
From: Simpson, Rachel
Sent: Sunday, 4 November 2018 10:35 AM
To: Public Accountability
Cc: Cook, Patrick; Lister, Todd
Subject: Answers to questions on notice - TfNSW
Attachments: Hearing 4 October - Responses to Questions taken on Notice - CBD SE Light Rail.pdf; Hearing 4 October 2018 - Responses to Supplementary Questions - CBD SE Light Rail.pdf

Hi Sarah,

Attached are TfNSW answers to questions taken on notice and supplementary questions arising from the hearing on 9 October 2018.

With respect to the undertaking by Mr Braxton-Smith to review the assessment of the Book Kitchen and Mondial Pink Diamonds, TfNSW 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.

Thanks and regards,

Rachel

SENSITIVE: NSW GOVERNMENT

Rachel Simpson
Principal Manager, Parliamentary Services
Transport for NSW

T | F | M
Level 5, 18 Lee Street Chippendale NSW 2008



Use public transport... plan your trip at transportnsw.info
Get on board with Opal at opal.com.au

This email is intended only for the addressee and may contain confidential information. If you receive this email in error please delete it and any attachments and notify the sender immediately by reply email. Transport for NSW takes all care to ensure that attachments are free from viruses or other defects. Transport for NSW assume no liability for any loss, damage or other consequences which may arise from opening or using an attachment.

Consider the environment. Please don't print this e-mail unless really necessary.

PUBLIC ACCOUNTABILITY COMMITTEE

**INQUIRY INTO THE IMPACT OF THE CBD AND SOUTH EAST LIGHT RAIL
PROJECT**

Responses to Questions on Notice

Hearing – 4 October 2018

1. The Hon. DANIEL MOOKHEY: Is it the case that ALTRAC is providing a monthly contract delivery progress report? Is that correct?

Mr TROUGHTON: Yes, they provide a monthly progress report.

The Hon. DANIEL MOOKHEY: That is tabled at the Sydney Light Rail Advisory Board or advice is prepared for the board on the basis of those reports?

Mr TROUGHTON: I do not attend those boards but I will take that on notice.

Response:

The Sydney Light Rail Advisory Board is regularly provided with updated information about the project informed by a number of sources.

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.

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.

4. The Hon. DANIEL MOOKHEY: Under the contract framework do you have the power to issue directions to modify design?

Mr TROUGHTON: Yes.

The Hon. DANIEL MOOKHEY: Have you issued such modifications?

Mr TROUGHTON: Yes.

The Hon. DANIEL MOOKHEY: How many have you issued?

Mr TROUGHTON: I think the number is around about 60 modifications, 11 of which have been withdrawn. So we have issued modifications.

The Hon. DANIEL MOOKHEY: Are you on notice able to give us a timetable as to when each notification was given, given that we have a lot of competing evidence about whether you changed the design or Acciona changed the design?

Mr TROUGHTON: I will take that on notice of what I can and cannot provide you of a commercial nature.

Response:

Modifications and claims on large infrastructure projects are anticipated and are business as usual. These matters are managed in accordance with the Sydney Light Rail Project Deed (SLR Project Deed). Under the SLR Project Deed, Modifications may be directed by Transport for NSW (TfNSW) either with or without prior consultation with ALTRAC Light Rail (ALTRAC) or may be initiated by ALTRAC for TfNSW's consideration.

Any commercial arrangements with ALTRAC with respect to Modifications and claims are managed with strictest confidentiality under the SLR Project Deed.

5. The Hon. DANIEL MOOKHEY: I am asking you a question. Is it correct that the reason that the New South Wales taxpayers have had to guarantee \$500 million of ALTRAC's debt is because you created a liquidity event that triggered the banks to recover that money. Is that correct?

Mr TROUGHTON: I will take that on notice.

The Hon. DANIEL MOOKHEY: That \$500 million loan, which banks have we guaranteed the money to?

Mr TROUGHTON: I will have to take that on notice.

The Hon. DANIEL MOOKHEY: It is publicly known that the banks that have lent money to ALTRAC are the National Australia Bank [NAB] and the Commonwealth Bank. Is it the NAB's and the Commonwealth Bank's loans that we have guaranteed?

Mr TROUGHTON: I was not involved as part of that process. I will have to take it on notice.

Response:

The New South Wales taxpayers did not have to guarantee the \$500 million of ALTRAC's debt because of a liquidity event that triggered bank recovery.

The National Australia Bank and the Commonwealth Bank are the banks that provided ALTRAC a loan of up to \$500 million, which is the subject of the guarantee.

