted, tilted into the road, dips, every part of it.<sup>426</sup>

**4.109** In terms of the accessibility of footpaths, Ms Prendergast informed the committee that 'pedestrian access has always been maintained' and that 'if there is localised disruption to access we notify the businesses or residents directly'.<sup>427</sup>

**4.110** In its submission, Transport for NSW also explained they have implemented Local Access Plans that are developed in conjunction with businesses to ensure access is maintained during construction. As outlined by Transport for NSW, the 'plans detail alternative access arrangements such as driveways, waste removal, and changes to loading space, taxi pick up and drop off, construction methodology and public transport', with plans continually updated as construction progresses.<sup>428</sup>

---

<sup>423</sup> Submission 86, City of Sydney, p 3.

<sup>424</sup> Evidence, Ms Oquist, Affected resident, 3 October 2018, p 5.

<sup>425</sup> Evidence, Ms Keay, 3 October 2018, p 2.

<sup>426</sup> Evidence, Mr Greg Tannos, Optical Illusions, 3 October 2018, p 32.

<sup>427</sup> Evidence, Ms Prendergast, 20 August 2018, p 2.

<sup>428</sup> Submission 39, Transport for NSW, p 13.

- 4.111** Further, Mr Noonan advised that 'workers are careful to minimise impact on the community in all instances and [Acciona] has maintained access to properties'. Mr Noonan added that 'where vehicles have been required to temporarily park on footpaths or across driveways for short periods during night work, [Acciona] has moved them if required, to maintain access'.<sup>429</sup>

#### **Committee comment**

- 4.112** The committee notes that many parking spaces have been removed to make way for the CSELR and acknowledge the frustration of local community members in areas that already have limited parking.
- 4.113** We note that Transport for NSW and the local councils have worked to provide alternative parking and the committee encourages both the department and the councils to continue working on initiatives such as these.

#### **Removal of trees**

- 4.114** The removal of trees along the CSELR route was a key concern for community groups and individuals in the inquiry. Many were extremely disappointed in the number of trees that had been removed and the significant impact this has had on the amenity of their local areas.
- 4.115** Randwick City Council noted 'significant' concerns that were raised by the community regarding the removal of trees via 'many phone calls, submissions and protests nearby and on site'. The Council explained that residents felt that the removal of significant trees, such as along Alison Road and Anzac Parade and on the corner of Wansey Road and High Street, has had a 'major impact' on the visual amenity of the area and on the biodiversity, birds and wildlife.<sup>430</sup>
- 4.116** Some comments received by community members in relation to the removal of trees in their local areas and how this has impacted them are listed below.
- 'There is only one tree left in our street ... We and our neighbours get tense as we turn into our street and no long[er] look forward to going home. We are told the trees will not be replaced at all along the northern side of [the] street. They cannot make up for the 60-70 year old trees we had on Devonshire St'.<sup>431</sup>
  - 'What is most sad though is the destruction of the trees. Slowly but surely I witnessed the most beautiful and healthy trees being chopped down and I have to say it was genuinely upsetting. For a city that supposedly prides itself on its greenery and eco friendliness this was disastrous! The areas all along the Light rail project whether in Surry Hills or in the CBD, or further out to Randwick have been destroyed'.<sup>432</sup>
  - 'For me, this was one of the most harrowing aspects of what the Light Rail has meant: I stood on the corner of Darley Avenue and Alison Road for two whole days as trees were cut down one after another in an operation of military precision. It was a thoroughly

<sup>429</sup> Answers to questions on notice Mr Noonan, 2 November 2018, p 3.

<sup>430</sup> Submission 87, Randwick City Council, pp 28-29.

<sup>431</sup> Submission 44, Name suppressed, p 3.

<sup>432</sup> Submission 34, Name suppressed, p 1.

shocking sight, I was powerless to stop it, I was angry and tearful, and I still feel traumatised. The sound of a chainsaw puts my teeth on edge nowadays, and brings it all back to mind. To add insult to injury, it was totally unnecessary'.<sup>433</sup>

- 'The loss of many of Sydney's most significant trees will see a diminution in terms of amenity and aesthetic value for present and future generations, particularly communities along the route as well as the wider public. Further given the net loss in urban canopy cover, the project will have a corresponding impact on health and amenity'.<sup>434</sup>
- 'I stood each evening on Anzac Parade trying to save the beautiful trees that were part of our history. Alison Rd - I weep when I see the devastation! The loss of canopy will impact both the existing and future communities. I do hope you have seen the before and after photos and that you are well aware of the frustrated and unhappy feelings of the communities effected'.<sup>435</sup>

**4.117** In particular, the trees that were removed along Anzac Parade caused significant distress amongst the community. The Daughters of ANZAC and Their Families explained the importance of Anzac Parade, outlining that it is 'a highly significant parade ... with approximately 15 sites which are either memorial sites or sites which are important in the story of the volunteers who fought in World War I as well as World War 2 and the Korean War', and noted the 'great resentment and disappointment' from the community that this had been destroyed due to the CSELR project.<sup>436</sup>

**4.118** Mrs Mary Richard, a Randwick resident, spoke of 'a sense of belonging and identification' with the 'complete avenue of Moreton Bay and Port Jackson figs along Anzac Parade' that were part of a 'living memorial for our Anzac War Heroes'. Mrs Richard explained that 'returned soldiers, their families and friends gathered there every Anzac Day to pay respects and honour the memory of [the] fallen'.<sup>437</sup>

**4.119** Further, Mrs Richard expressed her disappointment that there was a 'complete disregard of the exceptional worth and heritage value' of those 100 to 150 year old heritage protected fig trees, and that ignoring this has resulted in many being destroyed, with 'no possibility of size and canopy replacement in the immediate vicinity and those that will be planted will take several generations to reach similar stature'. Mrs Richard went on to say that she fought for the trees not to be removed with no positive outcome:

I and many others stood on Anzac Parade for months and months holding placards, wrote to Politicians, signed petitions, helped organise major rallies, wrote to the media, spent hours on social media, telephoned those responsible, maned information stalls, handed out leaflets, talked to hundreds of people, begged and pleaded for Mike Bairds' government to alter the route slightly to save all these trees but all our cries fell on deaf ears.<sup>438</sup>

<sup>433</sup> Submission 38, Name suppressed, p 1.

<sup>434</sup> Submission 24, Ryde Gladesville Climate Change Action Group, p 1.

<sup>435</sup> Submission 115, Name suppressed, p 1.

<sup>436</sup> Submission 74, Daughters of ANZAC and Their Families, pp 1-2.

<sup>437</sup> Submission 36, Mrs Mary Richard, pp 1-2.

<sup>438</sup> Submission 36, Mrs Mary Richard, pp 2.

- 4.120** Ms Marie Bradley, Co-founder of Keep Sydney Beautiful, which was established after the Anzac trees along Anzac Parade were felled for the CSELR, was 'shocked that Sydney's green spaces, majestic trees and heritage could be taken so easily and heritage protections rendered meaningless'.<sup>439</sup> Ms Bradley commented that 'the historical significance of both Anzac Parade and Alison Road trees was not recognised by the consultants who prepared the business case', adding that 'it is impossible to place an economic value on the ANZAC memorial trees'.<sup>440</sup>
- 4.121** In terms of the trees that were removed along Alison Road, one community member explained that a last minute change to the construction plan meant that the light rail route along Alison Road that was originally planned for the southern side closest to the Racecourse was changed to the northern side. This individual commented that this decision was 'unbeknown to most of the community' and was 'exhibited for a mere two weeks shortly before Christmas' at a 'time when most people are busy doing other things'. They went on to explain that due to this change the community lost 'a large chunk of public land to private interests from the edge of Centennial Park' and 'a dearly loved avenue of mature shade trees', which cannot be replaced overnight.<sup>441</sup>
- 4.122** When questioned about the removal of trees along Alison Road, Ms Shurey told the committee about what action they had taken to prevent this change from occurring and to try and save the trees along this part of the road:

The reasoning for those trees coming out was because they wanted a second rail link for event spill. We went to them and said, 'Please, can you not put a second rail line in', then that would have saved the trees. They insisted on having this event line so they can have the light rail banked up for when the races are on. The original plan for this stop was on the other side of the road, the racecourse side of the road, and that would have enabled the trees to survive and also the fact that the race goers are going to have to cross Anzac Parade to get to the racecourse, which seems crazy to me to have put it on Centennial Parklands side of the road.<sup>442</sup>

- 4.123** In its submission, Saving Sydney's Trees declared that 'the destruction of parts of the significant and complete avenue of figs along Anzac Parade, Alison Road and proposed Dacey Avenue has diminished social amenity for Sydney siders in a deep and profound way'.<sup>443</sup>
- 4.124** Further, Ms Hogg was concerned that 'the public will continue to lose trees associated with this project' due to modifications to the project:

As this project rolls on, there seem to be more and more amendments made and more trees seem to be going with them. That was seen in the *Government Information (Public Access) Act* request release, where we started to see modification after modification. Each modification rolls out with more trees going.<sup>444</sup>

<sup>439</sup> Evidence, Ms Maria Bradley, Co-founder, Keep Sydney Beautiful, 20 August 2018, p 62.

<sup>440</sup> Answers to question on notice, Ms Maria Bradley, Co-founder, Keep Sydney Beautiful, 25 September 2018, p 2.

<sup>441</sup> Submission 38, Name suppressed, p 6; See also submission 52, Mr John Boyle, p 4; Submission 54, Mr John Bellamy, p 1; Submission 96, Ms Maria Bradley, p 1.

<sup>442</sup> Evidence, Ms Shurey, 20 August 2018, p 39.

<sup>443</sup> Submission 22, Saving Sydney's Trees, p 4.

<sup>444</sup> Evidence, Ms Hogg, 20 August 2018, p 63.

**4.125** Ms Hogg also explained that the area surrounding the Randwick Racecourse, in which a number of trees have been removed, has 'flowing, moving underground water that fluctuates with the tides and climatic conditions' that cannot be stopped by storm water drains. Ms Hogg advised that these trees acted as a mitigation measure and when they were removed 'significant flooding occurred on Alison Road into the park'.<sup>445</sup>

**4.126** In relation to the number of trees that have been removed, Ms Bradley, as well as Ms Hogg, indicated that the estimated loss of canopy is approximately nine hectares.<sup>446</sup> Ms Hogg said that this was 'a severely negative outcome' and could 'only be rectified over 20-50 years of productive growth depending on species and survival rates'.<sup>447</sup>

**4.127** Mr Boyle had also estimated the number of trees that would be removed due to the project:

The Light Rail construction requires the unnecessary destruction of around 1,300 significant, heritage and other trees and many other park and street trees. The loss of almost 10 ha of precious air cleaning and cooling tree canopy and much public parklands and open space. A total of 1277 trees are to be 'impacted', in Stage 1, of which 871 are significant or heritage listed. Almost, 10 hectares or 10 Allianz Stadiums worth of important urban tree canopy is to be decimated by this project ...<sup>448</sup>

**4.128** During a hearing, Ms Prendergast from Transport for NSW acknowledged 'the loss of vegetation and its impact to the community', and stated that they have commenced revegetation, where 540 trees have already been planted with a further 120 saved and confirmed that they 'will replant 1,800 trees'.<sup>449</sup>

**4.129** However, community groups expressed the view that the number of trees to be replanted is inadequate. For example, Ms Hogg noted the significant number of trees that could not be replaced by planting only 1,800 trees:

The public were told it would receive six to eight replacement trees for each significant tree. There are 800 such trees involved in the first draft, although that number keeps increasing. Over 12,000 trees have been affected in the impact area and with each modification it seems to increase as this plan rolls out on the hop. Even at six to one, the promised 1,800 to 2,200 trees is a vague promise and is grossly inadequate.<sup>450</sup>

**4.130** Ms Bradley indicated that 'it is not possible to replant along the route because of the cement' and expressed the opinion that 'we were misled because they said that there would be replacement trees, but they did not say that they were not going to be in the area'.<sup>451</sup> In this regard, one resident said that 'more than ten healthy Moreton Bay figs planted in the Robertson Road playing fields by the Friends of Centennial Park were pulled out and relocated to the

---

<sup>445</sup> Evidence, Ms Hogg, 20 August 2018, p 62.

<sup>446</sup> Evidence, Ms Hogg, 20 August 2018, p 60; Answers to question on notice, Ms Bradley, 25 September 2018, p 2.

<sup>447</sup> Submission 22, Saving Sydney's Trees, p 5.

<sup>448</sup> Submission 52, Mr John Boyle, p 3.

<sup>449</sup> Evidence, Ms Prendergast, 20 August 2018, p 3.

<sup>450</sup> Evidence, Ms Hogg, 20 August 2018, p 61.

<sup>451</sup> Evidence, Ms Bradley, 20 August 2018, p 64.

Maroubra area, even though light rail representatives said they could be replanted in their original locations after the works were completed'.<sup>452</sup>

- 4.131** Ms Jane and Katey Grusovin and Ms Bradley expressed the view that 'the offset tree replacement is inadequate and does not properly account for or compensate the communities along the route as the tree canopy loss is greater than the offset replacement'.<sup>453</sup>

#### **Committee comment**

- 4.132** The committee notes the disappointment and evident distress from community members as to the number of trees that have been removed due to the project, particularly within the Randwick precinct.
- 4.133** We were saddened to hear that trees that pose great significance to the local community had also been removed, such as the trees along Anzac Parade, and that attempts by the community to keep these trees were not taken seriously.
- 4.134** It is the committee's view that the last minute change to the project plan along Alison Road, resulting in the removal of more trees, did not provide sufficient time for community consultation, and in effect did not enable the concerns of the community to be considered and alternatives to be fully investigated. The committee would encourage the NSW Government to ensure that sufficient community consultation takes place when project designs change, particularly when the change will impact on the community.
- 4.135** The committee is encouraged by the revegetation program, however agrees with stakeholders that the number of trees to be replanted will not adequately replace what the community has lost, particularly given the size and historical significance of a number of the trees that were removed. The committee therefore recommends that Transport for NSW review its revegetation program, with the aim of increasing the number of trees to be replanted along the CSELR route, ensuring that any trees are replanted as close to the site of removal as reasonably possible. It also recommends that steps be taken to protect significant trees, so that they can be retained with the design and development of state infrastructure.

---

#### **Recommendation 12**

That Transport for NSW review its revegetation program, with the aim of increasing the number of trees to be replanted along the CBD and South East Light Rail route, ensuring that any trees are replanted as close to the site of removal as reasonably possible.

---



---

#### **Recommendation 13**

That the NSW Government ensure significant trees are adequately protected and that the design and development of state infrastructure prioritises their retention.

---

<sup>452</sup> Submission 42, Name suppressed, p 1.

<sup>453</sup> Submission 51, Ms Jane and Katey Grusovin p 3; Submission 96, Ms Maria Bradley, p 3.

## Acknowledgment of the ongoing impacts

**4.136** During the inquiry, the key partners involved in the design and construction of the CSELR project acknowledged the impact the project has had on residents and businesses.

**4.137** Ms Prendergast from Transport for NSW told the committee that 'we have always been very upfront that a light rail project such as this in a dense area is disruptive and we do really appreciate the impact on residents' and businesses' lives', adding that 'we know that the delays have exacerbated this impact and we appreciate their patience and apologise'.<sup>454</sup>

**4.138** Mr Bramley from ALTRAC clearly stated 'that ALTRAC is under no illusions about the project's progress to date' and noted the 'serious impacts on residents, businesses and visitors', in particular due to the project delays. Mr Bramley acknowledged 'the patience and understanding that has been shown by the community in what has been very difficult circumstances' and gave the following apology:

We are sorry for the impacts and the length of time that construction has taken, and on behalf of ALTRAC I apologise to those affected.<sup>455</sup>

**4.139** Mr Noonan from Acciona also apologised to all those who have been impacted by the construction of the project:

Most importantly, Mr Chairman and Committee, I assure the Committee, residents and businesses that we regret the delays, disruption, and impacts that the Sydney light rail project has caused. Acciona is one part of the total light rail project. For our part, we are sincerely sorry that this project has caused this disruption and pain. All project participants and the infrastructure market generally should take consideration of this project and understand how we can all ensure such impacts do not occur again.<sup>456</sup>

**4.140** During a hearing, Mr Mark Coxon, Managing Director, Alstom Transport Australia, who is responsible for the operation and maintenance of the CSELR, confirmed their commitment to delivering the project, stating that 'we remain committed on the project to deliver it to the best of our abilities'.<sup>457</sup>

**4.141** Finally, Mr Brian Brennan, Managing Director, Transdev Sydney, noted that major projects like these can transform a city for the better, however acknowledged that they are disruptive during construction:

That said, Transdev has been involved in many major light rail projects around the world in recent years and I can categorically state they have been truly transformative to cities in which they have been built. But there is no getting around the fact that there is significant disturbance and real inconvenience while construction is underway. You would not be a human being if you were not moved by the testimony today. I did watch it by streaming and it is regrettable the level of disturbance. It was genuine. It was real and it has been very challenging for people.<sup>458</sup>

---

<sup>454</sup> Evidence, Ms Prendergast, 4 October 2018, p 37.

<sup>455</sup> Evidence, Mr Bramley, 4 October 2018, p 24.

<sup>456</sup> Evidence, Mr Noonan, 4 October 2018, p 2.

<sup>457</sup> Evidence, Mr Mark Coxon, Managing Director, Alstom Transport Australia, 3 October 2018, p 38.

<sup>458</sup> Evidence, Mr Brian Brennan, Managing Director, Transdev Sydney, 3 October 2018, p 54.

**Committee comment**

- 4.142** The committee acknowledges that the contractors and Transport for NSW recognise the significant impact the construction of the CSELR has had on businesses, residents and the wider community, and have apologised for the disruption and delays.
- 4.143** The committee was deeply moved by the stories shared by the residents and businesses affected by the delays. Given the impacts have continued for longer than expected, due to delays, the committee looks forward to the end of construction in particular, and finalisation of the project in 2020.

---

**Finding 1**

The committee finds that the delay of the project has contributed to the distress of residents and businesses.

---



## Chapter 5 Impacts on business owners

This chapter will examine the impacts of construction work on the CBD and South East Light Rail (CSELR) on business owners. It begins by looking at the financial impacts, including the disruption and loss of revenue caused by the placement of hoardings near businesses. It will also consider the adequacy of financial assistance and support provided to small business owners affected by the project. Lastly, it will discuss the mental health impacts many business owners have experienced while trying to keep their businesses afloat.

### Financial impacts

- 5.1 Many businesses, particularly small businesses, have financially struggled or even been forced to close, since the commencement of construction on the CSELR. This section will highlight the financial impacts these business owners have experienced.
- 5.2 From the outset, it is important to note that the committee received a significant amount of evidence from business owners located close to the CSELR route, particularly by way of written submissions.
- 5.3 It also heard directly from a number of small business owners at hearings, including the owners of Ouroboros Wholefoods Café on Devonshire Street, Optical Illusions on Anzac Parade and Mondial Pink Diamond Atelier on George Street in Sydney.<sup>459</sup>
- 5.4 The former owners of The Book Kitchen and Vivo Café also shared with the committee their experience, both having since closed their business due to the impacts of the CSELR project on revenue for their business.<sup>460</sup>
- 5.5 Each of these business owners reported to the committee how their business has financially suffered as a result of construction work on the project. Mr Emanuel Tzirtzilakis, owner of Ouroboros Wholefoods Café, spoke of being 'on the brink of financial ruin', reporting that they are heavily indebted with no help from the banks as they are 70 per cent down. Mr Tzirtzilakis said 'it is heartbreaking to step out of your business and see all your former customers elsewhere, and I do not blame them', as the business is surrounded by noise suppressing materials and a major pit that has been opened several times.<sup>461</sup>
- 5.6 Mr Greg Tannos, owner of Optical Illusions, reported that he has experienced impacts from the CSELR for more than two years now and has lost a significant number of regular customers. Mr Tannos explained that he has had to work longer hours to make up for the reduced hours of his staff. He estimated that he has incurred a loss of 15 per cent, commenting that 'I have had a lot of up and down moments and have not wanted to come to work because of what I feel is a losing battle going on around me'.<sup>462</sup>

<sup>459</sup> Evidence, Mr Emanuel Tzirtzilakis, Ouroboros Wholefoods Café, Mr Greg Tannos, Optical Illusions, and Mr Michael Neuman, Mondial Pink Diamond Atelier, 3 October 2018, pp 18-37.

<sup>460</sup> Evidence, Mr Amelia Birch, The Book Kitchen, and Ms Angela Vithoulkas, Vivo Café, 3 October 2018, pp 18-37.

<sup>461</sup> Evidence, Mr Emanuel Tzirtzilakis, Ourboros Wholefoods Café, 3 October 2018, p 19.

<sup>462</sup> Submission 62, Optical Illusions, pp 1-2.

- 5.7** Along similar lines, Mr Michael Neuman, owner of Mondial Pink Diamond Atelier, told the committee that they have 'seen a significant downturn in our turnover during the period'. He estimated his financial damage is between \$3 and \$5 million. Mr Neuman said that 'we keep going because we have a lease' and 'we have a business we do not want to give up, but it makes it much more difficult to trade'.<sup>463</sup>
- 5.8** Other business owners also reported financial losses, as shown by the quotes below:
- 'Severe loss of trade ... down across the board by over 30 per cent plus and not improving'.<sup>464</sup>
  - 'As construction still continues in Kingsford today, it's hard for me to make an estimate of total damages as we would need to look at where profit would have been without construction and I am unsure how fast profit will return once construction does cease. I am sure the total figure will be over \$500,000'.<sup>465</sup>
  - 'We have been in Kensington operating our small business for just on 10 years. In all our years in business we have never been put in this position of hardship as we find ourselves in today since the commencement of the light rail project along Anzac Parade ... Goodwill of business down from \$700,000 to current value of \$20,000'.<sup>466</sup>
  - 'My business has gone from earning me \$150k plus a year for the previous two years to lucky to be making \$50k, I can't give it away as I have been trying to sell as I am in too much debt to recover'.<sup>467</sup>
  - 'Low foot traffic has resulted in a huge loss of sales leading to low gross margins and loss of profit'.<sup>468</sup>
- 5.9** The part owner of Emperor's Garden in Chinatown, which had been trading for nearly 40 years, said that they had observed a 30 to 50 per cent decrease in turnover following the commencement of the project. The owner watched as businesses nearby in various shopping centres had come and gone due to not being able to pay rent as a result of the delays to construction. This owner was worried that they too would 'suffer the same fate'.<sup>469</sup>
- 5.10** Ms Angela Vithoukias, the former owner of Vivo Café, which closed in August 2018 due to the CSELR project, declared that 'we were hit hard immediately and nothing we did stopped the losses'. She said 'you can't change less people coming to your business when circumstances have nothing to do with your food or cost or service'. Ms Vithoukias outlined the plan Vivo Café enacted in response to the expected disruption during the CSELR project construction.<sup>470</sup>
- 5.11** Speaking on behalf of affected business owners, Ms Vithoukias suggested that the project was poorly managed and that the delays and time for construction work had prolonged the impact

---

<sup>463</sup> Evidence, Mr Michael Neuman, Mondial Pink Diamond Atelier, 3 October 2018, p 20.

<sup>464</sup> Submission 58, Name suppressed, p 1.

<sup>465</sup> Submission 80, Name suppressed, p 1.

<sup>466</sup> Submission 63, Café Jacks @ Kensington, p 1.

<sup>467</sup> Submission 64, Khing Thai, p 1.

<sup>468</sup> Submission 79, Name suppressed, p 1.

<sup>469</sup> Submission 81, Emperor's Garden Pty Ltd, p 1.

<sup>470</sup> Submission 21, Vivo Café, p 23.

on business owners. She also expressed frustration at the lack of support provided to businesses by the government, and the governments 'constant denial that anything was wrong' and 'constant commentary that nobody was complaining'. She argued that the government was unprepared to provide any real support to businesses.<sup>471</sup>

- 5.12** Further, Ms Vithoukias said that if your business runs at a loss for years 'you will never retrieve your loss or get back the potential of your growth and what that would bring', explaining that impacted businesses have lost money from day one, and that has compounded as each year has passed, with businesses losing potential, growth, profits and goodwill.<sup>472</sup> Ms Vithoukias went on to describe how each drop in trade affects a small business:

For us as small business owners it is thousands of days where your revenue has dropped anywhere—and I know the data—between 10- and 90 per cent from day one. You drop 10 per cent and you are insolvent; you drop 20 or 30 and you are living on a wing and a prayer; you drop 50, 60 or 70 per cent and God only knows how you are opening your door every day. Regardless of the uplift of this project we will never get that back.<sup>473</sup>

- 5.13** Randwick City Council also emphasised the 'significant' impact construction work has had on businesses in the Kensington and Kingsford areas, noting that 'the most extreme impact on town centres has been the closure of businesses'. The Council said that the construction activity has caused a loss of trade and disruption to foot traffic, with every business feeling the impacts, and the uncertainty of construction timeframes have made it difficult for businesses to make decisions along the way.<sup>474</sup>

- 5.14** These concerns were echoed by Ms Jenny Leong MP, Member for Newtown, who commented that 'many businesses have suffered severe loss in revenue due to construction noise, dust and lack of access to their venues'.<sup>475</sup>

- 5.15** The NSW Small Business Commissioner acknowledged that 'a significant number of small businesses along the alignment have been affected by the construction of the CSELR', highlighting that for those businesses 'it has been a stressful and painful journey', with many struggling financially and this has resulted in relationship breakdowns and mental health strains.<sup>476</sup>

- 5.16** The committee heard how hotels located along the route have also been impacted. The Australian Hotels Association highlighted how these hotels have experienced a loss of customers:

For all members along the route, the impact on their businesses have been many, and significant. Road closures, power, water and utility outages whether planned or due to incompetence, bollards, hoarding and obstructions to patrons entering or exiting

<sup>471</sup> Submission 21, Vivo Café, p 7.

<sup>472</sup> Submission 21, Vivo Café, p 10.

<sup>473</sup> Evidence, Ms Angela Vithoukias, Vivo Café, 3 October 2018, p 30.

<sup>474</sup> Submission 87, Randwick City Council, p 60.

<sup>475</sup> Submission 57, Jenny Leong MP. P 3.

<sup>476</sup> Submission 26, NSW Small Business Commissioner, p 3.

venues, noise, dust, mud and other impacts are all examples of the issues that have arisen that have deterred patrons from attending member hotels.<sup>477</sup>

- 5.17** Mr Sean Morrissey, Deputy Chief Executive Officer, Australian Hotels Association of NSW, told the committee that the feedback they have received from their members has been 'a mix of optimism in some parts and pessimism in others'. The less optimistic fear that 'the business will not return to the way it was, given the fundamental change in the way that area will operate'. Mr Morrissey said that the Association has broadly supported the CSELR project itself, hoping it will lead to positive impacts for businesses once light rail services are operational, adding 'I guess time will tell'.<sup>478</sup>
- 5.18** The Australian Hotels Association also engaged accountancy firm DFK Crosbie to examine the financial statements from a number of hotels along the CSELR route to determine the financial impact of the project.<sup>479</sup> During a hearing, Mr Jason Butler, DFK Crosbie Accountants, informed the committee that he has determined a reduction in bottom-line profit ranging from \$80,000 to \$683,000 annually, from looking at the 12 months prior to construction and 12 months post. Mr Butler also noted that from talking to some of the businesses that did not partake in the analysis they also reported 'varying effects but definitely sizable effects on those businesses over that period'.<sup>480</sup>

### **Hoardings and signage**

- 5.19** The placement of hoardings (temporary fences) and inadequate signage around businesses has been one of the main factors contributing to the loss of customers and revenue.
- 5.20** Transport for NSW acknowledged that one of the key impacts to business owners from construction are the hoardings, which obscure sightlines to businesses, and advised that it has worked with ALTRAC Light Rail (ALTRAC) to 'influence hoarding placement and support the reduction of the construction footprint where reasonably possible'.<sup>481</sup>
- 5.21** In this regard, Transport for NSW has utilised hoarding designs to pay respect to the heritage of Sydney and showcase the character of particular areas. It has also put in place a range of signage to 'support businesses and customers accessing stores', some of which are tailored to the precinct or specific businesses where intensive construction work has occurred. Transport for NSW advised that 'new signage has been installed in all business areas along the route' and plinth wayfinding signs have been fixed to the footpath which are illuminated at night to 'enhance the visibility of businesses within construction zones across the route'.<sup>482</sup>
- 5.22** However, significant concerns were raised by business owners about the use of hoardings close to their premises and inadequate signage provided by Transport for NSW. For example, Randwick City Council indicated that the issue of hoardings 'has never been satisfactorily

---

<sup>477</sup> Submission 20, Australian Hotels Association, p 3.

<sup>478</sup> Evidence, Mr Sean Morrissey, Deputy Chief Executive Officer, Australian Hotels Association of NSW, 20 August 2018, p 54.

<sup>479</sup> Submission 20, Australian Hotels Association NSW, p 4.

<sup>480</sup> Evidence, Mr Jason Butler, Accountant, DFK Crosbie Accountants, 20 August 2018, p 52.

<sup>481</sup> Submission 39, Transport for NSW, p 6.

<sup>482</sup> Submission 39, Transport for NSW, p 22.

resolved with affected businesses' particularly in the Kingsford and Kensington area, where businesses felt that the 'hoardings gave the general impression that businesses behind the hoardings are not operating during light rail construction'. The Council explained that repeated attempts by these local business owners to have suitable signage placed on the hoardings has not been produced,<sup>483</sup> stating that 'this shows the lack of communication and transparency in the business relationship that exists between Transport for NSW and the Kingsford business community'.<sup>484</sup>

- 5.23** Mr Morrissey from the Australian Hotels Association of NSW told the committee that a number of their members have indicated 'that the erection of barriers in and around hotels has led to a number of things, such as the impeding of foot traffic and their ability to access hotels', as well as reduced car parking where the barricades were erected. Mr Morrissey also highlighted that there have been a number of venues where the hoardings have prevented 'entrance to at least one of the entrances or exits to the building' making it difficult for patrons.<sup>485</sup>
- 5.24** The Vivo Café advised that once construction commenced in their zone 'barriers and walls were put up creating tunnels and blocking visibility', with businesses not able to be seen from the street 'unless you were in front of them'. In terms of signage, the Vivo Café expressed the opinion that 'signage was a joke, they never got it right, they never consulted or asked what we would prefer, they always thought they knew what we wanted or needed even though they never asked or gave us a choice'.<sup>486</sup>
- 5.25** In addition, the Vivo Café explained that the barriers and lack of lighting and security meant that 'vandalism and crime were easy', noting that the Police would often comment that 'even some CCTV cameras were blocked from being able to see what was going on, and Police patrols were less effective because they also could not see what was happening around them'. The Vivo Café added that it took them a year and repeated requests 'to finally have some lighting put along the barriers'.<sup>487</sup>
- 5.26** There were other criticisms of the signage arranged by Transport for NSW. One individual argued that signage was inadequate, and provided too late, such that businesses experienced a decline in patronage.<sup>488</sup> Another individual commented on the 'ugly chain fencing' and 'mass of orange plastic and signage', and how business owners still experienced limited visibility and access for customers.<sup>489</sup>

<sup>483</sup> This was as at the time of writing the submission on 13 July 2018 (submission 87, Randwick City Council, p 41).

<sup>484</sup> Submission 87, Randwick City Council, pp 41-42.

<sup>485</sup> Evidence, Mr Morrissey, 20 August 2018, pp 55-56.

<sup>486</sup> Submission 21, Vivo Café, p 6.

<sup>487</sup> Submission 21, Vivo Café, pp 6-7

<sup>488</sup> Submission 57a, Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP), p 11.

<sup>489</sup> Evidence, Ms Bidy Oquist, affected resident, 3 October 2018, p 5.

- 5.27 Ms Amelia Birch, the former owner of The Book Kitchen on Devonshire Street, Surry Hills, appeared before the committee to give a first-hand account of both the economic and personal impacts on her and her family as a result of the CSELR project, in particular the resulting impact of the hoardings that were erected right near her business. The case study below details Ms Birch's experience.

#### **Case study – The Book Kitchen<sup>490</sup>**

Ms Amelia Birch and her husband owned The Book Kitchen café/restaurant for eight years before the commencement of construction on the CSELR route. The Book Kitchen, which had been operating for 12 years, was a successful institution in Surry Hills, known for its outside seating area on Devonshire Street that in winter attracted the morning sun. It served more than 1000 customers a week, employed between 12 and 20 staff members at any one time and had a turnover in excess of \$1 million. The business held 'huge sentimental' value for Ms Birch and her husband as it had been purchased using funds that Ms Birch's husband inherited after his father passed away when he was 13 years old.

Two weeks prior to construction in the zone adjacent to The Book Kitchen, hoardings 2.5 to 3 metres high were erected 2.5 metres from its entrance. The café lost all of its outside seating, which constituted 35 per cent of its seating capacity. As a result, Ms Birch told the committee 'nobody could see us from the street, from driving down Devonshire Street. My friends, people who are close to me would say, "I drove past, Why are you closed?" '.

The Book Kitchen's revenue dropped by 40 per cent in the first week of the hoardings being erected. Ms Birch said 'there was no talk of impact or mitigation' from Transport for NSW or Acciona Infrastructure Australia in the first six weeks of the project. Ms Birch told the committee that the signage they received were 'run-of-the-mill squares with the words "The Book Kitchen" and a sweet picture of a coffee cup behind it'. Official branding did not arrive until five weeks after the project had commenced. When the signage did arrive, they were placed on the inside of the hoardings to alleviate safety concerns that they would fall on pedestrians.

Within two weeks of the hoardings being erected Ms Birch and her husband were forced to dismiss 12 to 15 staff members and run the business themselves. Soon the business was trading insolvent and Ms Birch attempted to change their business model. They first moved to more night time focused operations and reduced their staff. They then created a co-working space where they rented out their kitchen and set up seating space to small business owners and freelancers that do not need to be tied to a desk and provided business needs such as coffee, Wi-Fi, printing, and a blackboard.

However, after six weeks of construction on the CSELR, The Book Kitchen closed, putting Ms Birch and her husband in an 'incredibly difficult financial and emotional position, which left us with no opportunity to recover any loss or damage'. Ms Birch's husband suffered depression, they were forced to move in with Ms Birch's parents and the couple separated. She said 'it takes a toll, not just financially, not just physically, but emotionally and the wear and tear is – there are no words'.

<sup>490</sup> Evidence, Ms Amelia Birch, The Book Kitchen, 3 October 2018 pp 20-33; Submission 76, The Book Kitchen, p 1. This case study is not taken verbatim from the witness, but is an accurate reflection of how the witness presented her story to the committee.

Ms Birch suffered significant financial disadvantage in the six weeks following the CSELR project commencing and their business going into liquidation. Ms Birch said that they did not formally approach Transport for NSW at the time they liquidated their business because there was no formal process in place and they understood that Transport for NSW was not planning to compensate business owners. Ms Birch was appalled at the apathy from the NSW Government, stating that 'I put blood, sweat and tears into eight years in my life' and lost everything 'because of this inappropriate and expensive project and nobody in the government cares'.

**5.28** When questioned about the experience of The Book Kitchen, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, acknowledged the impact the project has had on Ms Birch's business, commenting that 'the hoardings did go up very close' and 'within six weeks, the business folded, which was very sad because it was an icon in the area'. Ms Prendergast went on to describe the support they had offered to the business prior to closing:

We did work with them. We provided them outdoor seating to replace the outdoor seating that was removed. We provided it to the side. We did work with them on a change in business model and serving and try to assist them. We do acknowledge the impact. They did fold quite quickly.<sup>491</sup>

**5.29** Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW, informed the committee that 'consideration was given to providing assistance under the Small Business Assistance Scheme' (discussed later in the chapter) to the owners of The Book Kitchen, however noted that there are complexities with providing payment as 'the business is now in liquidation'. Mr Braxton-Smith noted that 'any payment would effectively be made to the liquidator and therefore, regrettably, would not provide any assistance to the owner under the circumstances where their business is in liquidation'.<sup>492</sup>

**5.30** At the hearing, Ms Prendergast agreed to review The Book Kitchen case but later advised that Transport for NSW would not be recommending an ex-gratia payment to the business owner. The department stated:

TfNSW [Transport for NSW] has re-examined the initial assessment and the recommendations made to the Minister; and given consideration as to whether there is a basis for re-assessing a payment in accordance with the Small Business Assistance Scheme (SBAS), or whether there are other grounds to recommend an ex-gratia payment in accordance with Treasury Guidelines. Based on the re-assessment, there are no grounds to recommend an ex-gratia payment under the SBAS or Treasury Guidelines.<sup>493</sup>

<sup>491</sup> Evidence, Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW, 4 October 2018, p 51.

<sup>492</sup> Evidence, Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW, 4 October 2018, p 51.

<sup>493</sup> Correspondence from Ms Rachel Simpson, Principal Manager, Parliamentary Services, Transport for NSW, to secretariat, 4 November 2018.

- 5.31** Given how hoardings have affected businesses, the committee clarified when the hoardings will be removed. Ms Prendergast indicated that the barriers down strategy, which marks the conclusion of the main civil works, will occur in January-February 2019. Ms Prendergast went on to explain the process for the progressive removal of barriers:

We understand that it is the noisy civil works and the barriers that are blocking sight lines that are the biggest issues, so there has been some progressive removal. What we will see over the next five months is a removal of those barriers or at least contracting that footprint. That will then open up the vista. It will also mark the end of the really heavy duty work, which is the utilities work, the excavation, the paving, the track work, the track bed ... And when we talk barriers down, which is what ALTRAC has committed to, that is what we are alluding to: moving the main footprint and coming back in a localised sense and, of course, building the stops.<sup>494</sup>

- 5.32** In this regard, Mr James Bramley, Chairman, ALTRAC, stated in evidence that ALTRAC 'is absolutely committed to removing barriers as soon as possible and completing delivery of this important project', indicating that 'most of the construction barriers will be down in the CBD and Surry Hills by the end of the year, with the remainder to follow next year'.<sup>495</sup>
- 5.33** During a hearing, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, confirmed that they were on target to meet the timeframes for the removal of barriers, stating that they are aiming to pull back the barriers as much as possible and noted that 'at the moment that is going relatively well'.<sup>496</sup>
- 5.34** Mr Mark Coxon, Managing Director, Alstom Transport Australia, also confirmed that once a zone moves into a testing and commissioning phase 'it moves away from being a construction site', and the hoardings and barriers are removed. Mr Coxon explained that initially the construction barriers will come down, and then 'discrete hoardings' will be erected in much smaller areas to 'protect where we have to install our equipment'. Mr Coxon advised that following this the full barriers will come down, commenting that 'I think it will be much better for the businesses once we move into the full installation phase in those areas'.<sup>497</sup>
- 5.35** In early January 2019, the media reported that the planned removal of barriers associated with the project was 'running late'. The Minister for Transport was also quoted as stating that the barriers were needed for public safety, commenting that he 'would never apologise for putting safety first'.<sup>498</sup>

### **Committee comment**

- 5.36** It is clear to the committee that businesses along the CSELR route have been severely impacted by this project. We were extremely saddened to hear that many business owners have suffered

---

<sup>494</sup> Evidence, Ms Prendergast, 20 August 2018, p 10.

<sup>495</sup> Evidence, Mr James Bramley, Chairman, ALTRAC Light Rail, 4 October 2018, p 24.

<sup>496</sup> Evidence, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, 29 November 2018, p 24.

<sup>497</sup> Evidence, Mr Mark Coxon, Managing Director, Alstom Transport Australia, 3 October 2018, pp 43 and 48.

<sup>498</sup> Danielle Le Messurier and Adella Beaini, 'Zoned out', *Daily Telegraph*, 11 January 2019, p 1.

financial hardship, and some forced to close their doors. Understandably, it is small business owners that have been impacted the worst. We recognise that the impacts have been intensified by delays to the project, and in particular the construction phase.

- 5.37** The committee can see that the placement of hoardings so close to businesses has been a major factor in contributing to the loss of customers. While we understand that there needs to be the right balance between safety and ensuring visibility of businesses, we believe that there needs to be greater consideration in the future of how the placement of hoardings can negatively impact businesses.
- 5.38** The committee acknowledges that Transport for NSW have assisted in arranging signage for some businesses along the route, but we question the adequacy of this given the downturn businesses have experienced and concerns expressed during the inquiry. In particular, we note concerns about the quality, effectiveness and timing of signage. We understand that once a loss of customers and revenue is experienced by a small business, it is often difficult to claw back, particularly in an environment where construction noise, dust and visibility are having an impact too.
- 5.39** It was heart breaking to hear that The Book Kitchen, an icon in the Surry Hills district, was forced to close only six weeks after construction had commenced. It was distressing to see the devastating financial and emotional impact this has had on the business owners. The erection of the hoardings so close to the business clearly resulted in the almost instant and significant decline in customers and revenue. We were disappointed to hear of the lack of support that was offered by Transport for NSW and believe that if more was done initially it may have alleviated the pressure on the owners. The committee notes that a review was undertaken by Transport for NSW regarding whether financial assistance could still be provided to The Book Kitchen's owners, but that this review found that providing assistance would be difficult given the business is now in liquidation.
- 5.40** The committee acknowledges that the experience of The Book Kitchen is just one case, and there are many others who have also felt the profound impact of construction work on their business. We note the experience of the Vivo Café, which also closed its doors as a result of impacts of the project.
- 5.41** The committee acknowledges that the hoardings and barriers have started to come down along the route and we hope that this will start to lessen the impacts on businesses who have struggled over the last few years and will finally provide some relief.
- 5.42** In the next section we consider the effectiveness of financial assistance and support measures developed specifically to help small businesses affected by the CSELR project.

### **Small Business Assistance Program**

- 5.43** In August 2017, Transport for NSW established the Small Business Assistance Program.<sup>499</sup> The program targets small business owners along the CSELR route who have been impacted by construction taking longer than originally expected. It is not a compensation scheme but is

<sup>499</sup> Submission 39, Transport for NSW, p 20.

designed to provide targeted assistance for short term adverse impacts, which is provided on an ex-gratia basis.<sup>500</sup>

**5.44** To be eligible for the Small Business Assistance Program, business owners must meet the following criteria:

- the business must employ fewer than 50 full-time equivalent employees<sup>501</sup>
- the business must be situated along the alignment or in close proximity to and impacted by construction activity
- the business must be located in a zone where construction is taking longer than initially advised.<sup>502</sup>

**5.45** As part of the application process, businesses are requested to provide signed financial statements prior to and following the period of construction and any additional information that demonstrates the impact on the business. Reimbursement is also made to business owners for any reasonable accountant costs incurred in connection with applying for the assistance.<sup>503</sup>

**5.46** In assessing applications, Transport for NSW advised that businesses are 'assessed against the criteria on a case-by-case basis' and it takes into consideration the level of impact, the type of business and any other relevant factors that may have impacted the business' performance. The payments provided to business owners start at two month's rent, with the final recommended amount 'adjusted by causation factors (access, sight line, ambience, and dust) and severity multipliers depending on the overall impact of construction in particular zones'.<sup>504</sup>

**5.47** Mr Braxton-Smith outlined that each businesses' activity statements and financial returns are assessed to establish if 'there has been a downturn, either in turnover or in gross profit' and if this criteria is met then a further assessment is conducted by an independent financial adviser 'as to what the level of assistance might be in accordance with a formula'. Mr Braxton-Smith explained that assistance will start on the basis of rent per lease or if they are an owner occupier it will be based on the 'typical percentages of turn-over that are attributable to rent', and then factors are applied to assess the degree of impact due to construction. He went on to say that a recommendation is then made 'as to some alternatives of level of assistance for government consideration', which is then 'reviewed by a probity auditor before it is submitted to government for approval'.<sup>505</sup>

---

<sup>500</sup> Submission 39, Transport for NSW, Attachment 6.7, p 1.

<sup>501</sup> Originally the eligibility criteria was set at 20 full time equivalent staff. This was widened to 50 full time equivalent staff based on feedback from the business community in May 2018 (Submission 39, Transport for NSW, p 21).

<sup>502</sup> Submission 39, Transport for NSW, Attachment 6.7, p 1.

<sup>503</sup> Submission 39, Transport for NSW, Attachment 6.7, p 1. The offer to provide reimbursement for accounting costs was established in May 2018 (Submission 39, Transport for NSW, p 21).

<sup>504</sup> Submission 39, Transport for NSW, pp 20-21.

<sup>505</sup> Evidence, Mr Braxton-Smith, 20 August 2018, p 13.

- 5.48** According to Mr Braxton-Smith the present allowance for the scheme is up to \$40 million,<sup>506</sup> noting that 'we are monitoring the benefits that we are providing to the businesses and enabling them to address issues that they have suffered through the overstay'. Mr Braxton-Smith confirmed that 'we are continuing to provide support and assistance for as long as the overstay affects them' and that any business who has been provided assistance will be revisited every six months, unless assistance is required more quickly.<sup>507</sup>
- 5.49** During a hearing, Ms Prendergast, commented that this type of financial assistance 'is unprecedented',<sup>508</sup> and advised that 113 businesses have received assistance with a total of \$15.7 million paid, as at 29 November 2018.<sup>509</sup>
- 5.50** Transport for NSW provided to the committee a list of the businesses that had qualified for payment(s) in accordance with the Small Business Assistance Scheme as at 27 August 2018. A statistical analysis of these payments by location, business type and amount paid can be found in appendix 4.<sup>510</sup> Also at a hearing, Mr Braxton-Smith advised that 126, out of a potential 760 businesses have applied and 96 businesses have received the first round of assistance, with some up to the fourth round.<sup>511</sup>
- 5.51** In relation to communicating the program to business owners, Transport for NSW advised that a communication strategy was put in place, which involved engagement with peak representative bodies and other prominent stakeholders. It included door knocking, emailing businesses, active promotion during business forums and drop-in visits and the publication of fact sheets on the Sydney Light Rail web page. Transport for NSW also indicated that the program 'received extensive media coverage on TV, radio and print'.<sup>512</sup>
- 5.52** Ms Prendergast contended that the department has proactively engaged with businesses throughout the process, commenting that 'the minute we started the scheme, anyone who had come to us before or showed any sign of starting to do it tough, we went proactively to them and offered them the assistance'.<sup>513</sup> In addition, she noted that they have actively engaged with businesses to ensure they are there to receive the benefits of the CSELR when it is operational:

We have undertaken extensive engagement, as we have outlined in our submission, but I really want to make the point that our program has graduated over time. It commenced with proactive marketing to promote businesses, but as delays became apparent we graduated that program to provide financial assistance to help businesses because we want the businesses who are located on the route today to be the ones who experience the uplift.<sup>514</sup>

<sup>506</sup> The Small Business Assistance Program is funded by Transport for NSW, who continue to adjust the scheme in line with the length of overstay (Evidence, Ms Prendergast, 4 October 2018, p 61).

<sup>507</sup> Evidence, Mr Braxton-Smith, 4 October 2018, pp 62-63.

<sup>508</sup> Evidence, Ms Prendergast, 4 October 2018, p 62.

<sup>509</sup> Evidence, Ms Prendergast, 29 November 2018, p 56.

<sup>510</sup> Answers to questions on notice, Transport for NSW, 27 August 2018, pp 1-2.

<sup>511</sup> Evidence, Mr Braxton-Smith, 4 October 2018, pp 52-53.

<sup>512</sup> Submission 39, Transport for NSW, p 21.

<sup>513</sup> Evidence, Ms Prendergast, 4 October 2018, p 64.

<sup>514</sup> Evidence, Ms Prendergast, 20 August 2018, p 2.

**Stakeholder concerns**

- 5.53** Stakeholders and small business owners welcomed the Small Business Assistance Program, although there were some criticisms regarding the process to apply, the timing of its implementation and the criteria for eligibility.
- 5.54** Mr Chris Bastic, Randwick City Council, Light Rail Business Liaison Officer, expressed the view that whilst the financial assistance provided to businesses 'has been welcomed and in some cases saved several businesses from closing', it has 'not compensated for the full impact of what they have lost'.<sup>515</sup>
- 5.55** Mr Morrissey also acknowledged and welcomed the 'measures that have been implemented thus far', however indicated that members feedback received noted a lack of 'transparency and ease of access to information around eligibility for businesses impacted along the route'.<sup>516</sup>
- 5.56** The Vivo Café contended that the process has 'never been fair, or accurate, or transparent' with businesses not 'told how it is calculated or what it is based on', adding that 'unless you are able to show a great loss, you were never considered worthy of the small amount which was offered'. The Vivo Café went on to explain its experience in applying for the financial assistance:

My accountant gathered all my paperwork to present to Transport and Ernst & Young the forensic accountant. It took weeks for my accountant to prepare paperwork, because it wasn't in the usual course of doing business for us or him. There were two meetings, several phone calls, and emails, in order for Ernst & Young to be satisfied that they had enough information. I was then made an offer and told - take it or leave it.<sup>517</sup>

- 5.57** Both the Vivo Café and Mr Morrissey were concerned that as part of this process businesses are required to sign confidentiality agreements,<sup>518</sup> with Mr Morrissey noting that this could impact on any future compensation to businesses:

We understand that any arrangements in relation to compensation are subject to the confidentiality provisions where members might be required to sign some sort of deed of release and confidentiality. It is obviously a matter of concern for us broadly ... there are one-off payments to venues, where there is obviously the ongoing issue of an ultimate completion date, whereby those members are required to sign their lives away for a one-off payment, with a release given in respect of any future compensation. It is of significant concern for us.<sup>519</sup>

- 5.58** Randwick City Council also explained that given the agreements between business owners and Transport for NSW are confidential it makes it 'difficult to measure' just how much impact the program has had in helping those who have been affected.<sup>520</sup> The Council further noted that

---

<sup>515</sup> Submission 87, Randwick City Council, p 32.

<sup>516</sup> Evidence, Mr Morrissey, 20 August 2018, p 51.

<sup>517</sup> Submission 21, Vivo Café, pp 3-4.

<sup>518</sup> Submission 21, Vivo Café, p 3; Evidence, Mr Morrissey, 20 August 2018, p 57.

<sup>519</sup> Evidence, Mr Morrissey, 20 August 2018, p 57.

<sup>520</sup> Submission 87, Randwick City Council, p 60.

'many of the businesses wishing to take advantage of government assistance have expressed their intimidation at meeting the requirements of the assistance application criteria'.<sup>521</sup>

**5.59** In this regard, the committee heard from a number of business owners who did not meet the criteria for payment under the program. The Vivo Café argued that most businesses 'will never fit the criteria, and many have been knocked back', claiming that 'out of the thousands of businesses along the light rail route only 60 or so have been given financial assistance', adding that 'true compensation has never been offered, true acknowledgement has never happened'.<sup>522</sup>

**5.60** The owner of Mille Vini wine bar/restaurant had applied for the rental assistance twice, and both times did not meet the criteria. The owner highlighted that almost overnight the business revenue dropped considerably at 20 per cent, commenting 'we turned from making a profit ... to making a loss'. The owner sought advice from consultants and the previous owners and begun focusing on functions, however the 'decline in foot traffic occurred faster than functions could replace'. Rental relief was also sought from the landlords with a payment plan put in place, however the owner said that 'the outstanding rent became a debt'. In the end, the owner advised that they were 'still paying off a loan for goodwill that died after 17 months' and their mother had been providing financial assistance to keep their business going.<sup>523</sup>

**5.61** Ms Catherine McQuade, owner of Smooth, was told that as they had only commenced their tenancy in November 2016 they had no claim, even though they had been trading for 19 years and 'are absolutely certain that the difference in the previous year of trading is due to the light rail construction'.<sup>524</sup>

**5.62** Ms Rosa Maria Colagrossi, Kensington Pharmacy and Newsagency, described her disappointment in not receiving any financial assistance:

I was left feeling 'let down', as the representative from TfNSW [Transport for NSW] was very empathetic, I was very emotional the day I met and I felt positive that there may have been financial help available. The letter I received was somewhat insensitive and just a copy and paste style of letter, probably given to most applicants. In retrospect, I felt that I had been played a fool. Not only had I bared my heart and soul to these people, myself, my bookkeeper and accountants had spent hour's submitted very private accounting information, 3 or 4 years' worth, pages of reports from daily computing records, till records, highlighting the customer count decline and the decrease in sales. It was truly a slap in the face. Despite my disappointment, I did hope that those that had faced worse hardships than I, such as losing their homes or business or health, had in fact received the assistance. At least the money had been helping those that needed it more than me. I doubt that this ever occurred.<sup>525</sup>

**5.63** Mr Neuman, owner of Mondial Pink Diamond Atelier, told the committee that their claim for financial assistance was rejected due to their business not being 'situated along the alignment and in close proximity to and impacted by construction activity'. However, Mr Neuman argued that their business 'has suffered a significant decline as a direct result of the light rail

<sup>521</sup> Submission 87, Randwick City Council, p 31.

<sup>522</sup> Submission 21, Vivo Café, p 11.

<sup>523</sup> Submission 71, FoSaux Pty Ltd, pp 1-3.

<sup>524</sup> Submission 59, Smooth, p 2.

<sup>525</sup> Submission 85, Kensington Pharmacy and Newsagency, p 2.

construction, which has for a period of over 2 years caused havoc along George street and the approaches to our tenancy', commenting that it did not make sense that their claim was rejected:

It is laughable to think that you can have a business in the Queen Victoria Building whose address is 455 George Street, and have the light rail construction going along George Street right in front of the Queen Victoria Building, and for them to suggest that our business is not adjacent to it—it just does not make sense.<sup>526</sup>

**5.64** When questioned about the impact to Mondial Pink Diamond Atelier, Mr Braxton-Smith advised that 'in this particular case, they were not able to identify any connection between the change in turnover, which is a fact on the horizon, and the activity of the light rail construction'. Mr Braxton-Smith explained that they 'have always allowed case by case' and rely on the information that the owner and the accountant of the business can provide to determine 'what is occurring within the business and the construction activity'.<sup>527</sup>

**5.65** In addition, Ms Prendergast explained that it is their role to support businesses who are directly impacted by the project:

Our role is to help those who are really directly impacted. Those ones who are on the alignment and who are experiencing dust, noise, you know, and those really strong invasive impacts on their customers and affecting the businesses. That is who we need to help.<sup>528</sup>

**5.66** Another concern raised by business owners was the timing of the Small Assistance Business Program, with many claiming that the assistance was offered too late.

**5.67** For example, the Randwick City Council indicated that businesses impacted along the CSELR route had been seeking compensation for a substantial period of time before the Small Business Assistance Program was made available.<sup>529</sup>

**5.68** Another inquiry participant claimed that requests for financial assistance were initially refused, and it took a 'City of Sydney Councilor to go to a radio personality to get any movement on a partial admission of responsibility for losses to businesses'. They went on to say that it was 'too late for many as they closed down before it helped', noting as well that it was 'far too little' with no compensation for 'wages, loss of profit, insurance, and all other costs'.<sup>530</sup>

**5.69** The Vivo Café also commented that although some businesses have received payment under the program, including themselves, this was not enough and was provided too late:

Yes, some businesses have eventually received a small amount of financial assistance, but it is too little too late, and we have had to beg for it. We have been left with little dignity and buckets of misery. We have been ignored, vilified and humiliated.<sup>531</sup>

---

<sup>526</sup> Evidence, Mr Neuman, 3 October 2018, p 26; Submission 61, Mondial Pink Diamond Atelier, p 2.

<sup>527</sup> Evidence, Mr Braxton-Smith, 4 October 2018, p 52.

<sup>528</sup> Evidence, Ms Prendergast, 4 October 2018, p 52.

<sup>529</sup> Submission 87, Randwick City Council, p 52.

<sup>530</sup> Submission 44, Name suppressed, pp 5-65.

<sup>531</sup> Submission 21, Vivo Café, p 9.