6. The Hon. DANIEL MOOKHEY: Given that we have not been able to have Transport for NSW explain why a \$500 million guarantee is even required, do you wish to take the opportunity now to explain why taxpayers have guaranteed \$500 million of debt towards the ALTRAC consortium, given we had the Minister confirm at budget estimates that the New South Wales taxpayers have already done that? Why is it necessary that we guarantee these bank debts?

Mr TROUGHTON: As I said, I was not involved. I was not involved in the arrangement that ALTRAC have with their private bankers. It is not part of my responsibilities. I will take on notice what I can provide to you on notice.

The Hon. DANIEL MOOKHEY: The Minister for Transport wrote a letter to the Treasurer seeking a \$500 million loan. Did you have the opportunity to see that letter before he sent it?

Mr TROUGHTON: I have not seen that letter, no.

The Hon. DANIEL MOOKHEY: Did the Minister for Transport write this letter without seeking advice from Transport for NSW as to whether this is required? That is the inference you are leaving here right now?

Mr TROUGHTON: No, I am sure he had advice. I believe I was actually on holiday at the time. I am unable to tell you because I was not in the country. I will have to take it on notice.

Response:

On 3 July 2018 TfNSW entered into an agreement that provides a guarantee of up to \$500 million against a borrowing facility provided by National Australia Bank and the Commonwealth Bank to ALTRAC, which is currently constructing the Sydney Light Rail. ALTRAC's borrowing facility has three tranches totalling \$500 million. The first tranche of \$100 million was advanced by those lenders to ALTRAC on 3 July 2018. The second tranche of \$100 million has been made available to be drawn down by ALTRAC from 20 September 2018 once certain conditions have been met. The remaining tranche cannot be advanced to ALTRAC by its lenders unless certain conditions are met, including the agreement of TfNSW. As this guarantee is a contingent liability, there is no impact to the financial position of TfNSW as a result of providing this guarantee. The extent to which the guarantee may be called upon will depend on a number of factors, including the ultimate resolution of various commercial disputes between TfNSW and ALTRAC.

If the guarantee is called at a future point, it is part of a broader structured finance arrangement that references TfNSW's ultimately determined fair value liability associated with the commercial disputes. If the amount paid under the guarantee is more than TfNSW's fair value liability, TfNSW has recovery rights against ALTRAC for the difference, protecting the interests of New South Wales taxpayers.

7. The Hon. DANIEL MOOKHEY: Does the energy Minister have the power to direct Ausgrid to comply with directions from Transport for NSW to accelerate work on moving the Ausgrid utilities?

Mr TROUGHTON: I am not aware of that. I will take that on notice about the powers of the energy Minister.

Response:

This is a matter for the Minister for Resources, Minister for Energy and Utilities, Minister for the Arts, and Vice-President of the Executive Council.

8. The Hon. DANIEL MOOKHEY: Acciona says they first provided an informal warning to Transport for NSW in March 2015 that this project was at risk of 865 days delay and a \$426 million blowout. They say they then wrote formally to Transport for NSW in May, saying that this project was at risk of an 868-day delay and a \$426 million blowout. They say that Transport for NSW asked them to withdraw the letter. Who from Transport for NSW asked them to withdraw the letter?

Mr TROUGHTON: I am not aware of that occurrence. It was a long time before I was involved in the project and I am happy to take that on notice as well.

Response:

On 25 May 2015, TfNSW received a letter from ALTRAC attaching a number of notices of claim made by the D&C Contractor (including Acciona) against ALTRAC, including a claim for \$423M and a claim for an extension of time to the delivery program of 865 days, as referred to in this question. 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 ("Adjustment Guidelines").

The Adjustment Guidelines were neither endorsed nor approved by TfNSW and were issued by Ausgrid without the concurrence of TfNSW. Consequently, TfNSW responded to ALTRAC on 26 May 2015 clarifying that no direction has been issued by TfNSW in relation to the Adjustment Guidelines and noting that, on 26 May 2015, Ausgrid had separately issued an email to ALTRAC withdrawing the Adjustment Guidelines. On the basis of that clarification, the SLR Project Director, as the TfNSW Representative under the SLR Project Deed, requested that ALTRAC withdraw its claims made on 25 May 2015. This request was reiterated in a further letter dated 1 June 2015.

ALTRAC withdrew its claims against TfNSW (and in turn the D&C Contractor withdrew its claims against ALTRAC) subject to certain conditions on 15 June 2015. These conditional withdrawals were superseded by ALTRAC and the D&C Contractor unconditionally withdrawing their respective claims on 24 July 2015. As these claims were withdrawn, TfNSW was not obliged to proceed to assess them in accordance with the SLR Project Deed.