**5.70** Further, Ms Vithoukas told the committee that she 'constantly asked for compensation' at the Business Reference Group Meetings and was told that she was being 'disruptive' and 'asking for things that were beyond the scope'. Ms Vithoukas went on to say that if 'true compensation' had been provided from commencement some of the businesses may have survived, describing what businesses have had to do just to stay afloat:

This is not just a matter of revenue downturns; these are businesses who have had to draw down on mortgages, find money from friends, put stuff on credit cards they never thought they would do, beg, borrow and steal funds just to turn the lights on and the key of a business because they are committed to years of a lease that they cannot get out of. These people have had their backs up against a wall about to jump off a cliff. That is the world we have lived in and been told categorically for years there will be no compensation. We have been forced to seek other avenues. This was not what we wanted. We wanted a sensible good approach so we would still be here after construction.<sup>532</sup>

**5.71** When questioned as to why financial assistance was not provided to businesses sooner, Ms Prendergast advised 'that the seriousness of the delay was not apparent until about August last year', explaining that they 'were looking at it zone by zone' and 'when the multiple nature of the delays across multiple zones kicked in' they then developed the Small Business Assistance Program.<sup>533</sup>

**5.72** Ms Prendergast indicated that it was only at a meeting with businesses in June 2017, convened by the Small Business Commissioner, that the department 'heard, face to face, some of the issues that the businesses were having', and that prior to this only 0.04 per cent of complaints about the project related to businesses.<sup>534</sup>

**5.73** In terms of this meeting with businesses, Ms Vithoukas explained that she met with the Small Business Commissioner on a number of occasions and eventually convinced the Commissioner to host two meetings for small businesses to hear their stories. The first was held on a Monday morning, and Ms Vithoukas advised 'there was standing room only' with more than 80 small businesses telling their story, often heated towards the representatives present from Transport for NSW. The morning of the second meeting the Small Business Commissioner informed Ms Vithoukas that the meeting was cancelled, with Ms Vithoukas claiming she was told this was due to the Minister not wanting a meeting in a public space for business owners to 'have a go at Transport'. The second meeting was moved to the Vivo Café shop, with around 100 businesses recording their stories, in which Ms Vithoukas stated was passed on to the Small Business Commissioner and from her understanding 'none were presented to the Minister'.<sup>535</sup>

**5.74** However, Ms Prendergast told the committee that following the initial meeting Transport for NSW set about working on additional practical measures to support businesses and subsequently announced the financial assistance program. Ms Prendergast added that 'we are now providing assistance and providing more and more third, fourth rounds, fifth if we need to, to keep these businesses afloat', as 'we want them to be here when the civils are finished'.<sup>536</sup>

<sup>532</sup> Evidence, Ms Vithoukas, 3 October 2018, pp 28-29.

<sup>533</sup> Evidence, Ms Prendergast, 4 October 2018, pp 58-59.

<sup>534</sup> Evidence, Ms Prendergast, 4 October 2018, p 59.

<sup>535</sup> Evidence, Ms Vithoukas, 3 October 2018, pp 24-25.

<sup>536</sup> Evidence, Ms Prendergast, 4 October 2018, pp 59-60.

- 5.75** In respect of businesses that have closed, Transport for NSW advised that as at 20 August 2018 it was aware of six businesses out of the 86 that had received financial assistance under the Small Business Assistance Program that had since closed.<sup>537</sup> According to Ms Prendergast there 'are currently 51 vacancies along the route, of which eight are under refurbishment, 10 were vacant before construction started and three are brand new developments', stating that this 'accords with the rate—the normal rate of vacancy along the route—pre construction'.<sup>538</sup>
- 5.76** For those businesses who closed prior to the Small Business Assistance Program being established, Ms Prendergast indicated that with liquidators now in place 'it becomes very complex' and each circumstance would need to be looked at case by case.<sup>539</sup> Ms Prendergast further explained that the assistance under the scheme is really to help those impacted by the overstay:
- The issue is that the business assistance scheme has been established to help people through the hardship. It kicks in when the period of delay kicks in ... It is about the level of impact and it is the overstay. That is really critical to the criteria. It is assistance to help them stay afloat because we want those businesses to be here when the civil works are done.<sup>540</sup>
- 5.77** Further, Transport for NSW later advised that 'to be eligible to apply for and receive assistance, a business needs to be operating at the time of their application and/or commencement of a review', highlighting that the focus of the Small Business Assistance Program is to support businesses during construction impacts.<sup>541</sup>
- 5.78** Inquiry participants suggested a number of recommendations to improve the assistance provided to impacted businesses along the CSELR route. For example, the City of Sydney recommended that the NSW Government 'continue to provide more targeted business support services to support those impacted by the project, in combination with improved communication' and provide 'greater transparency around the availability and process for assistance and compensation available to residents and businesses'.<sup>542</sup>
- 5.79** The Small Business Chamber suggested the implementation of a 'centralised portal administered by Service NSW that allows businesses to upload compensation claims against clear and defined criteria, which at the minimum would provide temporary rent relief payable within ten business days'.<sup>543</sup>
- 5.80** The Australian Hotels Association commented that 'in reality, losses were sustained for many member venues from the commencement of the construction, and that should be factored in to any relief or assistance package'.<sup>544</sup> Mr Morrissey stated that 'our members are simply seeking

---

<sup>537</sup> Answers to questions on notice, Transport for NSW, 18 September 2018, p 4. Businesses that had relocated, rebranded, exchanged ownership but are still operating had not been included in this count.

<sup>538</sup> Evidence, Ms Prendergast, 20 August 2018, p 13.

<sup>539</sup> Evidence, Ms Prendergast, 20 August 2018, p 12.

<sup>540</sup> Evidence, Ms Prendergast, 4 October 2018, p 52.

<sup>541</sup> Answers to questions on notice, Transport for NSW, 12 December 2018, p 5.

<sup>542</sup> Submission 86, City of Sydney, p 4.

<sup>543</sup> Submission 16, Small Business Chamber, p 3.

<sup>544</sup> Submission 20, Australian Hotels Association, p 4.

transparency and certainty around a compensation package that provides full and fair redress for the ongoing losses that have been suffered as a result of the project'.<sup>545</sup>

- 5.81** Ms Monica Barone, Chief Executive Officer, City of Sydney Council, noted the challenge in helping people survive the disruption 'knowing that they are going to benefit from a good project' in the end, highlighting that 'if every time the government or council does a project people expect compensation, then we would stop doing projects'. Ms Barone noted that larger businesses do have the capacity to be flexible and adapt to disruption such as this, but suggested that 'smaller businesses do not have that and perhaps in future thinking about the impact on smaller businesses up-front may be something to be considered'.<sup>546</sup>
- 5.82** When asked what the financial assistance model should look like, Mr Tannos stated that 'it should be based on the losses', as rental assistance helps only to a certain point.<sup>547</sup>
- 5.83** Ms Vithoukas also provided a number of recommendations in respect of a model for financial assistance. She suggested that the model should initially provide rental assistance at a 30 per cent contribution, to assist both the business owner and property owner, and then once delays are known an assessment should be immediately made of the economic loss that a business has suffered, that is clearly defined and takes into account a business' goodwill.<sup>548</sup>
- 5.84** Ms Vithoukas also suggested that the *Retail Leases Act 1994* be reviewed to have 'state significant infrastructure inserted into it for us to get back that time so that we can continue trading after disruption', noting that if a business faces a number of years of disruption off the lease 'that could be a 25 per cent or 50 per cent investment loss on the goodwill of your business lease as well'.<sup>549</sup>
- 5.85** The Vivo Café felt that the current financial assistance provided to small business owners is not 'true compensation'. It went on to advise that due to the 'enormous economic devastation that has been suffered' a class action for business owners affected by the CSELR project has been organised, in the hope 'that many will finally receive at least the satisfaction of having the entire process stripped bare and the truth exposed'.<sup>550</sup>

### Committee comment

- 5.86** The committee acknowledges that the government has implemented the Small Business Assistance Program and is providing financial assistance to those businesses in need. We recognise that this assistance is unprecedented.
- 5.87** The committee notes, however, concerns of inquiry participants that the program lacks transparency and ease of access, that the process for applying has been time consuming and the

<sup>545</sup> Evidence, Mr Morrissey, 20 August 2018, p 51.

<sup>546</sup> Evidence, Ms Monica Barone, Chief Executive Officer, City of Sydney Council, 20 August 2018, pp 29-30.

<sup>547</sup> Evidence, Mr Tannos, 3 October 2018, p 35.

<sup>548</sup> Evidence, Ms Vithoukas, 3 October 2018, pp 35-36.

<sup>549</sup> Evidence, Ms Vithoukas, 3 October 2018, pp 35-36.

<sup>550</sup> Submission 21, Vivo Café, pp 9 and 11.

criteria for some businesses has been difficult to meet. We believe that a number of lessons can be learnt from this process.

- 5.88** With the benefit of hindsight, the introduction of the Small Business Assistance Program by the government in response to the dire financial impact of the delays in the CSELR project on businesses was too late and too restrictive in its scope. The likely financial impact on businesses along the CSELR route was clearly foreseeable given the experience of similar projects both interstate and overseas. The committee considers that the government should review the guidelines governing the Small Business Assistance Program to be less restrictive.
- 

#### **Recommendation 14**

That the NSW Government revise the guidelines for the Small Business Assistance Program and implement this scheme for all other major infrastructure projects.

---

- 5.89** The committee notes that a number of businesses had closed well before the program was established. Indeed, we note that some business owners have or are considering taking action against the government for compensation for their losses. In light of this experience, we would encourage the government to review the effectiveness of the program upon its completion, in order to identify how future financial assistance schemes could better operate.
- 5.90** This aside, the committee acknowledges that many business owners have found this assistance helpful. We support the continuation of financial assistance, until businesses experience the uplift expected after the project is completed. We would suggest that, along with Transport for NSW, the Small Business Commissioner has an ongoing role to play in encouraging and supporting businesses to apply for financial assistance and support, even in circumstances where businesses may not necessarily meet eligibility criteria, given the department has indicated that it will consider matters on a case by case basis.
- 

#### **Recommendation 15**

That Transport for NSW and the Small Business Commissioner encourage and support businesses to apply for financial assistance under the Small Business Assistance Program, even in circumstances where businesses may not meet eligibility criteria.

---

#### **Recommendation 16**

That Transport for NSW continue to provide financial assistance under the Small Business Assistance Program until the CBD and South East Light Rail project is completed.

---

## Mental health impacts

- 5.91** A concerning issue for the committee was the impact the project has had on the mental health and wellbeing of business owners as they try to stay afloat during the construction phase of the project.
- 5.92** Many business owners who wrote to the committee highlighted their struggles, with some of the comments detailed below:
- 'The stress of our business taking this downturn has been extremely high for both my business partner and myself'.<sup>551</sup>
  - 'The stress and anxiety caused by the ongoing situation resulted in my developing an ulcer which led to hospitalisation and ongoing medical treatment'.<sup>552</sup>
  - 'Although I have not sort medical treatment the stress of not being able to pay bills, the sleepless nights and the effect it has on your confidence to run a business is debilitating'.<sup>553</sup>
  - '... our Mental Health and Physical Health continue to decline as the situation is only getting worse'.<sup>554</sup>
  - 'Stress and Anxiety with regards to loss of trade and unknown ongoing nature of disruption'.<sup>555</sup>
  - 'Sleepless nights followed by severe migraines due to constant financial pressure due to loss of business'.<sup>556</sup>
  - 'Business blocked off, restricted access, dust, noise, asbestos, negative environment, stress, anxiety, depression, suicidal thoughts ... frustration, worthlessness'.<sup>557</sup>
  - 'Physical and mental strains at work and in the home ... The pressures on turning up for work each day and facing the long hours hoping that the bills can be paid each week'.<sup>558</sup>
- 5.93** At a public hearing the committee spoke with a number of business owners who had been impacted by the construction of the CSELR project. During this hearing, the business owners spoke of the impact to their own mental health and wellbeing and that of their families. The case study below details their experience.

---

<sup>551</sup> Submission 59, Smooth, p 2.

<sup>552</sup> Submission 60, Bishop Sessa, p 2.

<sup>553</sup> Submission 78, Name suppressed, p 2.

<sup>554</sup> Submission 79, Name suppressed, p 2.

<sup>555</sup> Submission 80, Name suppressed, p 2.

<sup>556</sup> Submission 63, Café Jacks @ Kensington, p 2.

<sup>557</sup> Submission 72, Ouroboros Wholefoods Café, pp 1-2.

<sup>558</sup> Submission 85, Kensington Pharmacy and Newsagency, pp 1-2.

**Case study – Mental health impacts<sup>559</sup>**

The owners of Ouroboros Wholefoods Café, Optical illusions, The Book Kitchen and Vivo Café appeared before the committee and spoke about trying to deal with the mental strain of running their businesses with construction on their doorsteps.

Mr Emanuel Tzirtzilakis, owner of Ouroboros Wholefoods Café, told the committee that the impact of construction on his business is 'posing such stress, anxiety and depression on me that I am on every medication there is', stating that 'I am borderline checking into a psychiatric facility ... because it is so depressing'. He spoke of the 'detrimental effect on the health and wellbeing of our family', adding that his eldest son is currently sitting his High School Certificate and was worried that he would not be able to perform to his full capacity.<sup>560</sup>

Another business owner, Mr Greg Tannos, Optical Illusions, described feeling nervous and depressed going in to work all the time, highlighting that it 'it is hurting me, it is affecting my health'. Mr Tannos said that he has trouble sleeping and has developed a twitch, stating that 'I thought I would be a lot stronger for it' and explained that he is now on medication.<sup>561</sup> Mr Tannos also spoke of another business owner he knows who has been affected and is suffering severe depression.<sup>562</sup>

Ms Amelia Birch, owner of The Book Kitchen, whose business has since closed, has been seeing a psychologist for some time, and commented that she struggles 'with feeling like a failure, with feeling like I am not the person that I should be or could be'. Ms Birch said that 'it is about identity and about having achieved and reached one's potential and then being stripped of that ability again', and although she feels like a stronger person for it she 'would not wish this on anybody because it is demoralising'.<sup>563</sup>

Ms Angela Vithoulkas, owner of Vivo Café, had the same feeling of failure, saying that 'the absolute humiliation of bearing the burden of failure will be the greatest legacy this project leaves behind'. In her submission, Ms Vithoulkas wrote that they had experienced increased aggression, depression and a lack of motivation for their personal and business lives, declaring that 'emotionally we have been distraught and overwhelmed for so long that we don't know how to be positive or unlearn the terrible ripple effects that this has had'. She argued that if you are stuck along the CSELR route you can't sell your business, you can't grow your business, you are losing every day and are getting further and further into debt, and 'most likely you have thoughts of killing yourself. This is how I feel'.<sup>564</sup>

Further, Ms Vithoulkas indicated that she had not sought any professional help and explained why this was difficult to do particularly for business owners:

'It is very difficult when you are in a family business and you have many hats to wear and supporting a lot of other people to even begin to allow myself, I thought, the luxury of breaking down. Since

<sup>559</sup> This case study is not taken verbatim from the witnesses, but is an accurate reflection of how the witnesses presented their story to the committee.

<sup>560</sup> Evidence, Mr Tzirtzilakis, 3 October 2018, p 19.

<sup>561</sup> Evidence, Mr Greg Tannos, Optical Illusions, 3 October 2018, pp 18, 22 and 33.

<sup>562</sup> Evidence, Mr Tannos, 3 October 2018, p 18.

<sup>563</sup> Evidence, Ms Birch, 3 October 2018, p 23.

<sup>564</sup> Submission 21, Vivo Café, pp 2 and 8.

closing the business I have curled up in a foetal position at various times of the day trying to cope with it. I am very lucky that we have all been a great source of support to each other. It is a rare group of virus that we all suffer from and unfortunately we completely understand each other. It is the single most humiliating time that any of us have ever gone through to achieve the level of failure that we all feel in our professional lives. It cannot be calculated or communicated adequately'.<sup>565</sup>

- 5.94** Following this hearing, Ms Prendergast commented that the most upsetting part of the evidence received from business owners 'is the psychological and emotional impact for those directly on the alignment'. Ms Prendergast explained that when they meet with stakeholders and there are concerns relating to emotional or psychological wellbeing 'we acknowledge that and, as a first step, we talk to them about visiting their GP' and claiming subsidised services under Medicare. Ms Prendergast advised that they also provide a list of mental health professionals through Transport for NSW's employee assistance program and offer to pay for any assistance that people may need, adding that 'we monitor these cases, [and] we check in continually'.<sup>566</sup>

#### **Committee comment**

- 5.95** The committee witnessed firsthand the mental strain some business owners are experiencing as they try to keep their business afloat and support their families during the construction phase of the CSELR project. We can see business owners are feeling the pressure, with many reporting anxiety, stress and depression, among other physical and mental health impacts. The committee commends these owners for coming forward and speaking so honestly about their hardships. This took courage, and we thank them for sharing their experience.
- 5.96** Unfortunately, the stories the committee heard painted a grim picture of what many other businesses along the route must be experiencing. The committee believes that the enormous stress and pressure that business owners have been under in trying to cope with the impacts of this project were not sufficiently taken into consideration at the onset of the project and its construction phase. We note that Transport for NSW has since provided support to business owners, including financial assistance, but it seems some of this may have been offered too late.
- 5.97** The committee's view is that more needs to be done to assist business owners who continue to struggle mentally with the devastating impacts this project has caused. To address this, the committee recommends that Transport for NSW provide ongoing mental health support to affected business owners and their families, at no cost to the recipients, and clearly communicate to each business the process for accessing this support. The committee suggests that Transport for NSW provide a more targeted mental health service instead of simply referring business owners to general practitioners.

---

#### **Recommendation 17**

That Transport for NSW provide ongoing mental health support to affected business owners and their families, at no cost to the recipients, and clearly communicate to each business the process for accessing this support.

---

<sup>565</sup> Evidence, Ms Vithoukias, 3 October 2018, p 22.

<sup>566</sup> Evidence, Ms Prendergast, 4 October 2018, p 37.

- 5.98** In relation to significant infrastructure projects undertaken by the department in the future, the committee believes that potential mental health impacts that may be experienced by residents and business owners in the vicinity should be considered and addressed in the initial planning of such projects. Strategies to provide support should be developed in a timely manner, so that services are provided upfront, especially to any small business that may be significantly impacted.

---

**Recommendation 18**

That the NSW Government, in its planning for all future major infrastructure projects, develop effective strategies to address the potential mental health impacts that may be experienced by residents and business owners in the vicinity of construction work.

---

**Other business support services**

- 5.99** Prior to and alongside the Small Business Assistance Scheme, business owners have been provided with other support services to assist in alleviating the impacts of construction.

- 5.100** In 2015, Transport for NSW established the Business Activation Program to support businesses along the CSELR route. The program was developed with key stakeholders and aimed to:

- encourage footfall alongside construction, including attracting new visitors to the area
- implement innovative programs through temporary place making and activations
- implement targeted and precinct specific initiatives to stimulate retail activity
- work cooperatively with directly impacted local business owners, peak bodies and key stakeholders
- seek feedback from local businesses and the community and respond with appropriate actions
- develop a rolling program of events and activities.<sup>567</sup>

- 5.101** Transport for NSW informed the committee that the Business Activation Program was 'unprecedented by any transport project in Australia' and aimed 'to deliver the strong message that Sydney remains open for business along the light rail route'. Some of the initiatives implemented under the program included:

Initiatives have included signage, plinths, place making activations, advertisements and social media, business guides, advertorials and videos promoting local business and loyalty schemes. This includes support for cultural events like Chinese New Year, Christmas activation and mainstream television advertising during the major retailing season. It also includes tailored local area marketing for different precincts across the alignment such as cultural and arts in Surry Hills and shopping in the CBD north and place making and art displays to attract footfall.<sup>568</sup>

---

<sup>567</sup> Submission 39, Transport for NSW, p 17.

<sup>568</sup> Submission 39, Transport for NSW, p 5.

- 5.102** Further, Transport for NSW advised that businesses have also had access to the Department of Industry's Business Connect program since January 2016, which provides 'a specialised and highly subsidised advice service' to businesses to help prepare them for the CSELR construction and provide tools to improve business practices. The program offers dedicated light rail business advisors who engage directly with small businesses and provide 'independent and confidential business advice and information' during construction, and assistance with 'business practices, revenue management, marketing, workshops and online seminars'.<sup>569</sup>
- 5.103** A Business Connect Bus has also been strategically positioned in varying locations to provide 'direct access for businesses to drop-in and discuss their business with an advisor'. Transport for NSW indicated that as at 28 June 2018 the 'program successfully helped businesses along the route, with 1400 hours of business advice provided, 650 interactions with businesses, and program delivered with 213 businesses'.<sup>570</sup>
- 5.104** In areas particularly impacted, such as Devonshire Street, Surry Hills and Kensington, Ms Prendergast told the committee that Transport for NSW have rolled out initiatives to target these areas such as the Head to Surry Hills Festival and a campaign for the east area, with a major art moves project, activation of Meeks Street, and the support of local festivals, stating that 'we just monitor, watch and try to support them'.<sup>571</sup>
- 5.105** In addition, Ms Prendergast told the committee that, along with the Small Business Commissioner's team, they have 'visited every single business along the alignment' - a total of 760 businesses - to reaffirm any assistance they can offer, including financial assistance and support services for wellbeing.<sup>572</sup>
- 5.106** During these visits, the NSW Small Business Commissioner advised that they offered a 'health check', shared information regarding financial assistance, offered Business Connect and Dispute Resolution services, provided information packs and referred businesses for further assistance where appropriate.<sup>573</sup>
- 5.107** The NSW Small Business Commissioner also highlighted that well in advance of the CSELR construction commencing they provided support to businesses impacted, through advocacy, dispute resolution and business advice.<sup>574</sup> Further, Ms Robyn Hobbs, NSW Small Business Commissioner, told the committee that assistance is tailored to each business's needs:

There is no doubt that we all accept businesses have been disrupted but what a business might need is totally different in every case. Some businesses might want help with rental relief. Some businesses might want us to help with negotiations with their landlords or with suppliers. Whatever they need, we will develop a personalised service for them.<sup>575</sup>

---

<sup>569</sup> Submission 39, Transport for NSW, p 20.

<sup>570</sup> Submission 39, Transport for NSW, p 20.

<sup>571</sup> Evidence, Ms Prendergast, 4 October 2018, p 61; Evidence, Ms Prendergast, 20 August 2018, p 19.

<sup>572</sup> Evidence, Ms Prendergast, 4 October 2018, p 37.

<sup>573</sup> Submission 26, NSW Small Business Commissioner, p 2.

<sup>574</sup> Submission 26, NSW Small Business Commissioner, p 1,

<sup>575</sup> Evidence, Ms Robyn Hobbs, NSW Small Business Commissioner, 20 August 2018, p 11.

- 5.108** The relevant local councils have also provided some assistance to businesses since the project commenced. Randwick City Council put in place a Light Rail Business Liaison Officer to be the primary contact for the local business community that works on the ground implementing business support initiatives. The Liaison Officer, Mr Chris Bastic, commented that in his role he had initially visited 150 businesses and continues to visit all businesses along the route on a regular basis, becoming 'very familiar with the various issues that these businesses have been experiencing'.<sup>576</sup> Alongside this, Ms Lindsay Shurey, Mayor, Randwick City Council, told the committee that they have offered rate relief to businesses if it has been requested, however was unsure at the time how many businesses had taken up this offer.<sup>577</sup>
- 5.109** The City of Sydney Council has also offered support, explaining that they have worked with Transport for NSW and the CSELR Coordination office 'to provide a variety of business support services'. In this regard, Ms Barone advised that the Council have provided rate relief for footway dining, outdoor events and a number of things that can be directly controlled in the public domain.<sup>578</sup>
- 5.110** However the committee received evidence that more could be done to support businesses throughout the construction phase of the project.
- 5.111** One inquiry participant argued that the support to date was insufficient:
- ... it is not sufficient' for Transport for NSW to offer solutions such as putting up "we're still open" signs, offering specials to construction workers, band together and get a loan to prop yourselves up, close up and go to Bali for 6 months, and change your business model from a café to selling heavy machinery.<sup>579</sup>
- 5.112** This individual added 'that it is not good enough to abandon these businesses and hope they last until the light rail opens', suggesting that there needed to be a plan to 'help and prop up these businesses if they are to suffer for the greater good'.<sup>580</sup>
- 5.113** Along similar lines, Mr Tannos reflected on one of the first business meetings he attended where a representative from Transport for NSW advised that 'as a group of businesses what you should be doing is getting together and approaching the bank to arrange a better rate of finance to put you through the difficult time you are going to face'. Mr Tannos was shocked that this was the advice that was given, stating that 'I knew from there it was always going to be downhill'.<sup>581</sup>
- 5.114** The Vivo Café stated that they were still waiting for any meaningful marketing campaigns to assist them, and suggested that the money allocated to marketing be provided to businesses directly:

... compensation needs to occur from the beginning to help people get through construction, was exactly what we had asked about here in Sydney for years. No amount of marketing can help in these instances – the money that goes into that useless budget

---

<sup>576</sup> Submission 87, Randwick City Council, pp 31-32.

<sup>577</sup> Evidence, Ms Lindsay Shurey, Mayor, Randwick City Council, 20 August 2018, p 32.

<sup>578</sup> Evidence, Ms Barone, 20 August 2018, p 24.

<sup>579</sup> Submission 44, Name suppressed, p 4.

<sup>580</sup> Submission 44, Name suppressed, p 4.

<sup>581</sup> Evidence, Mr Tannos, 3 October 2018, p 18.

is better spent given directly to the businesses. That way they can keep people employed, pay their suppliers, pay their rent and keep the doors open, pay their mortgage and keep the roof over their family's heads.<sup>582</sup>

- 5.115** The Small Business Chamber, noted that 'there has been some signage and marketing assistance but more could be done', and suggested 'regular communications with affected businesses to meet their particular needs'. The Small Business Chamber further recommended that a disruption mitigation plan be developed for future major projects:

The government should develop a disruption mitigation plan for all major projects (funded from the Department of Planning and/Transport). The plan should not focus exclusively on compensation, but rather set out communication initiatives, other support services (marketing/signage/street art for interest etc.) and advice. Advice should include support for businesses to navigate the disruption and provide for alternate business growth strategies and business sustainability measures pre, during and post construction activity.<sup>583</sup>

- 5.116** The City of Sydney Council received feedback from businesses that 'Transport for NSW [needs] to provide real assistance to businesses so they don't close down'. The Council went on to recommend that 'the NSW Government continue to provide more targeted business support services to support those impacted by the project, in combination with improved communication'.<sup>584</sup>

#### **Committee comment**

- 5.117** The committee acknowledges the work of Transport for NSW, the Small Business Commissioner and relevant local councils in implementing various business support initiatives to minimise the impacts of the project. We believe that these initiatives have provided some assistance, although not to the extent of alleviating the financial pressures business owners have felt. The committee also understands that there are real concerns about the effectiveness of these initiatives.
- 5.118** The committee agrees that more targeted business support should have been offered from the beginning of the project, based on the needs of individual businesses. We believe that there is still an opportunity for the government to work with impacted businesses to increase footfall in affected locations. The committee acknowledges Transport for NSW's Business Activation Program and recommends that the department expand this program, in consultation with small business owners. In particular, we recommend that the department work with affected businesses directly on marketing, communication and other initiatives to attract visitors to the affected areas.

<sup>582</sup> Submission 21, Vivo Café, p 10.

<sup>583</sup> Submission 16, Small Business Chamber, p 3.

<sup>584</sup> Submission 86, City of Sydney, pp 3 and 4.

---

**Recommendation 19**

That Transport for NSW, in consultation with business owners, expand the Business Activation Program developed for the CBD and South East Light Rail project, focusing on marketing, communication and other initiatives to attract visitors.

---

- 5.119** The committee also recommends that an independent review be undertaken into the effectiveness of support programs provided to affected businesses during this project, with direct input from business owners on how they have been impacted. We believe that this may help to identify any improvements that could be implemented in future infrastructure projects.
- 

**Recommendation 20**

That the NSW Government commission and publish the outcomes of an independent review of the effectiveness of financial and non-financial support provided to businesses during the CBD and South East Light Rail project.

---

## Appendix 1 Advice from the Clerk of the Parliaments



LEGISLATIVE COUNCIL

### MEMORANDUM

To	Public Accountability Committee
From	Mr David Blunt, Clerk of the Parliaments
Subject	Inquiry into the impact of the CBD and South East Light Rail – objections to answering questions on the basis of commercial and Cabinet confidentiality
Date	14 November 2018
Reference	D18/40299

### **Background**

At a public hearing for the Public Accountability Committee inquiry into the impact of the CBD and South East Light Rail Project, held on 4 October 2018, a number of witnesses declined to answer questions in relation to the cost of the project, on the grounds that answering these questions would breach commercial-in-confidence considerations.<sup>1</sup>

A number of questions were taken on notice by Transport for NSW. In response to two of these questions, Transport for NSW declined to answer based on claims of commercial and Cabinet confidentiality:

2. The Hon. DANIEL MOOKHEY: How much money has been spent to date on the CBD and South East Light Rail project?

Mr TROUGHTON: I will have to take that on notice. It probably is commercial-in-confidence anyway.

**Response:** This is commercial-in-confidence.<sup>2</sup>

3. The Hon. DANIEL MOOKHEY: I refer to the monthly contract delivery progress reports. Were they examined by Mr Jock Murray in his reports?

Mr TROUGHTON: I am not aware of that.

The Hon. DANIEL MOOKHEY: Were they all examined in Gateway Review and Health Check report No. 3 dated 25 October 2016, or were any other health checks undertaken by Infrastructure NSW under the Infrastructure Investor Assurance Framework?

Mr TROUGHTON: I do not know what Mr Jock Murray has reviewed or not reviewed. I will take that question on notice.

**Response:** The Infrastructure NSW Health Checks are Cabinet-in-confidence.<sup>3</sup>

<sup>1</sup> Evidence, Mr James Bramley, Chairman, ALTRAC Light Rail, 4 October 2018, p 32; Evidence, Mr Stephen Troughton, Deputy Secretary, Infrastructure and Services, Transport for NSW, 4 October 2018, p 42.

<sup>2</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 3.

<sup>3</sup> Answers to questions on notice, Transport for NSW, 4 November 2018, p 4.

The issue of whether the information sought can be considered Cabinet-in-confidence was the subject of a recent decision of the NSW Civil and Administrative Tribunal (NCAT). In 2016, the Hon Adam Searle MLC applied to Transport for NSW under the *Government Information (Public Access) Act 2009* (GIPA Act) for access to the Health Check Reports and Gateway Reviews relating to the CBD Light Rail project. Transport for NSW refused access to all of the information requested on the basis that the information is Cabinet information (as defined in the GIPA Act). Mr Searle subsequently applied to NCAT for review of Transport for NSW's decision.<sup>4</sup>

In its review of Transport for NSW's decision not to provide the documents, NCAT found that 'there are no reasonable grounds for the claim that the dominant purpose of preparing the Documents was their being submitted to Cabinet or a Cabinet committee for Cabinet's consideration'. While NCAT considered other public interest considerations against disclosure, NCAT ultimately determined that Transport for NSW should provide access to the information, with the exception of certain sections as listed in the determination.<sup>5</sup> Transport for NSW appealed NCAT's decision, however the appeal 'did not involve a challenge to the Tribunal's conclusion that the information was not Cabinet information'.<sup>6</sup>

The committee subsequently resolved that:

- the Clerk provide written advice to the committee on the committee's powers to seek information from Transport for NSW on matters in which they claim commercial or Cabinet confidentiality in their responses to questions taken on notice arising from the hearing on 4 October 2018, particularly in light of the NCAT decisions in 2017 and 2018 involving Transport for NSW and the Hon Adam Searle MLC
- following the distribution of written advice, the Clerk be invited to attend a committee meeting to provide a briefing to members in person.

### Advice

Under the *Parliamentary Evidence Act 1901*, committees have the power to compel a witness to answer a 'lawful question'.<sup>7</sup> As Lovelock and Evans explain, a lawful question is considered to be a question of fact, as opposed to opinion, relevant to the committee's terms of reference.<sup>8</sup>

While it is not unusual for witnesses to object to the provision of information on the grounds of public interest immunity, including commercial confidentiality, these claims generally have no application to parliamentary inquiries other than as a consideration to take evidence *in camera*. However, claims of privilege on the basis of Cabinet confidentiality are a somewhat different proposition as discussed below.

### **Issue 1: Commercial-in-confidence**

The first issue is whether commercial-in-confidence considerations are a valid reason not to provide an answer as to the money spent to date on the CBD and South East Light Rail project. As noted in Lovelock and Evans (2008), 'any common law duty or commercial requirement of secrecy would not prevent Parliament or a parliamentary committee from obtaining information, even if it was in respect of private commercial dealings, provided that the disclosure of information was in the public interest and relevant to the inquiry terms of reference'.<sup>9</sup>

<sup>4</sup> *Searle v Transport for NSW* (2017) NSWCATAD 256.

<sup>5</sup> *Searle v Transport for NSW* (2017) NSWCATAD 256.

<sup>6</sup> *Transport for NSW v Searle* (2018) NSWCATAP 93.

<sup>7</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008), p 508.

<sup>8</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008), p 508.

<sup>9</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008), p 511.

When committees assert their power to seek information subject to commercial confidentiality such claims by witnesses should not be ignored. Any claim or right normally afforded in our legal system is usually given serious consideration by committees. Therefore, if a witness objects to the provision of information on the basis of commercial confidentiality, the committee should consider the reasons provided by the witness, whether the disclosure of information is in the public interest and any damage that could occur through the disclosure of commercially sensitive information. The committee has the option of resolving to take evidence *in camera* if it may assist in managing the witnesses' concerns.<sup>10</sup>

In short, the committee should carefully consider the commerciality concerns raised by witnesses and whether to hear their evidence *in camera*, but should Transport for NSW continue to refuse to disclose the money spent to date on the CBD and South East Light Rail project on the basis of commercial confidentiality, it could constitute a refusal to answer a lawful question, although.

## Issue 2: Cabinet-in-confidence

The second issue is whether provision of information about the Health Checks and Gateway Reviews, or the documents themselves, can be declined on the basis they are Cabinet-in-confidence. It is relevant to note that issues pertaining to Cabinet confidentiality have been tested over many years in the context of the power of the House to order the production of documents under standing order 52.

*Egan v Chadwick (1999)* confirmed the Council's power to order documents subject to claims of public interest immunity and legal professional privilege, but did not adjudge that this power extended to Cabinet documents. However in his judgement, Spigelman CJ distinguished between documents which disclose the actual deliberations within Cabinet ('true' Cabinet documents) and those which are in the nature of reports or submissions prepared for the assistance of Cabinet, the latter which may or may not be covered by the prohibition.

Priestly JA came to a different conclusion, suggesting that like the courts, the Council has the power to compel the production of Cabinet documents. Bret Walker SC has expressed a similar view, suggesting that the automatic exclusion of Cabinet documents from scrutiny by the Council represents an 'extremely dubious and problematic state of the law'.<sup>11</sup>

The Executive however takes the view expressed by Meagher JA who found in his judgement that 'the immunity from production is complete'. The Executive has consistently maintained that it is not required to produce Cabinet documents, even on the occasions when they have furnished such documents in response to an order under standing order 52, and has taken an expansive interpretation of the judgement in *Egan v Chadwick (1999)* in determining what is a 'Cabinet' document.<sup>12</sup>

This dispute between the Executive and the Council as to what constitutes a Cabinet document was also examined in the context of the inquiry by the Legislative Council Privileges Committee into *The 2009 Mt Penny order for papers*. While the Executive tends to rely on the definition of Cabinet documents under the GIPA Act, the Privileges Committee report noted advice from the Clerk of the Parliaments that the definition of 'Cabinet documents' as defined in the GIPA Act 'is much broader in scope than the position articulated by Spigelman CJ in *Egan v Chadwick* and would have a deleterious impact on the capacity of the Council to hold the Executive to account through the orders for papers process'.<sup>13</sup> However it is significant in the current instance that the Health Checks and Gateway Reviews were not considered Cabinet documents *even* under the expansive definition used in the GIPA Act.

<sup>10</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008), p 512.

<sup>11</sup> C25: Marking 25 Years of the Committee system in the Legislative Council, 20 September 2013, pp 7-8.

<sup>12</sup> LC Minutes 26/5/2005, 1408.

<sup>13</sup> Privileges Committee, Legislative Council, *The 2009 Mt Penny return to order*, 2013, pp 79-80.

### ***Recent developments***

There have been significant developments in 2018 regarding the power of the Legislative Council to require the production of documents which have been classified by the Executive as Cabinet-in-confidence. During this year, the House received several returns to orders which stated that there were no documents which were lawfully required to be produced according to the terms of the resolution. The documents were eventually produced and subsequently, on 21 June 2018, the House agreed to a motion noting, among other points, that:

- 'the Legislative Council rejects the proposition that the test in the *Government Information (Public Access) Act 2009* of what constitutes Cabinet information is applicable to Parliament'
- 'that this House asserts that it has the power to require the production of Cabinet documents ... and that the test to be applied in determining whether a document is a Cabinet document captured by an order of the House is, at a minimum, that articulated by Spigelman CJ in *Egan v Chadwick*'.<sup>14</sup>

In relation to the refusal of Transport for NSW to disclose information relating to the Health Checks and Gateway Reviews on the basis of Cabinet confidentiality, NCAT has found that the information cannot be considered Cabinet-in-confidence even under the expansive definition in the GIPA Act. Even if this were not the case, the Council asserts that the test to be applied in determining what is a Cabinet document is, at a minimum, that articulated by Spigelman CJ in *Egan v Chadwick* and under this test, information in the Health Checks and Gateway Reviews, and the documents themselves, would not be covered by Cabinet confidentiality.

### **Issue 3: Committee power to order the production of documents**

A further issue that the committee may wish to consider is whether it has the power to order the production of the Health Check and Gateway Review documents, should Transport for NSW continue its refusal to answer questions relating to these documents.

Committees have the power to order the production of documents under standing order 208(c). Committee powers in this regard arose in the recent Auditor-General's *Report on State Finances 2018*, which contained as an appendix three legal opinions requested by the Auditor-General. Two of these legal opinions from the Crown Solicitor relate to the powers of parliamentary committees, including in respect of the production of documents. The Crown Solicitor noted that statutory secrecy provisions 'could not be relied upon to resist a summons, or other demand, from a committee to produce a document' and that in the Crown Solicitor's opinion 'it is more likely than not that a court would find a committee has power to require a witness to produce a document to it'.<sup>15</sup>

Recently, Portfolio Committee No. 4 – Legal Affairs issued a summons under section 4 of the *Parliamentary Evidence Act 1901* for a witness to attend and produce documents which the witnesses had previously refused to produce based on advice from the Acting Crown Solicitor, advice which appears to contradict the other two recent advices from the Crown Solicitor referred to above. The Clerk obtained initial verbal advice from Bret Walker SC who supported the Legislative Council's position that the committee has the power to order the production of documents, stating 'the suggestion that a committee is precluded from doing so (ie does not have power to do so by requiring the production of the document) is, however, not supported'.<sup>16</sup> However, in the face of the (current) response of their witnesses, Portfolio Committee No. 4 has resolved to not immediately enforce the summons and has

<sup>14</sup> LC Minutes 21 June 2018, 2798.

<sup>15</sup> Auditor-General, *Report on State Finances 2018* (19 October 2018), p 32.

<sup>16</sup> Advice from Mr David Blunt, Clerk of the Parliaments, Legislative Council, to Portfolio Committee No. 4, 25 October 2018.

sought further legal advice on this matter. This recent experiences illustrates some of the complexities involved in proceeding by way of summons under section 4 of the Parliamentary Evidence Act.

In this instance, the committee has the power under standing order 208(c) to order the production of the documents in question, namely the Health Checks and Gateway Reviews, or alternatively could seek to use the power under section 4 of the *Parliamentary Evidence Act*. As outlined earlier, these documents would not be considered Cabinet-in-confidence either under the expansive test in the GIPA Act or the Council's minimum test as articulated by Spigelman CJ.

### **Options**

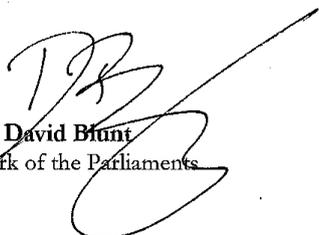
If the committee wishes to pursue the information sought in these questions on notice, the options include:

1. That the committee write to Transport for NSW to request that it reconsider its refusal to provide the information sought and assert the Legislative Council's position that:
  - the Council does not accept its objections on the basis of commercial and Cabinet confidentiality as a reason not to produce the information
  - in relation to Cabinet confidentiality, NCAT has determined that the Health Checks and Gateway Reviews cannot be considered to be Cabinet-in-confidence according to the expansive definition used in the GIPA Act, as they were not prepared for the dominant purpose of being submitted to Cabinet; and that in any case, the Legislative Council takes the view (as set out in the resolution of the House of 21 June 2018) that the test to be applied in determining whether a document is a Cabinet document is, at a minimum, that applied by Spigelman CJ in *Egan v Chadwick*, and the Health Checks and Gateway Reviews do not reach this threshold.

Further, that the committee advise Transport for NSW that if the information is not forthcoming, Transport for NSW may be recalled to attend a further hearing.

2. The committee recall Transport for NSW to appear at the public hearing on 29 November 2018 and consider whether to take the evidence *in camera*, in order to explore the basis of the claims for commercial and Cabinet confidentiality.
3. That subject to Transport for NSW's response to options 1 and 2, the committee pursue the production of the Health Checks and Gateway Reviews under standing order 208(c) or alternatively through the issuing of a summons to attend and produce documents according to section 4 of the *Parliamentary Evidence Act*.

I would welcome the opportunity to discuss these issues with the committee as it considers these matters.



**Mr David Blunt**  
Clerk of the Parliaments



## Appendix 2 Zone Occupation Schedule with Duration

Zone	Published Start Date	Published End Date	Duration
1 - Alfred Street, between George and Loftus streets	9-Jan-17	9-Oct-17	273
2 - George Street, between Alfred to Grosvenor streets	16-Feb-16	27-Nov-16	285
3 - George Street, between Bridge to Margaret streets	12-Apr-16	21-Dec-16	253
4 - George Street, between Hunter to King streets	1-Apr-16	14-Apr-17	378
5 - George Street, between King to Market streets	23-Oct-15	12-Aug-16	294
6 - George Street, between Market to Park streets	3-Dec-15	16-Oct-16	318
7 - George Street, between Park to Bathurst streets	1-Feb-16	31-Oct-16	273
8 - George Street, between Bathurst to Liverpool streets	10-Jun-16	22-Feb-17	257
9 - George Street, between Liverpool to Goulburn streets	18-Aug-16	21-Feb-17	187
10 - George Street, between Goulburn to Hay streets	17-Oct-16	14-Jul-17	270
11 - George Street, between Hay Street to Rawson Place	13-Jan-17	11-Aug-17	210
12 - Rawson Place between George and Pitt streets	29-Mar-17	21-Sep-17	176
13 - Eddy Ave between Pitt and Elizabeth streets	1-May-17	4-Nov-17	187
14 - Chalmers Street between Elizabeth and Devonshire streets	7-Sep-17	30-Apr-18	235
15 - Devonshire Street between Chalmers to Elizabeth streets	4-Aug-16	9-Feb-17	189
16 - Devonshire Street between Elizabeth to Steel streets	21-Sep-16	21-Jun-17	273
17 - Devonshire Street between Steel to Crown streets	24-Nov-16	19-Sep-17	299
18 - Devonshire Street between Crown to Bourke streets	23-Feb-17	20-Oct-17	239
19 - Olivia Gardens site, between Bourke to South Dowling	4-May-16	21-Nov-17	566
20 - Moore Park West	1-Sep-15	28-Sep-17	758
21 - Anzac Parade, from Moore Park to Lang Road	4-Nov-15	14-Jul-17	618
22.1 - Anzac Parade Busway	26-Jul-17	19-Feb-18	208
22.2 - Anzac Parade between Lang to Alison Road	19-Jul-16	19-Nov-16	123
23 - Alison Road between Anzac Parade to Darley Road	11-Feb-16	17-Nov-16	280
24 - Alison Road between, Darley to Wansey roads	4-Jan-16	11-Dec-16	342
25 - Wansey Road between Alison Road and High Streets	2-May-16	1-Apr-17	334
26 - High Street between Wansey and Belmore roads	3-Nov-16	21-Jul-17	260
27 - High Cross Park	9-Jan-17	17-Mar-17	67
28 - Anzac Parade between Dacey to Todman avenues	1-Dec-16	9-Nov-17	343
29 - Anzac Parade between Todman Avenue to High	19-Feb-16	6-Sep-16	200

Street			
30 - Anzac Parade between High to Rainbow streets	2-May-16	10-Mar-17	312
31 - Anzac Parade at the 9 Ways roundabout	1-May-17	19-Dec-17	232

## Appendix 3 Zone Occupation Schedule Original Dates v's Actual Start Date

Zone	Published Start Date*	Actual Start Date
1 - Alfred Street, between George and Loftus streets	9-Jan-17	5-May-17
2 - George Street, between Alfred to Grosvenor streets	16-Feb-16	11-Mar-16
3 - George Street, between Bridge to Margaret streets	12-Apr-16	1-Apr-16
4 - George Street, between Hunter to King streets	1-Apr-16	1-Jul-16
5 - George Street, between King to Market streets	23-Oct-15	23-Oct-15
6 - George Street, between Market to Park streets	3-Dec-15	2-Dec-15
7 - George Street, between Park to Bathurst streets	1-Feb-16	15-Jul-16
8 - George Street, between Bathurst to Liverpool streets	10-Jun-16	15-Jul-16
9 - George Street, between Liverpool to Goulburn streets	18-Aug-16	14-Oct-16
10 - George Street, between Goulburn to Hay streets	17-Oct-16	14-Oct-16
11 - George Street, between Hay Street to Rawson Place	13-Jan-17	14-Oct-16
12 - Rawson Place between George and Pitt streets	29-Mar-17	17-Jun-17
13 - Eddy Ave between Pitt and Elizabeth streets	1-May-17	1-May-17
14 - Chalmers Street between Elizabeth and Devonshire streets	7-Sep-17	28-Jul-17
15 - Devonshire Street between Chalmers to Elizabeth streets	4-Aug-16	2-Sep-16
16 - Devonshire Street between Elizabeth to Steel streets	21-Sep-16	21-Feb-17
17 - Devonshire Street between Steel to Crown streets	24-Nov-16	21-Feb-17
18 - Devonshire Street between Crown to Bourke streets	23-Feb-17	11-Mar-17
19 - Olivia Gardens site, between Bourke to South Dowling	4-May-16	25-Nov-16
20 - Moore Park West	1-Sep-15	1-Sep-15
21 - Anzac Parade, from Moore Park to to Lang Road	4-Nov-15	31-Mar-16
22.1 - Anzac Parade Busway	26-Jul-17	10-Aug-16
22.2 - Anzac Parade between Lang to Alison Road	19-Jul-16	29-Nov-16
23 - Alison Road between Anzac Parade to Darley Road	11-Feb-16	11-Feb-16
24 - Alison Road between, Darley to Wansey roads	4-Jan-16	11-Feb-16
25 - Wansey Road between Alison Road and High Streets	2-May-16	2-May-16
26 - High Street between Wansey and Belmore roads	3-Nov-16	31-Mar-17
27 - High Cross Park	9-Jan-17	28-Nov-16
28 - Anzac Parade between Dacey to Todman avenues	1-Dec-16	30-Nov-16
29 - Anzac Parade between Todman Avenue to High Street	19-Feb-16	7-May-16
30 - Anzac Parade between High to Rainbow streets	2-May-16	19-Aug-16
31 - Anzac Parade at the 9 Ways roundabout	1-May-17	31-Mar-17



## Appendix 4 Small Business Financial Assistance – Ex Gratia Payments by Zone/Category

Small Business Financial Assistance – Ex Gratia Payments by Zone/Category  
Data as at 19 August 2018

Zone	Post Code / Zone	No of businesses provided assistance	Sum of Total payments approved \$	Av. Payment per business	Comments
	2000 - Sydney	36	\$ 5,045,723	\$ 140,159	
1 - Alfred Street, between George and Loftus streets	1	2	\$ 450,000	\$ 225,000	
2 - George Street, between Alfred to Grosvenor streets	2	1	\$ 171,386	\$ 171,386	
3 - George Street, between Bridge to Margaret streets	3	2	\$ 281,943	\$ 140,972	
4 - George Street, between Hunter to King streets	4	7	\$ 1,358,738	\$ 194,105	
5 - George Street, between King to Market streets	5	1	\$ 198,686	\$ 198,686	Zone opened late 2017
6 - George Street, between Market to Park streets	6	6	\$ 1,344,284	\$ 224,047	
8 - George Street, between Bathurst to Liverpool streets	8	4	\$ 339,554	\$ 84,889	
9 - George Street, between Liverpool to Goulburn streets	9	4	\$ 402,460	\$ 100,615	
10 - George Street, between Goulburn to Hay streets	10	5	\$ 245,339	\$ 49,068	
11 - George Street, between Hay Street to Rawson Place	11	3	\$ 188,992	\$ 62,997	
13 - Eddy Ave between Pitt and Elizabeth streets	13	1	\$ 64,341	\$ 64,341	
	2010 - Surry Hills	29	\$ 2,979,231	\$ 102,732	
14 - Chalmers Street between Elizabeth and Devonshire streets	14	2	\$ 292,020	\$ 146,010	
15 - Devonshire Street between Chalmers to Elizabeth streets	15	2	\$ 90,924	\$ 45,462	Zone opened late 2017
16 - Devonshire Street between Elizabeth to Steel streets	16	13	\$ 1,399,199	\$ 107,631	
17 - Devonshire Street between Steel to Crown streets	17	9	\$ 927,013	\$ 103,001	
18 - Devonshire Street between Crown to Bourke streets	18	3	\$ 270,075	\$ 90,025	
	2032 - Kingsford	10	\$ 602,787	\$ 60,279	
30 - Anzac Parade between High to Rainbow streets	30	7	\$ 484,155	\$ 69,165	
31 - Anzac Parade at the 9 Ways roundabout	31	3	\$ 118,632	\$ 39,544	
	2033 - Kensington	11	\$ 433,545	\$ 39,413	
28 - Anzac Parade between Dacey to Todman avenues	28	8	\$ 353,420	\$ 44,178	
29 - Anzac Parade between Todman Avenue to High Street	29	2	\$ 67,933	\$ 33,967	
30 - Anzac Parade between High to Rainbow streets	30	1	\$ 12,192	\$ 12,192	
<b>Grand Total</b>	<b>Grand Total</b>	<b>86</b>	<b>\$ 9,061,286</b>	<b>\$ 105,364</b>	

SENSITIVE: NSW GOVERNMENT

**Small Business Financial Assistance – Ex Gratia Payments by Zone/Category  
Data as at 19 August 2018**

Categories as defined in the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006 (cat.no.1292.0)							
Category (as per ANZSIC 2006 classes)	No of businesses provided assistance	Sum of Total payments approved \$	Range (lowest payment)	Range (highest payment)	Count of < \$100k	Count of \$100k to \$250k	Count of > \$250k
Cafes, restaurants and takeaway food services	34	\$ 4,516,935	\$ 7,938	\$ 455,799	17	11	6
Clothing, footwear and personal accessory retailing	4	\$ 740,068	\$ 57,198	\$ 314,221	1	2	1
Food retailing	12	\$ 1,142,817	\$ 11,736	\$ 410,428	9	2	1
Household goods retailing	5	\$ 353,549	\$ 27,072	\$ 101,712	4	1	
Other retailing*	31	\$ 2,307,917	\$ 6,733	\$ 320,019	25	5	1
<b>Grand Total</b>	<b>86</b>	<b>\$ 9,061,286</b>	<b>\$ 6,733</b>	<b>\$ 455,799</b>	<b>56</b>	<b>21</b>	<b>9</b>

\*includes cosmetics, pharmaceutical, newsagency, florists, ancilliary medical, speciality shops

Zone	No of businesses provided assistance	Sum of Total payments approved \$
2000 - Sydney	36	\$ 5,045,723
2010 - Surry Hills	29	\$ 2,979,231
2032 - Kingsford	10	\$ 602,787
2033 - Kensington	11	\$ 433,545
<b>Grand Total</b>	<b>86</b>	<b>\$ 9,061,286</b>

**SENSITIVE: NSW GOVERNMENT**

## Appendix 5 Submissions

<b>No.</b>	<b>Author</b>
1	Mr John Davies
2	Name suppressed
3	Ms Mora Main
3a	Ms Mora Main
3b	Ms Mora Main
4	Name suppressed
5	Name suppressed
6	Name suppressed
7	Name suppressed
8	Name suppressed
9	Mr Larry Vincent
10	Confidential
11	Mr Paul Corradini
12	Name suppressed
13	Name suppressed
14	Ms Annette Key
15	Name suppressed
16	Sydney Business Chamber
17	Name suppressed
18	Auditor-General of New South Wales
19	Mrs Brenda Lee
20	Australian Hotels Association NSW
21	Vivo Cafe Group
22	Saving Sydneys Trees
23	Ryde Hunters Hill Flora and Fauna
24	Ryde Gladesville Climate Change Action Group
25	Ms Susana Greenfield
26	NSW Small Business Commissioner
27	Ms Helen Randerson
28	Name suppressed
29	Name suppressed

<b>No.</b>	<b>Author</b>
30	Name suppressed
31	Mr Jim Donovan
31a	Mr Jim Donovan
32	Mr Tim Ritchie
33	Name suppressed
34	Name suppressed
35	Ms Helen Parker
36	Mrs Mary Richard
37	Mr Andrew Jordan
38	Name suppressed
39	Transport for NSW
40	Name suppressed
41	Name suppressed
42	Name suppressed
43	Mr Ross Ogden
44	Name suppressed
44a	Name suppressed
45	Name suppressed
46	Mr George Conomos
47	Name suppressed
48	Name suppressed
48a	Name suppressed
49	Name suppressed
50	Name suppressed
51	Ms Jane and Katey Grusovin
52	Mr John Boyle
53	Ms Adnil Ramos
54	Mr John Bellamy
55	Sydney Light Rail Action Group
56	The Animal, Tree and Homeless Campaign
57	Ms Jenny Leong MP
57a	Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP)
58	Name suppressed
59	Smooth
60	Bishop Sessa

<b>No.</b>	<b>Author</b>
61	Jackson and MacDonald trading as Mondial Pink Diamond Atelier
62	Optical Illusions
63	Cafe Jacks @ Kensington
64	Khing Thai
65	Name suppressed
66	Name suppressed
67	Ms Narelle Clark
68	Ms Carol Fazal
69	Mr Norman Heavener
70	Mr Eddie Fazal
71	Fosaux Pty Ltd
72	Ouroboros Wholefoods Cafe
73	Ms Diana Argirellis
74	For Daughters of ANZAC and Their Families
75	Ms Yvonne Poon
76	The Book Kitchen
77	Ms Cat Wright
78	Name suppressed
79	Name suppressed
80	Name suppressed
81	Emperor's Garden Pty Ltd
82	Name suppressed
83	Mr Peter Egan
84	The Australian Economist's Advisory Group and Save the Parks Campaign
85	Kensington Pharmacy and Newsagency
86	City of Sydney
87	Randwick City Council
88	Confidential
89	Mr Graeme Dyer
90	Mr Vincent Brincat
91	Ms Vivien Ward
92	Confidential
93	Name suppressed
94	Name suppressed
95	Confidential

<b>No.</b>	<b>Author</b>
96	Ms Maria Bradley
97	Keep Sydney Beautiful
98	Name suppressed
99	Name suppressed
100	Name suppressed
101	Name suppressed
102	Name suppressed
103	Name suppressed
104	Name suppressed
105	Name suppressed
106	Name suppressed
107	Name suppressed
108	Name suppressed
109	Name suppressed
110	Name suppressed
111	Name suppressed
112	Name suppressed
113	Name suppressed
114	Name suppressed
115	Name suppressed
116	Name suppressed
117	Name suppressed
118	Name suppressed
119	Name suppressed
120	Name suppressed
121	Name suppressed
122	Name suppressed
123	Name suppressed
124	Name suppressed
125	Name suppressed
126	Name suppressed
127	Name suppressed
128	Name suppressed
129	Name suppressed
130	Name suppressed

<b>No.</b>	<b>Author</b>
131	Name suppressed
132	Name suppressed
133	Name suppressed
134	Name suppressed
135	Name suppressed
136	Ms Gabbi Lancaster
137	Name suppressed
138	Name suppressed
139	Name suppressed
140	Name suppressed
141	Name suppressed
142	Name suppressed
143	Name suppressed
144	Name suppressed
145	Name suppressed
146	Name suppressed
147	Mr Gary Cook
148	Name suppressed
149	Name suppressed
150	Mr Alesoun Marsden
151	Name suppressed
152	Name suppressed
153	Name suppressed
154	Name suppressed
155	Name suppressed
156	Name suppressed
157	Name suppressed
158	Name suppressed
159	Name suppressed
160	Name suppressed
161	Name suppressed
162	Name suppressed
163	Name suppressed
164	Name suppressed
165	Name suppressed