Subsequently, ALTRAC made a number of other claims in relation to the treatment of Ausgrid assets under the SLR Project Deed. These claims have been assessed by TfNSW in accordance with the SLR Project Deed and are commercial-in confidence.

9. Ms CATE FAEHRMANN: Does that mean you have undertaken an audit? When you say you monitor compliance, is that an audit?

Ms PRENDERGAST: It is overseeing their monitoring. We monitor complaints so that when issues are being raised, we step in and look at that and help resolve it and work out if there is a different way to do it to minimise the noise.

Ms CATE FAEHRMANN: You have not undertaken an audit?

Mr TROUGHTON: We might take that on notice and provide you with what we do and how we have done it. Certainly I know that under the whole contract process there are a number of requirements. There will be checks. What I would like to do, if I may, is provide you with an accurate process of what we have done and how many we have done.

Ms PRENDERGAST: And we have an environmental compliance team specifically to do that.

Ms CATE FAEHRMANN: There is also Transport for New South Wales Construction Noise Strategy, which says, on page 11:

“Compliance with the approved construction noise and vibration objectives is to be audited at least every three months.”

That is three months—four a year—which would make it 12 audits, maybe. You are not sure whether one has been undertaken.

Mr TROUGHTON: It depends on how we have contracted that to be done. I just need to be clear to you on this. There are two ways. Under the contract we may have said, "ALTRAC, you need to have independent compliance officers." They would then appoint an independent company to undertake those checks. At all times they have to comply with that process. I will just take it on notice and provide who exactly—

Ms CATE FAEHRMANN: So you do not know who the independent company is which is responsible for ensuring that compliance is—

Mr TROUGHTON: At the end of the day, ALTRAC is responsible, under the contract, for meeting the conditions. As a PPP, we do not hire those companies directly.

Ms CATE FAEHRMANN: You have outsourced responsibility, in other words—

Mr TROUGHTON: To ALTRAC.

Ms CATE FAEHRMANN: —in terms of noise.

Mr TROUGHTON: Fifteen years of the whole project has been outsourced to ALTRAC. So it is responsible for design, construction and operation. Under a normal project Transport for NSW would hire those companies. Under a PPP, the obligations are to the PPP company to organise all of that. I am happy to provide—

Ms CATE FAEHRMANN: The contract would have had to comply with Transport for NSW construction policy here though in terms of having an audit at least every three months.

Mr TROUGHTON: Yes, and it would have to comply with legislation.

Ms CATE FAEHRMANN: And it would have to comply with legislation. If they do not?

Mr TROUGHTON: Then the relevant legislative bodies would take action against them.

Ms PRENDERGAST: We can provide those details, but the environmental compliance team and the Department of Planning and Environment go out, often at night, to check on the noise compliance. If there is a spike in complaints they do special exercises.

Ms CATE FAEHRMANN: We heard today—I think you said it before—about three fines or three notices that have been issued. However, we did hear from many residents about continued noise that is keeping people—including students and babies—awake, and driving them to madness. Some people were talking about having mental health issues as a result of the noise. I think we also heard yesterday that people have had to buy noise-measuring machines because they do not think that the noise is being monitored.

One of the things that we know is that in the management plan they have to have independent monitoring at all times when they undertake out-of-hours work. Are you familiar with whether that has been happening with the Department of Planning and Environment compliance officers? Can they report that independent monitoring is taking place every time Acciona undertakes out-of-hours work in terms of construction?

Mr TROUGHTON: I do not have the day-to-day knowledge of that. I would have to take that on notice.

Response:

Both the SLR Project planning approval and Acciona's Environment Protection Licence prescribe that informal noise audits are to be undertaken on a monthly basis.

This information is outlined within the Construction Noise and Vibration Impact Statements (CNVISs) as well as the Construction Noise and Vibration Management Plan (CNVMP) prepared by ALTRAC, which are available on the Sydney Light Rail website.

In terms of responsibility for conducting these audits, this rests with ALTRAC the SLR Project Deed. The responsibility for ensuring that environmental auditing is undertaken rests with the independent Environmental Representative for the SLR Project, which is approved by Department of Planning and Environment (DPE).

TfNSW retains an assurance role in providing feedback on documentation and making recommendations on activities, processes and mitigation measures, however the PPP structure has no provision for audits to be undertaken by TfNSW directly.

The TfNSW environment team attend weekly environmental inspections undertaken by the Environmental Representative, which are occasionally undertaken at night during out of hours' works.