<b>No.</b>	<b>Author</b>
166	Name suppressed
167	Name suppressed
168	Name suppressed
169	Ms Sybille Frank
170	Name suppressed
171	Name suppressed
172	Name suppressed
173	Name suppressed
174	Name suppressed
175	Mr Shirin Bayat
176	Name suppressed
177	Name suppressed
178	Mr Peter Strong
179	Name suppressed
180	Name suppressed
181	Name suppressed
182	Name suppressed
183	Name suppressed
184	Name suppressed
185	Ms Samantha Markwick
186	Name suppressed
187	Name suppressed
188	Name suppressed
189	Name suppressed
190	Name suppressed
191	Name suppressed
192	Name suppressed
193	Name suppressed
194	Ms Shawna Koh
195	Confidential

## Appendix 6 Witnesses at hearings

Date	Name	Position and Organisation
Monday 20 August 2018, Jubilee Room, Parliament House, Sydney	Mr Stephen Troughton	Deputy Secretary, Infrastructure and Services, Transport for NSW
	Mr Tony Braxton-Smith	Deputy Secretary, Customer Services, Transport for NSW
	Ms Margaret Prendergast	Coordinator General, Transport Coordination Office, Transport for NSW
	Ms Robyn Hobbs OAM	NSW Small Business Commissioner
	Ms Monica Barone	Chief Executive Officer, City of Sydney Council
	Mr Kim Woodbury	Chief Operating Officer, City of Sydney Council
	Ms Bridget Smyth	Design Director, City of Sydney Council
	Ms Lindsay Shurey	Mayor, Randwick City Council
	Mr Luke Fitzgerald	Executive Manager, Randwick City Council
	Mr Alan Bright	Manager, Strategic Planning, Randwick City Council
	Ms Margaret Crawford	Auditor-General of NSW
	Mr Ian Goodwin	Deputy Auditor-General of NSW
	Ms Claudia Migotto	Assistant Auditor-General, Performance Audit
	Mr Sean Morrissey	Deputy Chief Executive Officer, Australian Hotels Association of NSW
	Mr Jason Butler	Accountant, DFK Crosbie Accountants
	Prof. Helen Armstrong	Committee Member, Saving Sydney Trees
Ms Margaret Hogg	Committee Member, Saving Sydney Trees	
Ms Maria Bradley	Co-founder, Keep Sydney Beautiful	
Ms Jane Grusovin	Co-founder, Keep Sydney Beautiful	
Ms Katey Grusovin	Co-founder, Keep Sydney Beautiful	
Ms Merrill Witt	Keep Sydney Beautiful	
Mr John Bellamy	Founding member ,Sydney Light Rail Action Group	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Peter Egan	Transport Analyst, Sydney Light Rail Action Group
	Mr Alex Kleytman	Retired civil engineer, Sydney Light Rail Action Group
	Ms Rosemary Mackenzie	Lawyer, Sydney Light Rail Action Group
	Mr Jim Donovan	Fix NSW Transport, Sydney Light Rail Action Group
<b>Wednesday 3 October 2018, Macquarie Room, Parliament House, Sydney</b>	Ms Annette Keay	Affected resident
	Ms Cat Wright	Affected resident
	Mr Andrew Jordan	Affected resident
	Ms Diana Argirellis	Affected resident
	Ms Bidy Oquist	Affected resident
	Ms Amelia Birch	The Book Kitchen
	Ms Angela Vithoulkas	Vivo Café
	Mr Michael Neuman	Mondial Pink Diamond Atelier
	Mr Emanuel Tzirtzilakis	Ouroboros Wholefoods Café
	Mr Greg Tannos	Optical Illusions
	Mr Mark Coxon	Managing Director, Alstom Transport Australia
	Mr Brian Brennan	Managing Director, Transdev Sydney
<b>Thursday 4 October 2018, Macquarie Room, Parliament House, Sydney</b>	Mr Bede Noonan	Managing Director, Acciona Infrastructure Australia
	Mr James Bramley	Chairman, ALTRAC Light Rail
	Mr Stephen Troughton	Deputy Secretary, Infrastructure and Services, Transport for NSW
	Mr Tony Braxton-Smith	Deputy Secretary, Customer Services, Transport for NSW
	Ms Margaret Prendergast	Coordinator General, Transport Coordination Office, Transport for NSW
<b>Monday 5 November 2018, Macquarie Room, Parliament House, Sydney</b>	Mr Mark Gifford	Chief Environmental Regulator, NSW Environment Protection Authority
	Mr Richard Gross	Chief Executive Officer, Ausgrid
	Mr Trevor Armstrong	Chief Operating Officer, Ausgrid

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Friday 29 November 2018, Jubilee Room, Parliament House, Sydney</b>	Mr Bede Noonan	Managing Director, Acciona Infrastructure Australia
	Mr Rodd Staples	Secretary, Transport for NSW
	Ms Margaret Prendergast	Coordinator General, Transport Coordination Office, Transport for NSW



## Appendix 7 Minutes

### Minutes no. 2

Tuesday 22 May 2018

Public Accountability Committee

Members' Lounge, Parliament House, Sydney, at 12.07 pm

#### 1. Members present

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Mrs Houssos

Mr Khan

Ms Ward

Mr Field

#### 2. Draft minutes

Resolved, on the motion of Mr Mason-Cox: That draft minutes no. 1 be confirmed.

#### 3. Correspondence

The committee noted the following correspondence:

##### *Received:*

- 16 May 2018 – Letter from Mrs Houssos, Mr Donnelly and Mr Field requesting a meeting of the Public Accountability Committee to consider a proposed self-reference into the impact of the CBD and South East light rail project.

#### 4. Consideration of terms of reference –Impact of the CBD and South East Light Rail Project

The Chairman tabled a letter to the Committee Clerk signed by Mr Donnelly, Mrs Houssos and Mr Field requesting a meeting of the committee to consider the following self-reference:

##### **Inquiry into the impact of the CBD and South East Light Rails Project**

That the Public Accountability Committee inquire into and report by 1 December 2018 on the impact of the construction of the CBD and South East Light Rail Project (“the project”) on residents and businesses in the vicinity of the light rail route, including:

1. The adequacy of the Government’s response to the financial impact and diminution in social amenity caused by the project on residents and businesses including access to financial compensation and business support services;
2. The appropriateness and adequacy of the financial compensation process established by the assessment process and consistency of outcomes;
3. The effectiveness of the Government’s communication with residents and businesses concerning project delays and financial compensation; and
4. Any other related matters.

Resolved, on the motion of Mr Donnelly: That the committee adopt the terms of reference.

## 5. Conduct of the inquiry into the impact of the CBD and South East Light Rail Project

### 5.1 Closing date for submissions

Resolved, on the motion of Mr Donnelly: That the closing date for submissions be 8 July 2018.

### 5.2 Stakeholder list

Resolved, on the motion of Mrs Houssos: That the proposed list of stakeholders be agreed to, and that members have until 12.00 pm Thursday 24 May 2018 to suggest any further additions to the list.

### 5.3 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

### 5.4 Inquiry timeline

Resolved, on the motion of Mr Mason-Cox: That hearings be held in August and September, the dates of which will be determined by the Chair after consultation with members regarding their availability.

## 6. Adjournment

The committee adjourned at 12.12 pm, until Tuesday 24 July 2018, Macquarie Room, Parliament House (public hearing, inquiry into scrutiny of public accountability in NSW).

Teresa McMichael  
**Committee Clerk**

## Minutes no. 5

Monday 20 August 2018

Public Accountability Committee

Jubilee Room, Parliament House, Sydney, at 9.31 am

### 1. Members present

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Mr Shoebridge (substituting for Dr Faruqi)

Mr Khan (from 10.14 am)

Mrs Houssos

Mr Mallard (substituting for Ms Ward)

### 2. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 4 be confirmed.

### 3. Correspondence

The committee noted the following correspondence:

#### *Sent:*

- 31 July 2018 – Letter from the Chairman to Mr Rodd Staples, Secretary, Transport for NSW requesting an organisation chart or diagram of the structure of inter-relationships between the

NSW Government and the companies, entities and sub-contractors involved in the CBD and South East Light Rail Project.

***Received:***

- 24 May 2018 – Email from Ms Liz Brown, Kensington resident, to committee, requesting that the terms of reference for the inquiry be expanded to include the process of approving the light rail
- 4 July 2018 – Email from Ms Victoria Gavan, Personal Assistant to the Manager, Strategic Planning, Randwick City Council, to secretariat, seeking an extension to provide a submission
- 5 July 2018 – Email from Ms Lauren Flaherty, Senior Community Engagement Coordinator, City of Sydney Council, to committee, seeking an extension to provide a submission
- 5 July 2018 – Email from Mr Shane McCulloch, to committee, raising a number of concerns regarding the Newcastle Light Rail Project
- 5 July 2018 – Email from Mr Dean Grant, to committee, raising a number of concerns regarding the Newcastle Light Rail Project
- 5 July 2018 – Email from Mr Colin Scott, to committee, raising a number of concerns regarding the Newcastle Light Rail Project
- 5 July 2018 – Email from Mr Michael Swan, to committee, raising a number of concerns regarding the Newcastle Light Rail Project
- 5 July 2018 – Email from Ms Jan Lay, to committee, raising a number of concerns regarding the Newcastle Light Rail Project
- 5 July 2018 – Email from Mr Timothy Owens, to committee, raising a number of concerns regarding the Newcastle Light Rail Project
- 6 July 2018 – Email from Mr Raymond Wehbe, to committee, raising a number of concerns regarding the Parramatta Light Rail Project
- 19 July 2018 – Email from Ms Rachel Simpson, Principal Manager, Parliamentary Services, Transport for NSW, to secretariat, requesting the committee publish attachments to their submission
- 1 August 2018 – Email from the Hon Patricia Forsythe, Executive Director, Sydney Business Chamber, to secretariat, declining the invitation to appear as a witness at the public hearing on 20 August 2018
- 8 August 2018 – Email from Ms Emma Browne, Team Assistant, Capella Capital, to secretariat, declining to provide a submission
- 9 August 2018 – Letter from Ms Margaret Crawford, NSW Auditor-General, to Chairman, regarding the Annual Work Program 2018/19
- 10 August 2018 - Email from Ms Emma Browne, Team Assistant, Capella Capital, to secretariat, declining the invitation to appear as a witness at the public hearing on 20 August 2018
- 13 August 2018 – Email from Mr Patrick Cook, Senior Parliamentary Officer, to secretariat, containing contract structure diagram
- 14 August 2018 – Email from Ms Jenny Leong MP, Member for Newtown, to secretariat, raising concerns about the publication status of the survey responses from Surry Hills residents facilitated by her office
- 14 August 2018 – Email from Ms Jenny Leong MP, Member for Newtown, to Chairman, requesting the survey responses from Surry Hills residents facilitated by her office be published as individual submissions

- 15 August 2018 – Letter from Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia, to secretariat, advising that Acciona Infrastructure Australia will not be providing a submission but will appear as a witness at a public hearing if required
- 17 August 2018 – Email from the author of submission no. 48, to committee, seeking an opportunity to tell the committee about their experience as a resident affected by the light rail project.

#### **4. Inquiry into the impact of the CBD and South East Light Rail Project**

##### **4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 3, 9, 11, 14, 16, 18-20, 22-27, 31, 32, 35, 36, 38, 39, 43, 46, 51-57, 59-64, 67-70, 72-77, 81, 83, 84, 86, 87, 89, 90, 91, 96, 97, 136, 147, 150, 169, 175, 178, 185.

##### **4.2 Partially Confidential Submissions**

Resolved, on the motion of Mr Shoebridge:

- that the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission nos. 2, 4-7, 12, 13, 15, 17, 21, 28-30, 33, 34, 40-42, 44, 45, 47-50, 65, 66, 71, 79, 80, 82, 93, 94, 98-135, 137-146, 148, 149, 151-168, 170-174, 176, 177, 179-184, 186-193.
- that the committee keep the following information confidential, as per the recommendation of the secretariat and agreed to by the submission author: names and/or identifying and sensitive information in submission nos. 8 and 58.
- that the committee authorise the publication of submission no. 37.

##### **4.3 Attachments to submissions**

The committee noted that attachments 1-10 of submission no. 39 were published by the committee clerk under the authorisation of the resolution appointing the committee.

##### **4.4 Views of Surry Hills residents**

Resolved, on the motion of Mr Shoebridge: That the committee publish the existing document entitled 'Views of Surry Hills residents (survey conducted by Ms Jenny Leong MP)' as a single submission.

Resolved, on the motion of Mrs Houssos: That the committee keep the individual survey responses received via Ms Jenny Leong's office confidential.

##### **4.5 Invitation to provide a submission**

The committee noted that the secretariat has followed up Alstom Transport Australia, Transdev NSW, Acciona Infrastructure Australia and Capella Capital in regards to providing a submission to the inquiry.

##### **4.6 Proposed witness list**

Resolved, on the motion of Mr Khan: That Alstom Transport Australia, Transdev NSW, Acciona Infrastructure Australia and ALTRAC Light Rail be invited to give evidence before the committee at a public hearing.

##### **4.7 Upcoming hearings**

Resolved, on the motion of Shoebridge: That the secretariat circulate the proposed list of impacted residents and business owners to committee members to consider who will be invited to give evidence at the public hearing on 3 October 2018.

#### 4.8 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Stephen Troughton, Deputy Secretary, Infrastructure and Services, Transport for NSW
- Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW
- Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW
- Ms Robyn Hobbs OAM, NSW Small Business Commissioner.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Monica Barone, Chief Executive Officer, City of Sydney Council
- Mr Kim Woodbury, Chief Operating Officer, City of Sydney Council
- Ms Bridget Smyth, Design Director, City of Sydney Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Cr Lindsay Shuray, Mayor, Randwick City Council
- Mr Luke Fitzgerald, Executive Manager, Randwick City Council
- Mr Alan Bright, Manager, Strategic Planning, Randwick City Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General of NSW
- Mr Ian Goodwin, Deputy Auditor-General of NSW
- Ms Claudia Migotto, Assistant Auditor-General, Performance Audit.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Sean Morrissey, Deputy Chief Executive Officer, Australian Hotels Association of NSW
- Mr Jason Butler, Accountant, DFK, Crosbie Accountants.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Prof. Helen Armstrong, Committee Member, Saving Sydney Trees
- Ms Margaret Hogg, Committee Member, Saving Sydney Trees
- Ms Maria Bradley, Co-Founder, Keep Sydney Beautiful
- Ms Jane Grusovin, Co-Founder, Keep Sydney Beautiful
- Ms Katey Grusovin, Co-Founder, Keep Sydney Beautiful
- Ms Merrill Witt, Keep Sydney Beautiful.

Ms Hogg tendered a folder containing the following documents:

- powerpoint slideshow entitled 'Saving Sydney's Trees response to the inquiry into the CSELR 2018'
- notes that formed the basis of her opening statement

- 6 photos demonstrating the amenity loss as a result of work, 4 dated 17 October 2015 and 2 dated 7 August 2015
- a document entitled 'Disrupting vegetation', showing tree removal along various roads
- Appendix B of a Tree Protection Plan from a GIPA application
- document entitled 'Draft report: Diversion road trees', authored by Kathlene Hennessy, dated 3 August 2016
- 2 photos dated 2 March 2017, pertaining to the impact of work on trees
- 1 photo dated 20 February 2017, pertaining to the impact of work on trees
- 1 photo dated 22 April 2017, pertaining to the impact of work on trees
- extracts from 7 arboriculture audit reports obtained under a GIPA request to Urban Tree Management, dated 8 July 2016, 11 August 2016, 7 September 2016, 24 October 2016, 2 December 2016, 24 January 2017 and 1 March 2017
- extracts from an arboriculture impact assessment conducted by Urban Tree Management (four pages)
- Appendix A entitled 'Audit outcomes action plan' from an audit reported conducted by Urban Tree Management from 24 January 2017 to 28 February 2017
- Peer Review of Traffic and Transport Assessment report by Samsa Consulting prepared for NSW Planning and Infrastructure, dated April 2014
- audio files from three community forums, held on 10 December 2014, 7 May 2015 and 19 August 2015.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Bellamy, Founding member, Sydney Light Rail Action Group
- Mr Peter Egan, Transport Analyst, Sydney Light Rail Action Group
- Mr Alex Kleytamm, Retired civil engineer, Sydney Light Rail Action Group
- Ms Rosemary Mackenzie, Lawyer, Sydney Light Rail Action Group
- Mr Jim Donovan, Fix NSW Transport, Sydney Light Rail Action Group.

Mr Donovan, Sydney Light Rail Action Group, tendered the following document:

- diagram of bus paths at the Haymarket region entitled 'Transit Conflicts', dated 20 August 2018.

Mr Bellamy, Sydney Light Rail Action Group, tendered the following documents:

- correspondence from Mr Alex Kleytman, entitled 'Letter from November 2016'
- memorandum by Mr Peter Egan, entitled 'Comparison of public transport capacities to aid understanding of the operational capacities of the Sydney Metro, Sydney Light Rail and other transport projects', dated 20 August 2018
- document entitled 'Light Rail – Misrepresentations', dated August 2018
- document entitled 'Inquiry into the Impact of the CBD and South East Light Rail Project Draft', concerning the removal of trees, dated 20 August 2018
- document entitled 'CBD and South East Light Rail (CSELR) cost/benefit analysis, estimated journey times and capacity', undated.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 4.52 pm.

**5. Tendered documents**

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing on 20 August 2018:

- powerpoint slideshow entitled Saving Sydney's Trees response to the inquiry into the CSELR 2018, tendered by Ms Margaret Hogg, Saving Sydney Trees
- diagram of bus paths at the Haymarket region entitled Transit Conflicts dated 20 August 2018, tendered by Mr Jim Donovan, Sydney Light Rail Action Group.

Resolved on the motion of Mr Shoebridge: That the secretariat review all other documents tendered during the public hearing before the committee accepts and publishes them.

**6. Adjournment**

The committee adjourned at 5.09 pm, *Sine die*.

Tina Higgins

**Committee Clerk**

**Minutes no. 6**

Thursday 20 September 2018

Public Accountability Committee

Members' Lounge, Parliament House, Sydney, at 1.30 pm

**1. Members present**

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Amato (substituting for Mr Khan)

Mr Donnelly

Ms Faehrmann (substituting for Mr Field for the duration of the inquiry into the impact of the CBD and South East Light Rail Project)

Mrs Houssos

Mr Mallard (substituting for Ms Ward for the duration of the inquiry into the impact of the CBD and South East Light Rail Project)

**2. Draft minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 5 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 20 August 2018 – Letter from the Hon Natasha Maclaren-Jones MLC, to secretariat, advising that the Hon Shayne Mallard MLC will be substituting for the Hon Natalie Ward MLC for the duration of the inquiry into the impact of the CBD and South East Light Rail Project
- 30 August 2018 – Email from the Hon Justin Field MLC, to secretariat, advising that the Hon Cate Faehrmann MLC will be substituting for the Hon Justin Field MLC for the duration of the inquiry into the impact of the CBD and South East Light Rail Project
- 13 September 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, to secretariat, declining the invitation to give evidence at a public hearing

- 13 September 2018 – Letter from Mr Glenn Bentley, OpCo's Representative, ALTRAC Light Rail, to secretariat, confirming attendance at a public hearing, subject to consent from Transport for NSW
- 14 September 2018 – Email from Mr Sheldon Young, Marketing & Communications Director, Alstom Australia & New Zealand, to secretariat, advising that Alstom is considering its position regarding the invitation to appear before the committee and will formally respond next week
- 18 September 2018 – Letter from Mr Mark Coxon, Managing Director, Alstom Australia & New Zealand, to Director, declining the committee's invitation to attend and give evidence at a hearing
- 19 September 2018 – Letter from Mr Brian Brenna, Managing Director, Transdev, to Director, declining the committee's invitation to attend and give evidence at a hearing.

***Sent:***

- 3 September 2018 – Letter from Director, to Mr René Lalande, Chief Executive Officer, Transdev Australasia, inviting representatives to give evidence at a public hearing on 3 October 2018
- 3 September 2018 – Letter from Director, to Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, inviting representatives to give evidence at a public hearing on 4 October 2018
- 4 September 2018 – Letter from Director, to Mr Glenn Bentley, Chief Executive Officer, ALTRAC Light Rail, inviting representatives to give evidence at a public hearing on 4 October 2018
- 4 September 2018 – Letter from Director, to Mr Mark Coxon, Managing Director for Alstom in Australia and New Zealand, Alstom Transport Australia, inviting representatives to give evidence at a public hearing on 3 October 2018.

#### **4. Inquiry into the impact of the CBD and South East Light Rail Project**

##### **4.1 Witnesses**

Resolved, on the motion of Mrs Houssos, that:

- the Chair write to Acciona Infrastructure Australia, Alstom Transport Australia and Transdev NSW, asking them to reconsider the invitation of the committee to attend the public hearings on 3 or 4 October 2018, noting that the committee may consider issuing a summons, and
- if they decline, that under the authority of s 4(2) of the Parliamentary Evidence Act 1901 the committee issue a summons to Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd; Mr Mark Coxon, Managing Director for Alstom in Australia and New Zealand, Alstom Transport Australia; and Mr Brian Brennan, Managing Director, Transdev Sydney to attend and give evidence before the committee on either 3 or 4 October.

##### **4.2 Residents panel**

Resolved, on the motion of Mr Donnelly: That the committee invite submission author no. 73 to appear as a witness as part of the residents panel at the hearing on 3 October 2018, and should they not be available the suggestion put forward by Ms Faehrmann be invited.

Resolved, on the motion of Mr Donnelly: That the committee extend the session for affected residents at the hearing on the 3 October for a further 15 minutes.

#### **5. Adjournment**

The committee adjourned at 1.38 pm, until Wednesday 3 October 2018, 9.15am, Macquarie Room, Parliament House (public hearing).

Sarah Dunn  
Committee Clerk

**Minutes no. 7**

Wednesday 3 October 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney, at 9.15 am

**1. Members present**

Revd Nile, *Chairman* (from 9.15 am to 10.11 am and 10.42 am to 3.31 pm)

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Ms Faehrmann

Mr Khan

Mrs Houssos

Mr Mallard

**2. Draft minutes**

Resolved, on the motion of Mr Khan: That draft minutes no. 6 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 20 August 2018 – Email from Mr John Bellamy, Founding Member, Sydney Light Rail Action Group, to secretariat, requesting a copy of the video footage from the hearing on 20 August 2018
- 21 August 2018 – Email from Mr Jim Donovan, Fix NSW Transport, Sydney Light Rail Action Group, to committee, in relation to a clarification of the transcript of 20 August 2018
- 21 August 2018 – Email from Ms Rosemary Mackenzie, Lawyer, Sydney Light Rail Action Group, to committee, providing the 'Anzac Parade corridor future Light Rail station and system capacity analysis', EMM Report, to the committee
- 27 August 2018 – Email from Ms Rosemary Mackenzie, Lawyer, Sydney Light Rail Action Group, to secretariat, providing documents 11 and 19 from the order for papers dated May 2014
- 4 September 2018 – Email from Mr Norm Heavener, to secretariat, declining the invitation to give evidence at a public hearing due to leave
- 10 September 2018 – Email from Mr Paul Corradini, to secretariat, declining the invitation to give evidence at a public hearing due to leave
- 14 September 2018 – Email from Mr Phillip Powney, to secretariat, declining the invitation to give evidence at a public hearing due to work commitments
- 18 September 2018 – Letter from Mr Alex Kleytman, Retired Civil Engineer, Sydney Light Rail Action Group, in relation to a clarification of the transcript of 20 August 2018
- 19 September 2018 – Email from Ms Victoria Gavan, Personal Assistant to the Manager, Strategic Planning, Randwick City Council, to secretariat, requesting an extension to provide answers to questions on notice by Friday 29 September 2018

- 21 September 2018 – Email from Ms Brenda Lee, to secretariat, declining the invitation to give evidence at a public hearing due to prior commitments
- 24 September 2018 – Letter from Mr Brian Brennan, Managing Director, Transdev Sydney, to Chairman, accepting the invitation to give evidence at a public hearing on 3 October 2018
- 24 September 2018 – Letter from Mr Mark Coxon, Managing Director for Alstom in Australia and New Zealand, Alstom Transport Australia, to Chairman, accepting the invitation to give evidence at a public hearing on 3 October 2018
- 24 September 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, to Chairman, declining the invitation to attend a public hearing on 4 October 2018
- 25 September 2018 – Email from Ms Adriana Brennan, Acciona Infrastructure Australia Pty Ltd, to secretariat, confirming that Mr Bede Noonan is the appropriate person to be summons to appear at the hearing on 4 October 2018
- 25 September 2018 - Email from Ms Adriana Brennan, Acciona Infrastructure Australia Pty Ltd, to secretariat, confirming the details in relation to issuing the summons on Mr Bede Noonan on 27 September 2018
- 26 September 2018 – Letter from Mr Glenn Bentley, OpCo's Representative, ALTRAC Light Rail, to secretariat, confirming witnesses attending the hearing on 4 October 2018 and advising they have not yet received consent from Transport for NSW.

***Sent:***

- 20 September 2018 – Letter from Chairman, to Mr Brian Brennan, Managing Director, Transdev Sydney, asking to reconsider the invitation to attend the public hearing on 3 October 2018
- 20 September 2018 – Letter from Chairman, to Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, asking to reconsider the invitation to attend the public hearing on 4 October 2018
- 20 September 2018 – Letter from Chairman, to Mr Mark Coxon, Managing Director for Alstom in Australia and New Zealand, Alstom Transport Australia, asking to reconsider the invitation to attend the public hearing on 3 October 2018
- 21 September 2018 – Email from secretariat, to Ms Victoria Gavan, Personal Assistant to the Manager, Strategic Planning, Randwick City Council, approving the request for an extension to provide answers to questions on notice
- 26 September 2018 – Letter from Chairman, to Mr John Gregor, Director, Finance, Department of Parliamentary Services, regarding the allowance for Mr Bede Noonan, Managing Director Acciona Infrastructure Australia Pty Ltd, to appear as a witness at the hearing on 4 October 2018
- 27 September 2018 – Summons from Chairman, to Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, ordering to appear before the committee at a hearing on 4 October 2018
- 27 September 2018 – Affidavit of service of summons, to Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, ordering to appear before the committee at a hearing on 4 October 2018.

Resolved, on the motion of Mr Mallard: That the committee keep the correspondence from Ms Rosemary Mackenzie, Lawyer, Sydney Light Rail Action Group, dated 27 August 2018, confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information.

#### 4. Inquiry into the impact of the CBD and South East Light Rail Project

##### 4.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 21 and 194.

##### 4.2 Partially Confidential Submissions

Resolved, on the motion of Mr Mallard: That the committee keep the following information confidential, as per the request of the author: names and/or identifying and sensitive information in submission nos. 44a, 78 and 85.

##### 4.3 Confidential submissions

Resolved, on the motion of Mr Mallard: That the committee keep submission nos. 10 and 195 confidential, as per the request of the author, as it contains identifying and/or sensitive information.

##### 4.4 Publication status of submissions

Resolved, on the motion of Mr Khan: That consideration of the publication status of submission nos. 88, 92 and 95 be deferred to the next committee meeting.

##### 4.5 Proforma A

Resolved, on the motion of Mr Mallard: That the committee keep the following information confidential, as per the request of the authors: names and/or identifying and sensitive information in Proforma A and the variations to Proforma A.

##### 4.6 Answers to questions on notice and supplementary questions

The committee noted that following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- additional information from Ms Margaret Hogg, Committee Member, Saving Sydney Trees, received 27 August 2018
- answers to questions on notice from Ms Monica Barone, Chief Executive Officer, City of Sydney Council, received 2 September 2018
- additional information from Mr Alex Kleytman, Retired Civil Engineer, Sydney Light Rail Action Group, received 16 September 2018
- answers to questions on notice from Mr Peter Egan, Transport Analyst, Sydney Light Rail Action Group, received 17 September 2018
- answers to questions on notice from Professor Helen Armstrong, Committee Member, Saving Sydney Trees, received 17 September 2018
- answers to questions on notice from Ms Margaret Crawford, Auditor-General, received 18 September 2018
- answers to questions on notice from Mr John Bellamy, Founding Member, Sydney Light Rail Action Group, received 18 September 2018
- answers to questions on notice, supplementary questions from Transport for NSW, received 18 September 2018
- answers to questions on notice from Mr Sean Morrissey, Deputy Chief Executive Officer, Australian Hotels Association of NSW, received 18 September 2018
- answers to questions on notice from Ms Robyn Hobbs, NSW Small Business Commissioner, received 25 September 2018
- answers to questions on notice from Ms Maria Bradley, Co-founder, Keep Sydney Beautiful, received 25 September 2018.

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of attachment 2, titled 'Ex Gratia Payments by Zone/Category' of the answers to questions on notice from Mr Tony Braxton-Smith, Deputy Secretary, Customer Services Division, Transport for NSW, and keep confidential attachment 1, titled 'Cost Report' as per the request of the author, as it contains identifying and/or sensitive information.

Resolved, on the motion of Mr Khan: That the committee keep confidential attachment 1 and 2 of the answers to questions on notice from Mr Sean Morrissey, Deputy Chief Executive Officer, Australian Hotels Association of NSW, as per the request of the author, as it contain identifying and/or sensitive information.

#### **4.7 Transcript clarification– Mr Jim Donovan**

Resolved, on the motion of Ms Faerhmann: That a footnote be included in the transcript of 20 August 2018 noting the clarification received by Mr Jim Donovan, Fix NSW Transport, Sydney Light Rail Action Group.

#### **4.8 Transcript clarification – Mr Alex Kleytman**

Resolved, on the motion of Mrs Houssos: That a footnote be included in the transcript of 20 August 2018 noting the clarification received by Mr Alex Kleytman, Retired Civil Engineer, Sydney Light Rail Action Group.

#### **4.9 Public hearing 20 August 2018 – tendered documents**

Resolved, on the motion of Mrs Houssos: That the committee keep confidential the audio files from three community forums, held on 10 December 2014, 7 May 2015 and 19 August 2015, tendered by Ms Margaret Hogg, Committee Member, Saving Sydney Trees, during the public hearing on 20 August 2018.

Resolved, on the motion of Ms Faerhmann: That the committee accept and publish the following documents tendered by Ms Margaret Hogg, Committee Member, Saving Sydney Trees, tendered during the public hearing on 20 August 2018:

- notes that formed the basis of Ms Hogg's opening statement
- 6 photos demonstrating the amenity loss as a result of work, 4 dated 17 October 2015 and 2 dated 7 August 2015
- a document entitled 'Disrupting vegetation', showing tree removal along various roads
- Appendix B of a Tree Protection Plan from a GIPA application
- document entitled 'Draft report: Diversion road trees', authored by Kathlene Hennessy, dated 3 August 2016
- 2 photos dated 2 March 2017, pertaining to the impact of work on trees
- 1 photo dated 20 February 2017, pertaining to the impact of work on trees
- 1 photo dated 22 April 2017, pertaining to the impact of work on trees
- extracts from 7 arboriculture audit reports obtained under a GIPA request to Urban Tree Management, dated 8 July 2016, 11 August 2016, 7 September 2016, 24 October 2016, 2 December 2016, 24 January 2017 and 1 March 2017
- extracts from an arboriculture impact assessment conducted by Urban Tree Management (four pages)
- Appendix A entitled 'Audit outcomes action plan' from an audit reported conducted by Urban Tree Management from 24 January 2017 to 28 February 2017
- Peer Review of Traffic and Transport Assessment report by Samsa Consulting prepared for NSW Planning and Infrastructure, dated April 2014.

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered by Mr John Bellamy, Founding member, Sydney Light Rail Action Group, tendered during the public hearing on 20 August 2018:

- correspondence from Mr Alex Kleytman, entitled 'Letter from November 2016'
- memorandum by Mr Peter Egan, entitled 'Comparison of public transport capacities to aid understanding of the operational capacities of the Sydney Metro, Sydney Light Rail and other transport projects', dated 20 August 2018
- document entitled 'Light Rail – Misrepresentations', dated August 2018
- document entitled 'Inquiry into the Impact of the CBD and South East Light Rail Project Draft', concerning the removal of trees, dated 20 August 2018
- document entitled 'CBD and South East Light Rail (CSELR) cost/benefit analysis, estimated journey times and capacity', undated.

#### **4.10 Summons to Acciona Infrastructure Australia Pty Ltd**

Resolved, on the motion of Mrs Houssos: That under the authority of s 4(2) of the *Parliamentary Evidence Act 1901* the committee issue a summons to Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia Pty Ltd to attend and give evidence before the committee on 4 October 2018.

#### **4.11 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Annette Keay, affected resident
- Ms Cat Wright, affected resident
- Mr Andrew Jordan, affected resident
- Ms Diana Argirellis, affected resident
- Ms Bidy Oquist, affected resident.

Ms Wright tendered the following documents:

- notes that formed the basis of Ms Wright's opening statement
- 16 photographs demonstrating damage as a result of work
- NSW Transport 'Construction Update' advising of weekend work at the intersection of Avoca Street and High Street from 9pm Friday 27 July 2018 to 5am Monday 30 July 2018
- NSW Transport CBD and South East Light Rail update for Randwick for 1 September to 1 December 2018.

Mr Jordan tendered the following documents:

- notes that formed the basis of Mr Jordan's opening statement
- document entitled 'ALR Construction Noise and Vibration Management Plan', authored by ALTRAC Light Rail, dated November 2015
- Press Release from the U.S. Department of Justice, 'Alstom Sentenced to Pay \$772 Million Criminal Fine to Resolve Foreign Bribery Charges', dated 13 November 2015.

Ms Argirellis tendered the following documents:

- email correspondence from Randwick City Council, entitled 'Good news for Doncaster Ave residents!', dated 3 May 2018

- correspondence to the Hon Andrew Constance from residents of Doncaster Ave, dated 29 June 2018
- email correspondence (miscellaneous) from Randwick City Council, entitled 'Light Rail – Bamboo planting', dating 24 July 2018 - 2 October 2018
- email correspondence from Randwick City Council, entitled 'Doncaster Bamboo', dated 2 October 2018.

The Chair left the meeting.

The evidence concluded and the witnesses withdrew.

The Chair joined the meeting.

The following witnesses were sworn and examined:

- Ms Amelia Birch, The Book Kitchen
- Cr Angela Vithoulkas, Vivo Café
- Mr Michael Neuman, Mondial Pink Diamond Atelier
- Mr Emanuel Tzirtzilakis, Ouroboros Wholefoods Café
- Mr Greg Tannos, Optical Illusions.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Mark Coxon, Managing Director, Alstom Transport Australia.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Brian Brennan, Managing Director, Transdev Sydney.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The public hearing concluded at 3.26 pm.

#### **4.12 After the hearing – tendered documents**

Resolved, on the motion of Mr Mallard: That the secretariat review all documents tendered during the public hearing before the committee accepts and publishes them.

#### **5. Other business**

The committee discussed contacting residents and business owners who appeared vulnerable during their appearance at the hearing: to check on their welfare, to ascertain whether they have support mechanisms in place, and if needed, to offer further support.

#### **6. Adjournment**

The committee adjourned at 3.31 pm, until Thursday 4 October 2018, 9.30 am, Macquarie Room, Parliament House (public hearing).

Tina Higgins  
**Committee Clerk**

**Minutes no. 8**

Thursday 4 October 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney, at 9.36 am

**1. Members present**

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Ms Faehrmann

Mr Mallard

Mr Martin (substituting for Mr Khan) (until 11.54 am)

Mr Mookhey (substituting for Mrs Houssos)

**2. Inquiry into the impact of the CBD and South East Light Rail Project****2.1 Tendered documents**

Resolved on the motion of Mr Mallard: That the committee accepts and publishes all documents tendered during the public hearing on 3 October 2018:

- notes that formed the basis of Ms Wright's opening statement, tendered by Ms Cat Wright
- 16 photographs demonstrating damage as a result of work, tendered by Ms Cat Wright
- NSW Transport 'Construction Update' advising of weekend work at the intersection of Avoca Street and High Street from 9pm Friday 27 July 2018 to 5am Monday 30 July 2018, tendered by Ms Cat Wright
- NSW Transport CBD and South East Light Rail update for Randwick for 1 September to 1 December 2018, tendered by Ms Cat Wright
- notes that formed the basis of Mr Jordan's opening statement, tendered by Mr Andrew Jordan
- document entitled 'ALR Construction Noise and Vibration Management Plan', authored by ALTRAC Light Rail, dated November 2015
- Press Release from the U.S. Department of Justice, 'Alstom Sentenced to Pay \$772 Million Criminal Fine to Resolve Foreign Bribery Charges', dated 13 November 2015 tendered by Mr Andrew Jordan
- email correspondence from Randwick City Council, entitled 'Good news for Doncaster Ave residents!', dated 3 May 2018, tendered by Ms Diana Argirellis
- correspondence to the Hon Andrew Constance from residents of Doncaster Ave, dated 29 June 2018, tendered by Ms Diana Argirellis
- email correspondence (miscellaneous) from Randwick City Council, entitled 'Light Rail – Bamboo planting', dating 24 July 2018 - 2 October 2018, tendered by Ms Diana Argirellis, affected resident
- email correspondence from Randwick City Council, entitled 'Doncaster Bamboo', dated 2 October 2018, tendered by Ms Diana Argirellis.

**2.2 Publication status of submissions**

Resolved, on the motion of Mr Mookhey: That consideration of the publication status of submission nos. 88, 92 and 95, and attachments to submission no. 95 be deferred to the next committee meeting.

**2.3 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia.

Mr Noonan tendered the following document:

- notes that formed the basis of Mr Noonan's opening statement.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr James Bramley, Chairman, ALTRAC Light Rail Partnership.

Mr Martin left the meeting.

The evidence concluded and the witness withdrew.

The following witnesses were reminded that they did not need to be sworn, as they had been sworn at an earlier hearing:

- Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW
- Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW
- Mr Stephen Troughton, Deputy Secretary, Infrastructure and Services, Transport for NSW.

Mr Braxton-Smith tendered the following document:

- a document entitled 'Small business financial assistance – ex gratia payments by zone/category. Data as at 30 September 2018', showing the number of businesses provided assistance, by amount and location.

Ms Prendergast tendered the following document:

- notes that formed the basis of Ms Prendergast's opening statement.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 3.32 pm.

#### **2.4 After the hearing – tendered documents**

Resolved, on the motion of Mr Mallard: That the committee accept and publish the following documents tendered during the public hearing:

- notes that formed the basis of Mr Noonan's opening statement, tendered by Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia
- a document entitled 'Small business financial assistance – ex gratia payments by zone/category. Data as at 30 September 2018', showing number of business provided assistance, by amount and location, tendered by Mr Tony Braxton-Smith, Deputy Secretary, Customer Services, Transport for NSW
- notes that formed the basis of Ms Prendergast's opening statement, tendered by Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW.

#### **2.5 Further hearings**

Mr Donnelly moved: That the Hon Gladys Berejiklian, Premier and the Hon Andrew Constance, Minister for Transport and Infrastructure, be invited to give evidence at a hearing.

Ms Faehrmann moved: That the motion of Mr Donnelly be amended by inserting 'and representatives from Ausgrid' after 'Minister for Transport and Infrastructure'.

Mr Mallard moved: That the motion of Ms Faehrmann be deferred until the next meeting.

Amendment of Mr Mallard put.

The committee divided.

Ayes: Mr Mallard, Mr Mason-Cox, Revd Nile.

Noes: Mr Donnelly, Ms Faehrmann, Mr Mookhey.

There being an equality of votes, the questions was resolved in the affirmative on the casting vote of the Chair.

Amendment of Ms Faehrmann, and original motion of Mr Donnelly, deferred until next meeting of the committee.

### 3. Adjournment

The committee adjourned at 3.47 pm, until Tuesday 9 October, 8.45 am, Macquarie Room, Parliament House (WestConnex public hearing).

Tina Higgins

**Committee Clerk**

### Minutes no. 12

Tuesday 23 October 2018

Public Accountability Committee

Room 1136, Parliament House, Sydney, 1.45pm

#### 1. Members present

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Ms Faehrmann

Mrs Houssos

Mr Mallard (from 1.47 pm)

#### 2. Apologies

Mr Khan

#### 3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes nos. 7 and 8 be confirmed.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 8 October 2018 – Email from Mr Andrew Jordan, affected resident, to secretariat, providing additional information to the committee in regards to night work on Carlton Street following Mr Jordan's appearance at the hearing on 3 October 2018.

- 16 October 2018 – Letter from Hon Ron Hoenig MP, Member for Heffron, to Mr David Blunt, Clerk of the Legislative Council, in relation to Mr Andrew Jordan's appearance at the hearing on 3 October 2018.
- 19 October 2018 – Email from Ms Madeleine Lewis, Executive Assistant for Mr Paul Broad, to secretariat, advising that Mr Broad is unavailable on 5 November to give evidence to the committee.

## **5. Inquiry into the impact of the CBD and South East Light Rail Project**

### **5.1 Concerns raised by Mr Andrew Jordan**

Resolved, on the motion of Mr Donnelly: That:

- the email from Mr Jordan to the committee, dated 8 October 2018, and correspondence from Mr Ron Hoenig MP, dated 11 October 2018, be provided to both the Department of Transport and ALTRAC Light Rail, with a written response sought within 36 hours from both organisations to the serious allegations Mr Jordan has raised
- Mr Jordan be advised of the actions the committee is taking in relation to the concerns he has raised
- Mr Ron Hoenig MP be copied into the correspondence provided to Department of Transport and ALTRAC Light Rail in relation to this matter.

### **5.2 Extension of the reporting date**

Resolved, on the motion of Mrs Houssos: That the committee extend the inquiry reporting date to 7 December 2018 and that the Chairman report this extension to the House.

### **5.3 Report deliberative**

The committee noted the report deliberative will be held on Thursday 29 November 2018, commencing at 9.30 am.

## **6. Other business**

Resolved, on the motion of Mr Donnelly: That following the hearing on 5 November 2018:

- Acciona Infrastructure Australia be invited to provide any additional comments in relation to evidence provided at the hearings by Ausgrid and the Department of Transport about the Ausgrid guidelines for the CBD and South East Light Rail Project
- Acciona Infrastructure Australia be advised that the response they provide to the committee in relation to this matter will be covered by parliamentary privilege.

## **7. Next meeting**

The committee adjourned at 1.58 pm, until Monday 5 November 2018, 9.30 am, Macquarie Room, Parliament House (Light rail public hearing).

Tina Higgins  
Clerk to the Committee

**Minutes no. 13**

Monday 5 November 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney, at 10.46 am

**1. Members present**

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Ms Faehrmann

Mr Fang (substituting for Mr Khan)

Mrs Houssos

Mr Mallard (from 10.49 am)

**2. Draft minutes**

Resolved, on the motion of Mr Mason-Cox: That draft minutes no. 12 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 22 October 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia, to Chairman, in regards to providing a response to supplementary questions
- 22 October 2018 – Email from Ms Cat Wright, to secretariat, providing additional information to the committee
- 26 October 2018 – Email from Ms Cat Wright, to secretariat, providing a number of photographs of the construction on her property
- 26 October 2018 – Letter and attachment from Mr Glenn Bentley, Chief Executive Officer, ALTRAC Light Rail, to Chairman, providing a response to the concerns raised by Mr Andrew Jordan
- 26 October 2018 – Email from Ms Rachel Simpson, Principal Manager, Parliamentary Services, Transport for NSW, to secretariat, advising that they will provide a response to the concerns raised by Mr Andrew Jordan on Monday 29 October 2018
- 29 October 2018 – Letter from Mr Stephen Troughton, Deputy Secretary, Infrastructure and Services, Transport for NSW, to Chairman, providing a response to the concerns raised by Mr Andrew Jordan
- 31 October 2018 – Email from Ms Adrianna Brennan, Acciona Infrastructure Australia, to secretariat, advising that Acciona is unable to provide a meaningful response to the supplementary questions without being compelled by the committee
- 4 November 2018 – Email from Ms Rachel Simpson, Principal Manager, Parliamentary Services, Transport for NSW, to secretariat, regarding a response to a question taken on notice at the hearing on 4 October 2018.

***Sent:***

- 8 October 2018 – Email from secretariat, to Mr Emanuel Tzirtzilakis, Ouroboros Wholefoods Café, in relation to appearance at the hearing on 3 October 2018
- 8 October 2018 – Email from secretariat, to Ms Amelia Birch, The Book Kitchen, in relation to appearance at the hearing on 3 October 2018

- 23 October 2018 – Letter from Chairman, to Mr Glenn Bentley, Chief Executive Officer, ALTRAC Light Rail, requesting a response to the allegations raised by Mr Andrew Jordan
- 23 October 2018 – Letter from Chairman, to Mr Stephen Troughton, Deputy Secretary, Infrastructure and Services, Transport for NSW, requesting a response to the allegations raised by Mr Andrew Jordan
- 23 October 2018 – Email from secretariat, to Hon Ron Hoenig MP, Member for Heffron, advising of the committee's resolution to seek a response from Transport for NSW and ALTRAC Light Rail in relation to Mr Andrew Jordan's appearance at a hearing
- 30 October 2018 – Email from secretariat, to Ms Adriana Brennan, Acciona Infrastructure Australia, advising that their letter of 22 October 2018 will be considered at the next committee meeting and reminding them that parliamentary privilege applies to supplementary questions.

Resolved, on the motion of Mrs Houssos: That the committee keep the following correspondence confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information:

- 8 October 2018 – Email from secretariat, to Mr Emanuel Tzirtzilakis, Ouroboros Wholefoods Café, in relation to appearance at the hearing on 3 October 2018
- 8 October 2018 – Email from secretariat, to Ms Amelia Birch, The Book Kitchen, in relation to appearance at the hearing on 3 October 2018.

#### **4. Inquiry into the impact of the CBD and South East Light Rail Project**

##### **4.1 Concerns raised by Mr Andrew Jordan**

Resolved, on the motion of Mr Donnelly: That

- Mr Jordan be provided with the responses from ALTRAC Light Rail and Transport for NSW in relation to the concerns he raised
- the Chair write to Mr Jordan to explain that in light of the responses received from ALTRAC Light Rail and Transport for NSW no further action will be taken in relation to the concerns he raised.

##### **4.2 Acciona answers to supplementary questions**

Resolved, on the motion of Mr Donnelly: That

- the Chairman write to Acciona Infrastructure Australia advising that in light of the fact that Acciona will not be answering supplementary questions the committee will be issuing a further summons to appear at a public hearing
- under the authority of s 4(2) of the Parliamentary Evidence Act 1901 the committee issue a summons to Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, to attend and give evidence before the committee on Thursday 29 November 2018.

##### **4.3 Extension of the reporting date**

Resolved, on the motion of Mrs Houssos: That the committee extend the inquiry reporting date to 21 January 2019 and that the Chairman report this extension to the House.

##### **4.4 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Mark Gifford, Chief Environmental Regulator, NSW Environment Protection Authority.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Richard Gross, Chief Executive Officer, Ausgrid
- Mr Trevor Armstrong, Chief Operating Officer, Ausgrid.

Mr Gross tendered the following documents:

- opening statement by Mr Gross
- a document titled 'Sydney Light Rail Project Ausgrid Asset Details'.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 1.30 pm.

#### **4.5 Answers to question on notice**

The committee noted that the answers to questions on notice from Mr Alan Bright, Manager Strategic Planning, Randwick City Council, received 28 September 2018, was published by the committee clerk under the authorisation of the resolution appointing the committee.

Resolved, on the motion of Mrs Houssos: That the committee authorise the publication of the answers to questions on notice from Mr Brian Brennan, Managing Director, Transdev Sydney, received on 2 November 2018.

#### **4.6 Transcript clarification – Ms Margaret Prendergast**

Resolved, on the motion of Ms Faehrmann: That a footnote be included in the transcript of 20 August 2018 noting the clarification received by Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for New South Wales.

#### **4.7 Vulnerable witnesses – 3 October hearing**

The committee noted that following the hearing on 3 October 2018 the secretariat contacted witnesses identified as vulnerable via phone and email to check in on their welfare, to ascertain whether they have support mechanisms in place, and if needed to offer further support.

#### **4.8 Tendered documents**

Resolved, on the motion of Mr Mason-Cox: That the committee accept and publish the following documents tendered during the public hearing:

- opening statement by Mr Richard Gross, Chief Executive Officer, Ausgrid, tendered by Mr Gross
- a document titled 'Sydney Light Rail Project Ausgrid Asset Details', tendered by Mr Gross.

#### **4.9 Formal advice from the Clerk**

Resolved, on the motion of Mrs Houssos: That

- the Clerk provide written advice to the committee on the committee's powers to seek information from Transport for NSW on matters in which they claim commercial or cabinet confidentiality in their responses to questions taken on notice arising from the hearing on 4 October 2018, particularly in light of the NCAT decisions in 2017 and 2018 involving Transport for NSW and the Hon Adam Searle MLC
- following the distribution of written advice, the Clerk be invited to attend a committee meeting to provide a briefing to members in person.

## 5. Adjournment

The committee adjourned at 1.43 pm, until Wednesday 7 November at 9.45 am in the Macquarie Room (public hearing for WestConnex inquiry).

Sarah Dunn

**Committee Clerk**

### Minutes no. 14

Wednesday 7 November 2018

Public Accountability Committee

Macquarie Room, Parliament House, Sydney at 9.47 am

#### 1. Members present

Revd Nile, *Chairman*

Mr Donnelly

Ms Faehrmann

Mr Mallard

Mr Moselmane (substituting for Mr Mookhey) (from 1.00 pm)

Dr Phelps

Ms Voltz (substituting for Mr Mookhey) (until 12.00 pm)

#### 2. Apologies

Mr Khan

#### 3. Previous minutes

Resolved, on the motion of Dr Phelps: That draft minutes nos. 10 and 11 be confirmed.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### ***Received***

- 12 October 2018 – Email from Ms Janette Willett to the secretariat, requesting that the committee invite Dr Noel Child to give evidence to the committee
- 14 October 2018 – Email from Mr Ben Aveling, Co-convenor, Alexandria Residents Action Group to the secretariat, providing additional information on the benefit-cost ratio of the WestConnex project
- 17 October 2018 – Email from Ms Frances Vumbaca to the secretariat, calling for a Royal Commission or inquiry into the property valuation system
- 17 October 2018 – Letter from the Hon Natasha Maclaren-Jones MLC, Government Whip, to secretariat, advising that the Hon Dr Peter Phelps MLC will be substituting for the Hon Matthew Mason-Cox MLC for the duration of the inquiry into the impact of the WestConnex project
- 21 October 2018 – Email from Witness B, Leichhardt Against WestConnex to secretariat, regarding the publication of evidence taken *in camera*
- 22 October 2018 – Email from Mr Sam Shaw, Environmental Projects Officer, Strathfield Council, to the secretariat, reaffirming the Council's position on the WestConnex project
- 25 October 2018 – Email from Mr Stuart Dennon to the Chair, calling for a Royal Commission into land acquisition in New South Wales

- 26 October 2018 – Letter from Ms Kathryn Calman, Convenor, Beverly Hills Progress Association to Committee, providing additional information to the committee regarding the work of the organisation
- 26 October 2018 – Letter from Ms Kathryn Calman, Convenor, Beverly Hills Progress Association to committee, advising of the preferred publication status of individuals referred to in tabled document.

Resolved, on the motion of Mr Donnelly: That the committee keep correspondence from Witness B, dated 21 October 2018, confidential, as per the recommendation of the secretariat, as it contains identifying information.

## 5. Inquiry into the impact of the WestConnex Project

### 5.1 Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: Submission nos. 362-364, 394, 395, 399, 401, 416, 419a, 430a, 434, 435, 437, 470, 491, 525, 545, 547, 548a, 548b, 553, 555 and 556.

### 5.2 Partially confidential submissions

Ms Faehrmann moved: That the committee keep the following information confidential, as per the request of the author: names and/or identifying information in submissions nos. 130, 427, 457, 466, 483, 506, 517, 535 and 542.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mr Mallard, Ms Voltz.

Noes: Dr Phelps.

Question resolved in the affirmative.

### 5.3 Requested change in publication status of submission nos. 355 and 506

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of submission nos. 355 and 506, as per the request of the authors.

### 5.4 Answers to questions on notice

The committee noted that the following questions on notice and supplementary questions were published under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Roads and Maritime Services, received 30 October 2018.

Resolved, on the motion of Mr Mallard: That the committee publish answers to questions on notice from Witness A and Witness B, Leichhardt Against WestConnex, with the exception of identifying information relating to Witness A and Witness B.

### 5.5 Publication of *in camera* transcript

Resolved, on the motion of Ms Faehrmann: That the committee:

- authorise the partial publication of the transcript of the in camera evidence given by Leichhardt Against WestConnex on the 9 October 2018, as requested by the witnesses,
- redact all identifying information,
- publish the transcript on the committee's website.

### 5.6 Timeframe for return of answers to questions on notice

Resolved, on the motion of Dr Phelps: That witnesses appearing at the public hearing of 7 November 2018 be requested to return answers to questions on notice and/or supplementary

questions from members within 14 days of the date on which questions are forwarded to the witnesses by the committee clerk.

### **5.7 Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were examined on their former oath:

- Mr Marcus Ray, Deputy Secretary, Planning Services, Department of Planning and Environment
- Mr Glenn Snow, Director, Transport Assessments, Department of Planning and Environment.

The following witnesses were sworn and examined:

- Mr David Gainsford, Executive Director, Priority Projects Assessment, Department of Planning and Environment
- Mr Mark Gifford, Chief Environmental Regulator, Environment Protection Authority
- Mr Stephen Lancken, Independent Chair, M4 East Air Quality Community Consultative Committee, and New M5 Air Quality Community Consultative Committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were examined on their former oath:

- Mr Ken Kanofski, Chief Executive, Roads and Maritime Services
- Ms Camilla Drover, Executive Director, Motorways Division, Roads and Maritime Services.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.01 pm.

The public and media withdrew.

## **6. Inquiry into the impact of the CBD and South East Light Rail Project**

### **6.1 Extension of the reporting date**

Resolved, on the motion of Mr Mallard: That the committee extend the inquiry reporting date to 25 January 2019 and that the Chairman report this extension to the House.

## **7. Adjournment**

The committee adjourned at 3.07 pm until Thursday 29 November 2018 (Light Rail hearing).

Stephanie Galbraith  
**Committee Clerk**

### **Minutes no. 15**

Wednesday 21 November 2018

Public Accountability Committee

Members' Lounge, Parliament House, Sydney, 10.00 am

### **1. Members present**

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Ms Faehrmann  
 Mr Khan  
 Mrs Houssos  
 Mr Mallard

## 2. Previous minutes

Resolved, on the motion of Ms Faehrmann: That draft minutes no. 13 be confirmed.

## 3. Correspondence

The committee noted the following items of correspondence:

### *Received:*

- 31 October 2018 – Email from Ms Cat Wright, affected resident, to secretariat, providing additional information to the committee
- 6 November 2018 – Email from Ms Selina O'Connor, Government and Stakeholder Relations Manager, Ausgrid, to secretariat, raising concerns that Ausgrid's full opening statement was not included in the transcript of 5 November
- 6 November 2018 – Email from Ms Selina O'Connor, Government and Stakeholder Relations Manager, Ausgrid, to secretariat, providing further justifications for Ausgrid's opening statement to be included in the transcript of 5 November
- 7 November 2018 – Email from Ms Cat Wright, affected resident, to secretariat, providing additional information to the committee
- 20 November 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia, to secretariat, responding to the request for any additional comments regarding the Ausgrid guidelines.

### *Sent:*

- 6 November 2018 – Letter to Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia, from Chairman, advising that in light of the fact that Acciona will not be answering supplementary questions the committee will be issuing a further summons to appear at a public hearing
- 9 November 2018 – Letter to Mr Andrew Jordan, affected resident, from Chairman, explaining that in light of the responses received from ALTRAC Light Rail and Transport for NSW no further action will be taken in relation to the concerns he raised
- 9 November 2018 – Email to Hon Ron Hoenig MP, Member for Heffron, from secretariat, attaching a copy of the correspondence sent to Mr Andrew Jordan
- 12 November 2018 – Letter to Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, from secretariat, seeking any additional comments regarding the Ausgrid guidelines
- 14 November 2018 – Letter to Mr John Gregor, Director, Finance, Department of Parliamentary Services, from Chairman, requesting to issue a cheque to Mr Bede Noonan as expenses for the witness's appearance before the committee.

## 4. Inquiry into the impact of the CBD and South East Light Rail Project

### 4.1 Transport for NSW response to questions on notice

The Clerk provided a short briefing on the committee's powers to seek information from Transport for NSW on matters in which they claim commercial or cabinet confidentiality in their responses to questions taken on notice arising from the hearing on 4 October 2018.

Ms Faehrmann moved: That:

- the committee write to Transport for NSW to request that it reconsider its refusal to provide the information sought and assert the Legislative Council's position that:
  - the Council does not accept its objections on the basis of commercial and Cabinet confidentiality as a reason not to produce the information
  - in relation to Cabinet confidentiality, NCAT has determined that the Health Checks and Gateway Reviews cannot be considered to be Cabinet-in-confidence according to the expansive definition used in the GIPA Act, as they were not prepared for the dominant purpose of being submitted to Cabinet; and that in any case, the Legislative Council takes the view (as set out in the resolution of the House of 21 June 2018) that the test to be applied in determining whether a document is a Cabinet document is, at a minimum, that applied by Spigelman CJ in *Egan v Chadwick*, and the Health Checks and Gateway Reviews do not reach this threshold.
- the committee recall Transport for NSW to appear at the public hearing on 29 November 2018, and the secretariat liaise with witnesses to ascertain whether appearing in camera at this hearing would alleviate their concerns.

Mr Donnelly moved: That the motion of Ms Faehrmann be amended by inserting the following dot point at the end of the motion:

'if Transport for NSW fails to produce the Health Checks and Gateway Reviews documents as sought prior to or at the hearing on 29 November 2018 the committee will order the production of the documents under standing order 208(c).'

Amendment of Mr Donnelly put and passed.

Original question of Ms Faehrmann, as amended, put and passed.

#### **4.2 Ausgrid's opening statement**

Resolved, on the motion of Mr Mallard: That the opening statement provided by Ausgrid be included in the transcript from their appearance.

#### **4.3 Report deliberative**

The committee confirmed the report deliberative will be held at 10.00 am Tuesday 22 January 2019.

### **5. Adjournment**

The committee adjourned at 10.25 am, until Thursday 29 November 2018, 9.30 am, Jubilee Room, Parliament House (CBD Light Rail public hearing).

Sarah Dunn

**Clerk to the Committee**

### **Minutes no. 16**

Thursday 29 November 2018

Public Accountability Committee

Jubilee Room, Parliament House, Sydney, at 9.35 am

#### **1. Members present**

Revd Nile, *Chairman* (from 9.45 am)

Mr Mason-Cox, *Deputy Chair* (from 12.55 pm)

Mr Donnelly

Ms Faehrmann (from 9.45 am)

Mrs Houssos

Mr Khan (from 9.35 am until 10.09 am, from 10.35 am)

Mr Mallard

Mr Searle (participating from 12.55 pm until 1.10 pm, from 1.48 pm until 2.30pm, from 2.55 pm)

## 2. Election of Chair

The Clerk noted the absence of both the Chair and Deputy Chair for the meeting. The Clerk called for nominations for a member to act as Chair for the purpose of the meeting.

Mr Donnelly moved: That Mr Khan be elected Chair of the Committee.

There being no further nominations, the Clerk declared Mr Khan elected Chair.

## 3. Draft minutes

Resolved, on the motion of Mrs Houssos: That draft minutes no. 15 be confirmed.

## 4. Correspondence

The committee noted the following items of correspondence:

### *Received:*

- 12 November 2018 – Email from Mr Steve Lanken, Independent Chair of the M4 East and New M5 Air Quality Community Consultative Committees, requesting that certain answers to questions on notice be kept confidential.

### *Sent:*

- 21 November 2018 – Summons from Chairman, to Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, to appear at a hearing on 29 November 2018
- 22 November 2018 – Affidavit of service for the summons on Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, to appear at a hearing on 29 November 2018
- 22 November 2018 – Letter from Chairman, to Mr Rodd Staples, Secretary, Transport for NSW, requesting a further response to questions 2 and 3 of the questions on notice and related documents and inviting to appear at a hearing on 29 November 2018.

## 5. Inquiry into the impact of the CBD and South East Light Rail Project

### 5.1 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Donnelly: That:

- any supplementary questions from members be provided to the secretariat by 4.00pm Friday 30 November 2018
- any responses to questions taken on notice and/or supplementary questions for witnesses appearing at the 29 November hearing be due within 7 calendar days from the receipt of those questions.

Revd Nile arrived and resumed as Chair.

### 5.2 Answers to questions on notice – Ausgrid

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of Ausgrid's answers to questions on notice, answers to supplementary questions and Memorandum of Understanding between Ausgrid and Transport for NSW, received on 27 November 2018.

### **5.3 Public hearing – Acciona Infrastructure Australia**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was reminded that they did not need to be sworn, as they had been sworn at an earlier hearing:

- Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia.

Mr Noonan tendered the following document:

- notes that formed the basis of Mr Noonan's opening statement.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

Resolved, on the motion of Mr Khan: That the committee defer consideration of the publication of the Health Check - In Delivery Report, received from Transport for NSW, until shortly before the hearing re-commences at 1.00 pm, and the secretariat seek advice from the Clerk.

Mr Searle arrived.

### **5.4 Participating member**

Resolved, on the motion of Mr Donnelly: That Mr Searle, who has advised the committee that he intends to participate for the duration of the hearing on 29 November 2018, be provided with copies of hearing related documents.

### **5.5 Health Check – In Delivery Report**

The secretariat provided the committee with the advice from the Clerk in relation to the publication of the Health Check – In Delivery Report, dated 24 November 2016.

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of the Health Check – In Delivery Report, dated 24 November 2016, received by Transport for NSW, with the exception of Appendix B which is to remain confidential as it contains identifying information, and that the committee request Transport for NSW provide an un-redacted version of this document on a confidential basis at this stage.

### **5.6 Public hearing – Transport for NSW**

Witnesses, the public and the media were admitted.

The following witness was reminded that they did not need to be sworn, as they had been sworn at an earlier hearing:

- Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for NSW.

The following witness was sworn and examined:

- Mr Rodd Staples, Secretary, Transport for NSW.

Mr Staples tendered the following documents:

- notes that formed the basis of Mr Staples opening statement, to be incorporated into the transcript
- letter from Mr Glenn Bentley, ALTRAC Light Rail, to Mr Jeff Goodling, Transport for NSW, dated 20 April 2015, in relation to the Deed of Adjustment Works to Network Assets and draft Adjustment Guidelines – Ausgrid.

The evidence concluded and the witnesses withdrew.

The public and the media withdrew.

The public hearing concluded at 3.00 pm.

## 6. Inquiry into the impact of the WestConnex project

### 6.1 Request for questions on notice to be kept confidential

Resolved, on the motion of Mr Donnelly: That the question on notice taken by Mr Steve Lancken, Independent Chair, M4 East and New M5 Air Quality Community Consultative Committees, regarding his fee arrangements for services provided, be kept confidential, as per his request.

### 6.2 Clarification of evidence provided by Mr Lancken

Resolved, on the motion of Ms Faerhmann: That the committee write to Mr Steve Lancken, Independent Chair, M4 East and New M5 Air Quality Community Consultative Committees seeking clarification of his evidence provided on 7 November 2018 relating to the number of appointments made to the M4 East Air Quality Community Consultative Committee.

## 7. Inquiry into the impact of the CBD and South East Light Rail Project

### 7.1 Submission nos. 88, 92 and 95, and attachments to submission no. 95

Resolved, on the motion of Mr Khan: That the committee keep submission nos. 88, 92 and 95 confidential, as per the recommendation of the secretariat, as they contain potential adverse mention and would require significant redaction if published.

Resolved, on the motion of Mr Khan: That the committee keep the attachments to submission no. 95 confidential, in accordance with usual practice and as per the recommendation of the secretariat.

### 7.2 Answers to questions on notice and supplementary questions – October hearings

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Mark Coxon, Managing Director, Alstom Transport Australia, received 29 October 2018
- answers to questions on notice from Mr Brian Brennan, Managing Director, Transdev Sydney, received 2 November 2018
- answers to questions on notice from Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, received 2 November 2018
- answers to questions on notice from Mr James Bramley, Chairman, ALTRAC Light Rail, received 1 November 2018
- answers to questions on notice from Transport for NSW, received 4 November 2018.

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of the answers to questions on notice and photographs from Ms Cat Wright, affected resident, received 20-22 October 2018.

Resolved, on the motion of Ms Faerhmann: That the committee authorise the publication of answers to questions on notice and attachments from Ms Diana Argirellis, affected resident, received 30 October 2018, and keep confidential contact information (phone nos. and email addresses), as per the request of the author.

**7.3 Transcript Clarification – Ms Margaret Prendergast**

Resolved, on the motion of Mr Khan: That a footnote be included in the transcript of 4 October 2018 noting the clarification received by Ms Margaret Prendergast, Coordinator General, Transport Coordination Office, Transport for New South Wales.

**7.4 After the hearing – tendered documents**

Resolved, on the motion of Mrs Houssos: That the committee accept and publish the following documents tendered during the public hearing:

- notes that formed the basis of Mr Bede Noonan's opening statement, tendered by Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia
- notes that formed the basis of Mr Rodd Staples opening statement, tendered by Mr Rodd Staples, Secretary, Transport for NSW
- letter from Mr Glenn Bentley, ALTRAC Light Rail, to Mr Jeff Goodling, Transport for NSW, dated 20 April 2015, in relation to the Deed of Adjustment Works to Network Assets and draft Adjustment Guidelines – Ausgrid, tendered by Mr Rodd Staples, Secretary, Transport for NSW.

**8. Adjournment**

The committee adjourned at 3.10 pm, until Tuesday 11 December 2018, McKell Room, Parliament House (WestConnex report deliberative).

Tina Higgins

**Committee Clerk**

**Draft minutes no. 18**

Tuesday 22 January 2019

Public Accountability Committee

McKell Room, Parliament House, Sydney at 10.03 am

**1. Members present**

Revd Nile, *Chairman*

Mr Mason-Cox, *Deputy Chair*

Mr Donnelly

Ms Faehrmann (substituting for Mr Field from 12.44 pm)

Mr Field (until 12.44 pm)

Mr Khan

Mrs Houssos

Mr Mallard (substituting for Mrs Ward)

**2. Previous minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes no. 17 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 16 May 2018 – Email from Mr John and Mrs Jan Macdonald, to committee, regarding the scrutiny of NSW Police in relation to a private matter
- 30 May 2018 – Letter from Dr Maxine Cooper, ACT Auditor-General, to Chairman, declining to make a submission to the scrutiny of public accountability inquiry

- 1 June 2018 – Letter from Ms Margaret Crawford, Auditor-General, NSW Audit Office, to Chairman, accepting the committee's invitation to provide a regular briefing to the committee together with the Deputy Auditor-General and Assistant Auditor-General Performance Audit
- 1 June 2018 – Email from Mr John Bladen, to committee, requesting that the committee investigate the effectiveness of the NSW Firearms Registry
- 6 June 2018 – Email from Mr Paul Cooper, to committee, regarding the validity and effectiveness of the Rock Fishing Safety Act
- 11 June 2018 – Letter from Mr Andrew Greaves, Auditor-General for Victoria, to Chairman, advising that the Audit Office will not be providing a submission to the Scrutiny of public accountability inquiry
- 29 November 2018 – Email from Mr Todd Lister, Manager, Parliamentary Services, Transport for NSW, to secretariat, requesting that the Health Check – In Delivery Report, Infrastructure NSW, provided to the committee be kept confidential
- 3 December 2018 – Email from Ms Victoria Waller, Senior Policy and Project Officer, NSW Environment Protection Authority, to secretariat, requesting that the attachments to answers to questions on notice be kept confidential
- 5 December 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, to Chairman, declining to respond to supplementary questions without a further summons due to the confidentiality obligation contained in their contract
- 7 December 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, to Chairman, advising that they are unable to meet the deadline to respond to answers to questions on notice and will provide a response by 14 December 2018
- 7 December 2018 – Email from Mr Julian Elliott, Head of Corporate Communications, Acciona Infrastructure Australia, to committee, requesting video footage from the hearing on 29 November 2018
- 10 December 2018 – Email from Mr Peter Egan, Transport Analyst, Sydney Light Rail Action Group, to committee, providing additional information to the committee on the analysis of light rail capacity
- 10 December 2018 – Email from Mr Ismat Zerir Joarder, Sydney Light Rail Project, Acciona Infrastructure Australia Pty Ltd, to secretariat, clarifying if the request to provide answers to questions on notice by 14 December 2018 has been approved
- 13 December 2018 - Email from Mr Peter Egan, Transport Analyst, Sydney Light Rail Action Group, to committee, providing additional information to the committee on costs-benefits ratios
- 13 December 2018 - Email from Mr Peter Egan, Transport Analyst, Sydney Light Rail Action Group, to committee, providing additional information to the committee on relevant evidence released by Australian Bureau of Statistics
- 13 December 2018 – Letter from Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, to Chairman, advising that they are unable to meet the revised deadline to respond to answers to questions on notice and will provide a response by 21 December 2018
- 14 December 2018 – Letter from Ms Elizabeth Mildwater, Acting Secretary, Transport for NSW, to Chairman, providing additional information relating to the answers to questions on notice from 29 November hearing and requesting confidentiality
- 17 December 2018 – Email from Mr Bahar Yildirim, Senior Ministerial Liaison Officer, Department of Planning and Environment, to secretariat, responding to the request for information regarding the Independent Environmental Representative

- 17 December 2018 - Email from Mr Bahar Yildirim, Senior Ministerial Liaison Officer, Department of Planning and Environment, confirming that the information regarding the Independent Environmental Representative can be made public
- 15 January 2019 – Email from Mr Anthony Meere, Executive Director, Transport for NSW, requesting the committee keep confidential the document entitled '*CBD and South East Light Rail: Preliminary Ausgrid Asset Assessment, Treatments and Supply Advice*' received on 15 January 2018
- 17 January 2019 – Letter from the Hon Natasha Maclaren-Jones MLC, to secretariat, advising that the Hon Shayne Mallard MLC will be substituting for the Hon Natalie Ward MLC at the report deliberative on 22 January 2019
- 21 January 2019 – Email from the Hon Justin Field MLC, to secretariat, advising that the Hon Cat Faehrmann MLC will be substituting for him for part of the report deliberative on 22 January 2019.

**Sent:**

- 25 May 2018 – Letter from Chairman, to Ms Margaret Crawford, Auditor-General of New South Wales, inviting the Auditor-General to regularly brief the Public Accountability Committee on the work of the NSW Audit Office
- 5 December 2018 – Email from secretariat, to Mr Todd Lister, Manager, Parliamentary Services, Transport for NSW, requesting an un-redacted version of the Health Check – In Delivery Report
- 6 December 2018 – Email from secretariat, to the Department of Planning and Environment, requesting information in relation to the Independent Environmental Representative for the CBD and South East Light Rail Project
- 10 December 2018 – Email from secretariat, to Mr Ismat Zerine Joarder, Sydney Light Rail Project, Acciona Infrastructure Australia Pty Ltd, confirming there were no objections from members in providing the answers to questions on notice by 14 December 2018
- 17 December 2018 – Letter from Chairman, to Mr Juan Antonio Adan, Construction Director, Acciona Infrastructure Australia Pty Ltd, responding to the letter of 5 and 13 December 2018 in relation to answers to questions on notice and supplementary questions.

Resolved, on the motion of Mr Mallard: That the committee keep the following correspondence confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information:

- email from Mr John and Mrs Jan Macdonald, to committee, regarding the scrutiny of NSW Police in relation to a private matter
- email from Mr Paul Cooper to the committee, regarding the validity and effectiveness of the Rock Fishing Safety Act, dated 6 June 2018.

#### **4. Inquiry into the scrutiny of public accountability in New South Wales**

##### **4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1 and 2.

##### **4.2 Consideration of Chairman's draft report**

The Chairman submitted his draft report entitled *Inquiry into the scrutiny of public accountability in New South Wales* which, having been previously circulated, was taken as being read.

Mr Field moved: That paragraph 3.13 be amended by inserting 'The committee recognises that public accountability would be best served if a joint committee was established within the next Parliament. However,' after 'to be re-established as a joint committee.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos, Mr Mason-Cox.

Noes: Mr Khan, Mr Mallard, Revd Nile.

Question resolved in the affirmative.

Consideration of the remainder of the Chairman's draft report was deferred until the conclusion of the meeting.

## 5. Inquiry into the impact of the CBD and South East Light Rail Project

### 5.1 Answers to questions on notice and supplementary questions – NSW EPA

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice and supplementary questions from Ms Victoria Waller, Senior Policy and Project Officer, NSW Environment Protection Authority, received 30 November 2018.

Resolved, on the motion of Mr Field: That the committee authorise the publication of the seven attachments to answers to questions on notice from the NSW Environment Protection Authority, and the accompanying letter, received 30 November 2018.

### 5.2 Answers to questions on notice and supplementary questions – Transport for NSW

The committee noted that the following answers to questions on notice and supplementary questions from Ms Elizabeth Mildwater, Acting Secretary, Transport for NSW, received 12 December 2018, were published by the committee clerk under the authorisation of the resolution appointing the committee:

- cover letter and answers to questions on notice
- answers to supplementary questions
- redacted version of attachment entitled '*Gateway Health Check Report*', attached to Question 5 of answers to questions on notice

Resolved, on the motion of Mrs Houssos: That the committee keep confidential:

- the names and titles of the persons listed in Appendix B of the February 2016 preliminary draft Gateway Health Check Report, as per the request of the author
- versions 1-6 of the draft Ausgrid Guidelines, as per the request of the author.

Resolved, on the motion of Mr Mallard: That the committee keep confidential the document entitled '*CBD and South East Light Rail: Preliminary Ausgrid Asset Assessment, Treatments and Supply Advice*', from Transport for NSW, received 15 January 2019, as per the request of the author.

### 5.3 Additional information – Transport for NSW

Resolved, on the motion of Mr Khan: That the committee authorise the publication of *Appendix A – Agency's response to recommendations* from Transport for NSW, received on 14 December 2018,

with the exception of the names and titles of the persons listed in Appendix A which are to remain confidential, as per the request of the author.

#### **5.4 Answers to questions on notice and supplementary questions – Acciona**

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, received 21 December 2018.

The committee noted the correspondence received from Acciona on 5 and 21 December 2018 declining to respond to supplementary questions from 29 November hearing without a further summons due to the confidentiality obligation contained in their contract.

#### **5.5 Correspondence from Department of Planning and Environment**

The committee noted that the correspondence from the Department of Planning and Environment in reply to a request for information regarding the Independent Environmental Representative for the light rail project, received 17 December 2018, was published by the committee clerk under the authorisation of the resolution appointing the committee.

#### **5.6 Transcript clarification – Mr Rodd Staples**

Resolved, on the motion of Mr Khan: That footnotes be included in the transcript of 29 November 2018 noting the clarifications as raised by the secretariat with the committee of Mr Rodd Staples, Secretary, Transport for New South Wales, received 12 December 2018.

#### **5.7 Acciona request for video footage**

Resolved, on the motion of Mr Khan: That the committee decline to release the video footage of Mr Bede Noonan and Transport for NSW at the 29 November 2018 hearing to Acciona Infrastructure Australia.

#### **5.8 Clerk's advice**

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of the advice from the Clerk of the Parliaments, regarding witness objections to answering questions on the basis of commercial and Cabinet confidentiality, dated 14 November 2018.

#### **5.9 Consideration of Chairman's draft report**

The Chairman submitted his draft report entitled *Inquiry into the impact of the CBD and South East Light Rail Project*, which, having been previously circulated, was taken as being read.

### **Chapter 1**

Resolved, on the motion of Mrs Houssos: That paragraph 1.3 be amended by omitting the third bullet point which states: 'the potential to join two light rail vehicles for special events at Moore Park to move up to 18,000 people per hour in each direction'.

Mr Field moved: That the following new paragraph be inserted after paragraph 1.7:

'On 17 May 2013 the Environmental Planning and Assessment Amendment (Light Rail Project) Order 2013 was gazetted by the Planning Minister, Brad Hazzard, to declare the light rail project 'critical state significant infrastructure' under the State and Regional Development State Environmental Planning Policy. Under the *Environmental Planning and Assessment Act 1979* this allows the project to proceed without certain provisions of the Act applying to it. Provisions which do not apply to the light rail project include:

1. Third-party appeal provisions which allow any person to bring proceedings in the Court for an order to remedy or restrain a breach of this Act

2. Development control orders, such as stop work orders or public safety orders or compliance orders

3. Environmental Protection Notices and stop work orders issued by the EPA under the *Protection of the Environment Operations Act 1997*.'

Mr Khan moved: That the motion of Mr Field be amended by omitting ' Under the *Environmental Planning and Assessment Act 1979* this allows the project to proceed without certain provisions of the Act applying to it. Provisions which do not apply to the light rail project include: 1 Third-party appeal provisions which allow any person to bring proceedings in the Court for an order to remedy or restrain a breach of this Act 2. Development control orders, such as stop work orders or public safety orders or compliance orders 3. Environmental Protection Notices and stop work orders issued by the EPA under the *Protection of the Environment Operations Act 1997*.'

Amendment of Mr Khan put and passed.

Original question of Mr Field, as amended, put and passed.

Mr Field moved:

a) That the following new paragraph be inserted after paragraph 1.20:

'The committee does not agree with the decision to construct the light rail project as a public-private partnership. At a time of historically low interest rates the committee believes that public infrastructure projects of the scale of the CBD and South East light rail project should not be financed and/or delivered by the private sector'

b) That the following new recommendation be inserted after paragraph 1.20:

**'Recommendation X**

That at a time of historically low interest rates public infrastructure projects of the scale of the CBD and South East light rail project should not be financed and delivered by the private sector.'

Question put.

The committee divided.

Ayes: Mr Field.

Noes: Mr Donnelly, Mr Khan, Mrs Houssos, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That the following new paragraph be inserted after paragraph 1.23:

'Yet, Transport for NSW was unable to provide specific improvements on travel times to the committee. The committee received testimony that once opened, the journey on the CSELR from Randwick to Circular Quay would take longer than the bus services that operated prior to the project's commencement. Transport for NSW were unable, or unwilling, to respond to this.'

Mr Khan moved: That the motion of Mrs Houssos be amended by omitting 'The committee received testimony that once opened, the journey on the CSELR from Randwick to Circular Quay would take longer than the bus services that operated prior to the project's commencement. Transport for NSW were unable, or unwilling, to respond to this'

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Noes: Mr Donnelly, Mr Field, Mrs Houssos.

Amendment of Mr Khan resolved in the affirmative.

Original question of Mrs Houssos, as amended, put and passed.

Resolved, on the motion of Mrs Houssos: 'That paragraph 1.28 be amended by omitting 'From the outset' and inserting instead 'At the outset'.

Mrs Houssos moved: That paragraph 1.30 be amended by omitting 'Like City for Sydney, Randwick City Council expressed concerns about the impact of construction work, particularly on businesses in Kensington and Kingsford' and inserting instead 'Both City of Sydney and Randwick City Councils also outlined the extensive concerns they had with the delivery of the project and complaints they had received from their local residents and businesses. These complaints focused on the delays of the project, but also included poor communication from Transport for NSW and contractors with residents and businesses, lack of transparency about compensation offered to businesses, complaints about excessive construction noise and out of hours works and their impact'.

Question put and negatived.

Mrs Houssos moved: That paragraph 1.31 be amended by omitting: 'The committee notes the benefits of the CSELR and believes it is a good solution to ease the increasing traffic congestion in the Sydney CBD. The committee looks forward to seeing the project finalised', and inserting instead:

'The committee notes the submissions from Transport for NSW outlining the potential benefits of the CSELR project. While the committee is not opposed to light rail projects in principle, it was unable to verify these claims as it was not provided with accurate information on journey times, once the project is completed, nor could it determine what the actual benefit of the project will be, without determining a final cost.

It is clear that the scope of the project changed a number of times, and poor planning, particularly at the initial stages, has led to delays and cost blow outs.'

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That paragraph 1.31 be omitted: 'The committee notes the benefits of the CSELR and believes it is a good solution to ease the increasing traffic congestion in the Sydney CBD. The committee looks forward to seeing the project finalised.'

Mr Khan moved: That the motion of Mrs Houssos be amended by inserting 'The committee notes the benefits of the CSELR and believes it is a good solution to ease the increasing traffic congestion in the Sydney CBD. The committee looks forward to seeing the project finalised', after Recommendation 4.

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Noes: Mr Donnelly, Mr Field, Mrs Houssos.

Amendment of Mr Khan resolved in the affirmative.

Resolved, on the motion of Mrs Houssos: That paragraph 1.37 be omitted: 'The Auditor-General made two recommendations: firstly, that Transport for NSW should, by December 2016, finalise outstanding design and scope issues, confirm that controls over the budget and use of contingency funds are consistent with the relevant guidelines, update and consolidate information about project costs and benefits and ensure that it is readily accessible to the public and ensure that the Sydney Light Rail Project Director provides six-monthly briefings to the Transport for NSW's Audit and Risk Committee. Secondly, the Auditor General recommended that for all capital projects, Transport for NSW should comply with the Infrastructure Investor Assurance Framework.' [FOOTNOTE: Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 4.], and the following new paragraph be inserted instead:

The Auditor-General in the report recommended:

- 1 For the CSELR project, Transport for NSW should, by December 2016:
    - a) finalise outstanding design and scope issues
    - b) ask the project Advisory Board to confirm that controls over the budget and use of contingency funds are consistent with NSW Government decisions and NSW Treasury guidelines
    - c) update and consolidate information about project costs and benefits and ensure that it is readily accessible to the public
    - d) ensure the Sydney Light Rail Project Director provides six-monthly briefings to the TfNSW Audit and Risk Committee.
  - 2 For all capital projects, Transport for NSW should comply with the Infrastructure Investor Assurance Framework.
- [FOOTNOTE: Audit Office of NSW, *CBD and South East Light Rail Project*, 30 November 2016, p 4.]

Resolved, on the motion of Mrs Houssos: That the following new paragraphs be inserted after paragraph 1.40:

'The Auditor-General noted that the governance of the project includes the CBD and South East Light Rail Advisory Board (the Board). The Auditor-General commented that:

"The Board's role is to provide assurance and strategic oversight of the procurement and delivery stages so there is an independent, critical review of how TfNSW is managing the project. During our review of the Board minutes we noted the Board expressed concerns it was not receiving updates on the final forecasted cost on a timely basis."

It was further noted that Transport for NSW had disclosed contingent liabilities in relation to the project as at 30 June 2018. However, as observed:

"Management have not quantified the liability as they believe it cannot be measured reliably due to uncertainties as to the extent of the future liability."

[FOOTNOTE: Audit Office of NSW, *Transport 2018 Financial Audit Report*, 28 November, p 36.]

Mrs Houssos moved: That paragraph 1.43 be omitted: 'The committee notes that since the CSELR project started the Auditor-General has made several observations regarding the project, particularly on the planning and procurement of the project and its financing. It is concerning that issues are arising during the pre-planning stages of this project and other major infrastructure projects across New South Wales, such as the WestConnex project. Not only were concerns

highlighted by the Auditor-General early on, there continues to be concerns with the CSELR project that will be discussed later in the report', and the following new paragraphs and finding be inserted instead:

'The committee is deeply concerned by the findings of the Auditor-General that a failure by the government to properly plan the CSELR project has led to significant cost blow outs and delays. The impact of these delays will be discussed in subsequent chapters.

Despite advice in 2013 to resolve outstanding design and scope issues as a matter of urgency, there remains a number of outstanding issues between Transport for NSW and the contractor.

It is alarming that the NSW Government did not resolve pricing issues after they were raised by the Auditor-General in 2013. The committee finds that a further cost blow out is now inevitable.

Given the initial calculation of the cost-benefit ratio was determined on a cost of \$1.6 billion and the benefits being \$4 billion, the committee recommends that the Auditor-General calculate a revised cost-benefit ratio for the CSELR project.'

#### **'Finding X**

A failure by the government to properly plan the CSELR project has led to significant cost blow outs and delays.'

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That the following new recommendation be inserted after paragraph 1.43:

#### **'Recommendation X**

That Transport for NSW, once the final cost is determined, calculate a final cost benefit ratio for the project.'

Question put and negatived.

## **Chapter 2**

Resolved, on the motion of Mrs Houssos: That paragraph 2.19 be omitted: 'The committee heard from the contractors involved with the project about the collaborative approach taken to mitigate delays'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 2.27:

'In evidence provided to the committee by Mr Noonan on 29 November regarding the company's commitment to complete the project he said: "We have no desire to do anything but complete this project as soon as possible".' [FOOTNOTE: Evidence, Mr Bede Noonan, Managing Director, Acciona Infrastructure Australia, 29 November 2018, p 23.]

Resolved, on the motion of Mr Donnelly: That paragraph 2.39 be amended by omitting 'its core contractors appear to have a different view, and this is concerning, particularly given the ongoing negative impacts of construction work' and inserting instead 'its core contractors appear to have a different view. Both ALTRAC and Acciona have informed Transport for NSW that the

completion date for the project is May 2020. This is concerning, particularly given the ongoing negative impacts of construction work'.

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 2.40:

'Nevertheless, all governments, irrespective of their political persuasions, must do everything they can during the concept, planning and scoping stages of infrastructure projects to ensure all that can be done is done to lock in tightly firm completion dates'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.52 be amended by omitting 'The Auditor-General made a few observations about the cost' and inserting instead 'The Auditor-General made a number of observations about the cost'.

Mr Donnelly moved: That paragraph 2.81 be amended by:

- a) inserting 'particularly' before 'concerned that the cost'
- b) omitting 'the project is increasing' and inserting instead 'the project continues to increase, with a final figure unknown at this time.'
- c) inserting at the end 'and that it occurred because of poor project planning.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Resolved in the negative.

Mr Donnelly moved: That paragraph 2.83 be amended by omitting 'the committee questions whether the costs of the project are being managed effectively' and inserting instead 'the committee believes that there is sufficient evidence to conclude that the CSELR project has been mismanaged. The answer of who is responsible for the mismanagement is a matter of ongoing debate.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Resolved in the negative.

Mr Donnelly moved: That the following new finding be inserted after paragraph 2.83:

**'Finding X**

'The committee is unable to establish a final cost for the CSELR project, or a final delivery date.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Field, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Resolved in the negative.

Resolved, on the motion of Mr Donnelly: That the heading before 2.86 be amended by omitting 'Ausgrid's Adjustment Guidelines' and inserting instead 'Ausgrid's explanation of their Adjustment Guidelines'.

Resolved, on the motion of Mrs Houssos: That paragraph 2.87 be omitted: 'According to Transport for NSW, an initial draft of the Adjustment Guidelines developed by Ausgrid specifically for the project were provided to the department on 3 February 2015, after the proposal period for the project had expired'.

Resolved, on the motion of Mrs Houssos: That paragraph 2.88 be amended by omitting 'After Transport for NSW provided feedback on the first version of the guidelines, further drafts were provided on 20, 23 and 24 February 2015' and inserting instead 'Transport for NSW initially informed the committee that it received the guidelines on 27 February 2015. However, subsequent questioning from the committee revealed they were provided with an initial draft on the 3 February 2015, with further drafts provided on 20, 23 and 24 February 2015'.

Resolved, on the motion of Mrs Houssos: That paragraph 2.89 be amended by inserting 'Ausgrid maintains' before 'the guidelines were drafted in accordance'.

Resolved, on the motion of Mrs Houssos: That paragraph 2.91 be amended by inserting ' Ausgrid explained to the committee that' before 'the guidelines developed by Ausgrid supplemented the network standards'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.93 be amended by omitting 'Mr Noonan explained the probity rules that he felt applied' and inserting instead 'Mr Noonan explained the probity rules that he believed applied'.

Mrs Faehrmann arrived at 12.44 pm.

Mr Field left at 12.44 pm.

Mr Donnelly moved: That paragraph 2.151 be amended by omitting 'That aside, the committee accepts that the guidelines were produced to clarify network standards in relation to the treatment of utility assets' and inserting instead 'The committee does not form a position on the dispute between Transport for NSW and its contractors but expresses alarm that the Agency ultimately responsible (Transport for NSW) was unable to prevent this disaster. The delays and contractor dispute leads the committee to find that the project has been mismanaged.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 2.153 and Recommendation 1 be amended by omitting 'the NSW Government commission an independent review' and inserting instead 'the NSW Government formally request the Auditor-General to undertake a review'.

### **Chapter 3**

Resolved, on the motion of Mr Donnelly: That paragraph 3.25 be amended by inserting 'if fully realised' after 'capacity'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.26 be amended by inserting 'potentially' before 'significant'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.27 be amended by inserting at the end: 'Furthermore, we recommend that Transport for NSW will publish on at least a quarterly basis patronage data on the CBD and South East Light Rail service.'

Resolved, on the motion of Mr Donnelly: That Recommendation 3 be omitted: 'That Transport for NSW closely monitor patronage on the CBD and South East Light Rail service once it becomes operational, to ensure it can respond effectively to future demand', and the following new recommendation be inserted instead:

**'Recommendation X**

That Transport for NSW:

- closely monitor patronage on the CBD and South East Light Rail service once it becomes operational, to ensure it can respond effectively to future demand
- publish on at least a quarterly basis patronage data on the CBD and South East Light Rail service.'

Resolved, on the motion of Mr Donnelly: That paragraph 3.52 be amended by inserting at the end: 'However, the committee accepts that with these significant matters still not finalised at this stage, of what has been a lengthy project, it is understandable that there is public disquiet.'

Resolved, on the motion of Mr Donnelly: That the following new paragraph be inserted after paragraph 3.54:

'The committee understands that negotiations regarding signal prioritisation are continuing to take place between relevant government departments and agencies, in particular Transport for NSW, Roads and Maritime Services and the NSW Police Force.'

Resolved, on the motion of Mr Mallard: That paragraph 3.62 be amended by omitting 'genuinely', and omitting 'consider' and inserting instead 'reconsider'.

Resolved, on the motion of Mr Donnelly: That paragraph 3.64 be amended by inserting 'with the view to give favourable consideration' after 'need'.

Resolved, on the motion of Mr Donnelly: That Recommendation 5 be amended by inserting 'with the view to give favourable consideration' after 'need'.

**Chapter 4**

Resolved, on the motion of Mrs Houssos: That paragraph 4.1 be amended by inserting 'large' before ' number'.

Resolved, on the motion of Mrs Houssos: That the following new paragraph be inserted after paragraph 4.6:

'Ms Shurey further commented on the impact it was also having on students living alongside the CSELR route who were studying for their HSC:

We do have residents whose children are going through the HSC. It is becoming impossible for their children to study. It is really impacting on the future lives of these children. The noise is constant. Days are going on and they are not getting any sleep. It is really impacting on them.' [FOOTNOTE: Evidence, Ms Lindsay Shurey, Mayor, Randwick City Council, 20 August 2018, p 38.]

Resolved, on the motion of Ms Faehrmann: That a new heading be inserted after paragraph 4.30: 'Impact of the Critical State Significant Infrastructure declaration'.

Ms Faehrmann moved: That the following new paragraphs be inserted after paragraph 4.31:

'The committee also heard evidence from members of the public who expressed concern that the critical state significant infrastructure provisions prevented proper enforcement of conditions of approval:

We look to scrutiny and review of awarding State significant critical infrastructure and the exclusion of the public in its execution [FOOTNOTE: Evidence, Ms Hogg, Saving Sydney Trees, 20 August 2018].

The next thing I want is I want the light rail project stripped of its critical infrastructure tag. This critical infrastructure tag was a Trojan horse to let the project get away with blue murder and not be held accountable for what it is and to work and not pay compensation to small businesses and residents. [FOOTNOTE: Evidence, Mr Jordan, Affected Resident, 3 October 2018].

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Ms Faehrmann: That new paragraphs and a recommendation be inserted after paragraph 4.31:

'The committee also heard evidence from members of the public who expressed concern that the critical state significant infrastructure provisions prevented proper enforcement of conditions of approval:

We look to scrutiny and review of awarding State significant critical infrastructure and the exclusion of the public in its execution [FOOTNOTE: Evidence, Ms Hogg, Saving Sydney Trees, 20 August 2018].

The next thing I want is I want the light rail project stripped of its critical infrastructure tag. This critical infrastructure tag was a Trojan horse to let the project get away with blue murder and not be held accountable for what it is and to work and not pay compensation to small businesses and residents. [FOOTNOTE: Evidence, Mr Jordan, Affected Resident, 3 October 2018].

### **Committee comment**

In light of the concerns expressed by members of the public, the committee recommends that the NSW Government undertake a review of the exemptions provided to projects declared Critical State Significant Infrastructure.

### **Recommendation X**

That the NSW Government undertake a review of the exemptions provided to projects declared Critical State Significant Infrastructure.'

Mrs Houssos moved: That paragraph 4.60 be amended by omitting 'commends Transport for NSW for' and inserting instead 'notes that Transport for NSW is'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mrs Houssos.

Noes: Ms Faehrmann, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mrs Houssos: That paragraph 4.60 be amended by:

- a) inserting 'has rendered these alternative accommodation arrangements impracticable for some residents' after 'claiming payment'
- b) and omitting 'we note' after 'however'.

Resolved, on the motion of Mrs Houssos: That paragraph 4.61 be amended by omitting 'were also pleased to see' and inserting instead 'note'.

Mrs Houssos moved: That Recommendation 7 be amended by omitting 'review the effectiveness' and inserting instead 'conduct a thorough review of the effectiveness'.

Question put and negated.

Resolved, on the motion of Ms Faehrmann: That Recommendation 8 be amended by omitting 'a review of any outstanding claims for property damage by residents affected by the CBD and South East Light Rail' and inserting instead 'an urgent review of all claims for property damage which shall include recommendations for compensation for residents whose properties have been found to be adversely impacted by the CBD and South East Light Rail project,'.

Resolved, on the motion of Mrs Houssos: That Recommendation 8 be amended by inserting 'work with the residents and contractors to resolve these issues as soon as possible', and that this be a second dot point in Recommendation 8, to follow the original text, as amended by Ms Faehrmann.

Resolved, on the motion of Mrs Houssos: That paragraph 4.88 be amended by;

- a) inserting 'experienced by' before 'residents along Doncaster Avenue'
- b) omitting 'must feel' after 'residents along Doncaster Avenue'
- c) omitting 'not had much' before 'respite' and inserting instead 'had little'.

Mrs Houssos moved: That paragraph 4.89 be amended by omitting 'welcomes' and inserting instead 'notes'.

Question put and negated.

Resolved, on the motion of Mrs Houssos: That paragraph 4.90 be amended by omitting 'the main issue that needs to be addressed urgently' and inserting instead 'the most urgent issue that needs to be addressed immediately', and inserting 'as a matter of urgency' after 'arrange'.

Resolved, on the motion of Mrs Houssos: That Recommendation 10 be amended to insert 'as a matter of urgency' after 'arrange'.

Resolved, on the motion of Mr Donnelly: That paragraph 4.108 be amended by omitting 'car spots' and inserting instead 'parking spaces'.

Resolved, on the motion of Mrs Houssos: That paragraph 4.109 be amended by omitting 'commend' and inserting instead 'note that'.

Resolved, on the motion of Mrs Houssos: That paragraph 4.109 be amended by omitting 'on their work in providing' and inserting instead 'have worked to provide'.

Resolved, on the motion of Mrs Houssos: 'That paragraph 4.110 be omitted: 'The committee hopes that once the CSELR is operational it will deter people travelling into the city by car, enabling local community members to utilise the available car spots, and achieve less vehicle congestion within the Sydney CBD precinct.'

Mrs Houssos moved: 'That paragraph 4.132 be amended by omitting is 'encouraged by' and inserting instead 'notes'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mrs Houssos: 'That paragraph 4.132 be amended by inserting ', particularly given the size and historical significance of a number of the trees that were removed' after 'community has lost'.

Ms Faehrmann moved: 'That a new recommendation be inserted after paragraph 4.132:

**'Recommendation X**

'That the NSW Government ensure significant trees are adequately protected in legislation and that the design and development of state infrastructure prioritises their retention.'

Question put and negatived.

Ms Faehrmann moved: 'That a new recommendation be inserted after paragraph 4.132:

**'Recommendation X:**

'That the NSW Government ensure significant trees are adequately protected in legislation.'

Mr Mallard moved: 'That the motion of Ms Faehrmann be amended by omitting 'in legislation' and inserting instead 'and that the design and development of state infrastructure prioritises their retention'.

Amendment of Mr Mallard put and passed.

Original question of Ms Faehrmann, as amended, put and passed.

Mrs Houssos moved: 'That a finding be inserted after paragraph 4.132: 'With better planning of the CSELR project, more of the trees along the route could have been retained.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: 'That paragraphs 4.139 and 4.140 be omitted and the following new paragraphs be inserted instead:

'Although all of the contractors recognised the significant impact of the delays of the CSELR project, the committee understands this offers little comfort to the residents and businesses affected by these delays.

The committee was deeply moved by the stories shared by the residents and businesses affected by the delays. The committee finds that the delay of the project is the root cause of the distress of the residents.

Although the committee acknowledges that every major infrastructure project has an impact, the failure of the government to respond quickly to concerns and to shroud the project in secrecy has exacerbated the disruption and suffering of residents.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That:

- a) paragraph 4.139 be amended by omitting 'thanks each of' and inserting instead 'acknowledges that', omitting 'for recognising' and inserting instead 'recognise', and omitting 'for apologising' and inserting instead 'have apologised'
- b) paragraph 4.140 be amended by inserting a new first sentence: 'The committee was deeply moved by the stories shared by the residents and businesses affected by the delays.' and omitting the final sentence: 'We hope that the community will then reap the benefits of having a light rail service near their homes and businesses.'

Mrs Houssos moved: That a finding be inserted after paragraph 4.140:

**'Finding X**

The committee finds that the delay of the project is the root cause of the distress of the residents and businesses.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mrs Houssos: That a finding be inserted after paragraph 4.140:

**'Finding X**

The committee finds that the delay of the project has contributed to the distress of residents and businesses.'

Mrs Houssos moved: That a new recommendation be inserted after paragraph 4.140:

**'Recommendation X**

That the NSW Government must respond in a timely manner to members of the public adversely affected by major infrastructure projects.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

### **Chapter 5**

Resolved, on the motion of Mrs Houssos: That paragraph 5.1 be amended by omitting 'have financially struggled since the commencement' and inserting instead 'have financially struggled or even been forced to close since the commencement'.

Resolved, on the motion of Mrs Houssos: That paragraph 5.9 be amended by inserting at the end: 'She outlined the plan Vivo Café enacted in response to the expected disruption during the CSELR project construction.'

Mrs Houssos moved: That paragraph 5.37 be amended by omitting 'some businesses along the route, but we question the adequacy of this given the downturn' and inserting instead 'some businesses along the route, but the response was slow. We question the adequacy of this response given the downturn'.

Question put and negatived.

Resolved, on the motion of Mrs Houssos: That paragraph 5.38 be amended by omitting 'It was sad to see the devastating' and inserting instead 'It was distressing to see the devastating'.

Mrs Houssos moved: That paragraph 5.38 be amended by omitting 'We were disappointed to hear of the lack of support that was offered' and inserting instead 'We were angered to hear of the sluggish response and lack of support that was offered'.

Question put and negatived.

Resolved, on the motion of Mrs Houssos: That paragraph 5.39 be amended by inserting 'many' before 'others who have also felt'.

Resolved, on the motion of Mr Mallard: That paragraph 5.39 be amended by omitting 'closed its doors as a direct result' and inserting instead 'closed its doors as a result'.

Mrs Houssos moved: That paragraph 5.40 be amended by:

- a) omitting 'The committee are pleased to see that the hoardings' and inserting instead 'We thank all of the businesses who shared their stories with the committee. While the committee acknowledges that the hoardings'
- b) omitting 'we hope that this will start to lessen' and inserting instead 'this may start to lessen'
- c) omitting 'and will finally provide some relief' and inserting instead 'this is little comfort to many businesses along the route'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 5.40 be amended by omitting 'The committee are pleased to see' and inserting instead 'The committee acknowledges'.

Mrs Houssos moved: That paragraph 5.51 be omitted: 'Ms Prendergast contended that the department has proactively engaged with businesses throughout the process, commenting that 'the minute we started the scheme, anyone who had come to us before or showed any sign of starting to do it tough, we went proactively to them and offered them the assistance'.<sup>503</sup> In addition, she noted that they have actively engaged with businesses to ensure they are there to receive the benefits of the CSELR when it is operational:

We have undertaken extensive engagement, as we have outlined in our submission, but I really want to make the point that our program has graduated over time. It commenced with proactive marketing to promote businesses, but as delays became apparent we graduated that program to provide financial assistance to help businesses because we want the businesses who are located on the route today to be the ones who experience the uplift.'

Question put and negatived.

Mrs Houssos moved: That paragraph 5.85 be omitted: 'The committee applauds the government for implementing the Small Business Assistance Program and providing financial assistance to those businesses in need. We recognise that this assistance is unprecedented, and was introduced when the extent of financial impact to small business owners became apparent', and the following new paragraphs be inserted instead:

'The committee acknowledges that there are impacts from any major infrastructure project. However the failure of the government to respond in a timely manner to the pleas of business, especially small business, led to closures and financial suffering.

The committee is concerned that support was not forthcoming when delays were first flagged. It was not until media reports of financial distress became common that the government provided financial support.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That paragraph 5.85 be amended by:

- a) omitting 'The committee applauds the government for implementing the' and inserting instead 'The committee acknowledges that the government has implemented the'
- b) omitting 'and was introduced when the extent of financial impact to small business owners became apparent.'

Mr Mason-Cox moved: That the following new paragraphs and recommendation be inserted after paragraph 5.85:

'With the benefit of hindsight the introduction of the Small Business Assistance Program by the Government in response to the dire financial impact of the delays in the CSELR project on businesses was too late and too restrictive in its scope. The likely financial impact on businesses along the CSELR route was clearly foreseeable given the experience of similar projects both interstate and overseas.

The committee considers that the government should review the guidelines governing the Small Business Assistance Program to be less restrictive.

**Recommendation X**

That the NSW Government revise the guidelines for the Small Business Assistance Program and implement this scheme for all other major infrastructure projects.'

Question put and resolved in the affirmative with all members unanimously supporting the motion.

Mrs Houssos moved: That paragraph 5.88 be omitted: 'This aside, the committee acknowledges that many business owners have found this assistance helpful. We support the continuation of financial assistance, until businesses experience the uplift expected after the project is completed. We would suggest that, along with Transport for NSW, the Small Business Commissioner has an ongoing role to play in encouraging and supporting businesses to apply for financial assistance and support, even in circumstances where businesses may not necessarily meet eligibility criteria, given the department has indicated that it will consider matters on a case by case basis', and the following new paragraph be inserted instead:

'Until the completion of the CSELR project, Transport for NSW should continue to provide financial support for businesses. However, the current package should be expanded, made more transparent, easier to access and have shorter turnaround times for assistance.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That Recommendation 12 be omitted: 'That Transport for NSW and the Small Business Commissioner encourage and support businesses to apply for financial assistance under the Small Business Assistance Program, even in circumstances where businesses may not meet eligibility criteria', and the following new recommendation be inserted instead:

**Recommendation X**

'Until the completion of the CSELR project, Transport for NSW should continue to provide financial support for businesses. However, the current package should be expanded, made more transparent, easier to access and have shorter turnaround times for assistance.'

Question put and negatived.

Mrs Houssos moved: That paragraph 5.89 be amended by omitting 'A concerning issue for the committee was the impact the project' and inserting instead 'The committee was alarmed by the submissions and testimony from business owners about the effect the project'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes:, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That paragraph 5.91 be amended by:

- a) inserting 'almost all of' before 'the business owners spoke of'
- b) inserting 'adverse' before 'impact to their own mental health'.

Question put and negatived.

Resolved, on the motion of Mrs Houssos: That paragraph 5.95 be amended by omitting 'With this in mind, the committee' and inserting instead 'To address this, the committee'.

Resolved, on the motion of Mrs Houssos: That paragraph 5.96 be amended by omitting 'The committee suggests that Transport for NSW consider whether a more targeted' and inserting instead 'The committee suggests that Transport for NSW provide a more targeted'.

Mrs Houssos moved: That paragraph 5.117 be omitted: 'The committee agrees that more targeted business support should have been offered from the beginning of the project, based on the needs of individual businesses. We believe that there is still an opportunity for the government to work with impacted businesses to increase footfall in affected locations. The committee acknowledges Transport for NSW's Business Activation Program and recommends that the department expand this program, in consultation with small business owners. In particular, we recommend that the department work with affected businesses directly on marketing, communication and other initiatives to attract visitors to the affected areas', and the following new paragraphs and finding be inserted instead:

'The committee agrees that more targeted business support should have been offered from the beginning of the project, based on the needs of individual businesses. The committee finds that the support for business was inadequate, especially considering the delays that plagued the CSELR project.

We note that there is a legal case underway that has been instigated by a number of small businesses, but the committee will await its outcome without offering comment.

### **Finding X**

The committee finds that the support for business was inadequate, especially considering the delays that plagued the CSELR project.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mrs Houssos.

Noes: Ms Faehrmann, Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That the following new paragraph be inserted after paragraph 5.117:

'It is clear that the CSELR project suffered cost blowouts and delays as a result of poor planning, particularly in the initial stages. This was identified by the Auditor-General in her initial report in 2013. To protect the community against this occurring in the future, the committee recommends that public planning inquiries for major projects, costing \$1 billion or more, be subject to thorough public scrutiny. This would include releasing the business case publicly, allowing analysis from independent experts and genuine consultation with the community. This will provide increased transparency of the expenditure of public funds, and also allow projects to be improved by a range of stakeholders and the public.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

Mrs Houssos moved: That the following new recommendation be inserted after paragraph 5.117:

**'Recommendation X**

The committee recommends that public planning inquiries for major projects, costing \$1 billion or more, be subject to thorough public scrutiny. This would include releasing the business case publicly, allowing analysis from independent experts and genuine consultation with the community. This will provide increased transparency of the expenditure of public funds, and also allow projects to be improved by a range of stakeholders and the public.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Ms Faehrmann, Mrs Houssos.

Noes: Mr Khan, Mr Mallard, Mr Mason-Cox, Revd Nile.

Question resolved in the negative.

**Initial pages**

Mr Mason-Cox moved: That the 'Conduct of inquiry' section be amended by inserting the following new paragraphs at the end:

'The committee views the initial refusal by Transport for NSW to produce the requested documents as unacceptable. The claim that documents are Cabinet in confidence should not be arbitrarily made to avoid accountability and transparency to the Legislative Council or its committees.'

Mr Khan moved: That the motion of Mr Mason-Cox be amended by omitting 'to avoid accountability and transparency to the Legislative Council or its committees.'

Amendment of Mr Khan put.

The committee divided.

Ayes: Mr Khan, Mr Mallard, Revd Nile.

Noes: Mr Donnelly, Ms Faehrmann, Mrs Houssos, Mr Mason-Cox.

Amendment of Mr Khan resolved in the negative.

Original question of Mr Mason-Cox put and passed.

Resolved, on the motion of Mr Khan: That:

- a) The draft report [as amended] be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;

- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) That the report be tabled on Friday 25 January 2019;
- i) That the Chairman hold a press conference at 12.00 pm on Friday 25 January 2019.

#### **5.10 Government response**

Resolved, on the motion of Mr Donnelly: That the committee request that the NSW Government provide an early response to the recommendations made in the committee's report by 28 February 2019

### **6. Inquiry into the scrutiny of public accountability in New South Wales**

#### **6.1 Consideration of Chairman's draft report**

Resolved, on the motion of Mr Donnelly: That paragraphs 3.7, 3.8 and 3.9 be omitted and amendments, as circulated, be included in the section entitled 'Impact of the CBD and South East Light Rail project'.

Resolved, on the motion of Mr Donnelly: That:

- a) The draft report [as amended] be the report of the committee and that the committee present the report to the House;
- b) The submissions and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all submissions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

h) That the report be tabled on 30 January 2019.

**7. Adjournment**

The committee adjourned at 3.07 pm, *sine die*.

Tina Higgins  
**Committee Clerk**

## Appendix 8 Dissenting statement

### **The Hon. Greg Donnelly MLC and The Hon. Courtney Houssos MLC, Australia Labor Party**

It is a truism to say that if a society is to flourish and grow it needs quality, affordable infrastructure that is properly planned, built to high standards and delivered in a timely way. To ensure that this is done so the benefits of such large investments are shared by all, it falls to governments to show leadership in planning and managing infrastructure development. That is not to say that government must do everything itself. However, it is the government that must be held accountable for the what, how and when of these developments.

The CSELR project will go down in NSW history as one of the examples, par excellence, of how not to build infrastructure. This is not a partisan political statement. In the November 2016 Audit Office of New South Wales report it said on page 2:

“The CSELR project suffered many of the same problems we reported for WestConnex, Large construction projects and the Albert ‘Tibby’ Cotter Walkway.”

and further

“As a result, between 2011 and 2014, TfNSW did not effectively plan and procure the CSELR project to ensure it maximised value for money for New South Wales.”

In truth, as far as this project is concerned, since its announcement, matters have only gone from bad to worse to disastrous. It is just incongruous that at the time of finalising this report (January 2019) the answers to the largest questions regarding this project are still up in the air; when will it be completed?; what will be the travel times?; and how much is it going to cost? Furthermore, how is all the co-lateral damage that has been done to businesses, particularly small businesses and residents along or near the light rail lines going to be satisfactorily resolved?

In our view the content, findings and recommendations of this report could and should have been far stronger and robust. As Opposition members on this inquiry, we encourage all to read the Minutes of the deliberative meeting held on 22<sup>nd</sup> January 2019. They are appended to the report. It is our view that those Opposition amendments that were not carried should have been endorsed. If they had been, it is our opinion that this report would stand as a far more rigorous critique of the CSELR project.

A key cause of the ongoing distress to residents and businesses has been the significant and lengthy delays of the CSELR project.

Construction on the project commenced in October 2015 and the final zone was to be completed by December 2017. Most zones were projected to be completed within six to nine months. A table of the proposed construction dates appears at Appendix 2 of the report. Not one of these completion dates were met.

Conflicting dates of when the project will now be completed were provided to the committee. The Secretary of Transport informed the committee in November 2018 that there was still 99 metres of track left to be laid. At a previous hearing, the committee was informed that testing on the track would take six

months. The Secretary for Transport also advised at the final hearing of the committee that he did not know when the project would be completed or how much it would cost.

The lack of certainty, in particular for businesses, was devastating for their finances, but also for the mental health of the owners.

The distress and suffering as a result of the delays has been exacerbated by poor communication to the residents and businesses and the sluggish response from the NSW Government, including the department. Indeed, the inquiry heard that at the initial meetings with businesses about the project, one Transport for NSW employee told business owners to “go on a holiday to Bali” for six months while construction was underway.

We believe that the support for businesses was inadequate, especially considering the delays that plagued the project. Furthermore, we are concerned that support for businesses was not forthcoming when delays were first identified. It was not until media reports of financial distress became common that the NSW Government provided meaningful support. Even then, the committee heard that the scheme was difficult to access, and there was no support for businesses who had already been forced to close or go into liquidation.

We strongly believe that it is not acceptable for governments to assume or accept as a default position that delays, particularly long delays, are necessarily a feature of infrastructure building programs. To adopt such an assumption, or accept this as a default position, virtually normalises the expectations of all parties related with the project that delays associated with its completion are ‘just the way it is’. The truth is, that when there are delays, somebody has to pay for them.

Indeed, by accepting delays as inevitable, it sends the message to the private sector that the government will not hold them accountable for their failures to deliver a project.

We find it particularly concerning that in January 2019, six years and two months after the project was publicly announced by the former Premier, Barry O’Farrell, and Minister for Transport and now current Premier, Gladys Berejiklian, it is still not possible to obtain from the NSW Government, an accurate figure of what the CSELR project is going to cost the state. We find this alarming, because if the NSW Government cannot confirm an accurate figure, nobody else can.

Given the total contingency fund for the CSELR project has been exhausted, it is likely that the cost of the project will continue to climb. Although we do not take a position on the dispute between Transport for NSW and its contractors, we are alarmed that the agency ultimately responsible was unable to prevent this disaster. The delays and contractor dispute leads us to find that the project has been mismanaged.