10. Ms CATE FAEHRMANN: —Acciona is monitoring, according to their contract, every time they undertake out-of-hours work. That is the majority of the complaints.

Ms PRENDERGAST: What I cannot answer is the "every time". I do know there is a strong monitoring regime. There has also been a graduation in the practice, if there is noisy works after midnight. There has been a strengthening in the requirements. There is also the respite that is offered to residents. If there are three nights of noisy work on the third night there is offered respite accommodation. We, ourselves, have made over 8,000 offers over and above that in recognition of the noise, particularly in areas such as zone 28, where there is high rise. That is where the gentleman from yesterday—Mr Jordan—was from. We understand that when there is high rise the noise echoes. That is on Anzac Parade, where we are constricted from doing more day work, although we have tried to fit in more day work. We can provide you with the details of that environmental compliance. The Department of Planning and Environment is very much overseeing this as well.

Response:

It is ALTRAC's responsibility to monitor noise monitoring compliance of its contractors. TfNSW receives monitoring data on a monthly basis and also receives noise monitoring reports prepared in response to complaints where monitoring has been offered by Acciona and accepted by the complainant. The monitoring required is outlined within the Construction Noise and Vibration Management Plan (CNVMP) prepared under Condition B89(b) and the Construction Noise and Vibration Impact Statements (CNVISs) prepared under Condition B5 of the SLR Project planning approval.

The CNVMP (Section 10.1.2) details that attended noise monitoring will be undertaken in the following circumstances:

- Within a period of 14 days from the commencement of construction activities; to assess if the predicted levels in the CNVISs are met;
- At the commencement of construction, rock breaking activities if impacting sensitive receivers will be monitored to assess if predicted noise levels are met;
- At active construction locations on a monthly basis;
- In response to a noise related complaint(s) and associated to an investigation process (to be determined on a case-by-case basis);
- Where practicable, at the commencement of out of hours works (within the first two nights, or as agreed with the Environmental Representative); and
- As otherwise required by the Environmental Representative.

An Independent Environmental Representative approved by the DPE monitors ALTRAC's compliance with the project's planning approval conditions and acts as the principal point of advice in relation to the environmental performance of the project.

TfNSW raises any possible non-compliance directly with ALTRAC's construction contractor, Acciona, as the holder of the Environment Protection License. The Environment Protection Agency and/or DPE are notified where appropriate.

11. Ms CATE FAEHRMANN: Has Acciona breached its contract or breached its management plan in order to do this work more quickly when it comes to construction noise at night? For example, operating six nights a week at midnight in certain places. We have heard from some witnesses that that is the case.

Ms PRENDERGAST: That is not true. It has not been breaching the contract, bar the three formal notices, that we are aware of.

Ms CATE FAEHRMANN: Do you know what the three formal notices were in regard to?

Ms PRENDERGAST: We can provide you with details of that, but the Department of Planning and Environment is very vigilant in overseeing this, as is our own environmental team. They have not been accelerating the works and doing more activity, bar what the planning conditions allow.

Ms CATE FAEHRMANN: When I asked about this this morning, I think there was a commitment by ALTRAC to check—to take on notice—whether they can publish the monitoring data that they are supposed to be doing continuously during out-of-hours work operation. Are you able to provide that monitoring data? Would you receive it as well?

Ms PRENDERGAST: The monitoring includes weekly inspections with an independent environmental advisor doing the overview checks, as well as the Department of Planning. We also review program. How we ascertain the offer for the additional respite accommodation—beyond what ALTRAC offers—is by going through and forecasting the week's activities and determining the impact on residents. Then we work out the impact and what we need to offer to give them some respite.

Ms CATE FAEHRMANN: So you see that data, Ms Prendergast?

Ms PRENDERGAST: The environment group does within the project team. My team is the one that communicates that to the residents. So every week we make offers.

Ms CATE FAEHRMANN: Can you table for the Committee what the independent noise monitoring audit has—all of the data from noise monitoring for this project.

Ms PRENDERGAST: I can take on notice what the team has available and—

Ms CATE FAEHRMANN: Provide it to the Committee?

Ms PRENDERGAST: We will take that on notice.

Ms CATE FAEHRMANN: Thank you.

Response:

With regard to out of hours' works, TfNSW is aware of the following three formal notices issued to Acciona (as the holder of the Environment Protection Licence) by the Environment Protection Authority (EPA):

- on 24 February 2017, Acciona was issued with a formal warning from EPA regarding breaches of their Environment Protection Licence. This specifically related to both working outside the project boundary and community notification of out of hours work;

- on 5 May 2017, Acciona was issued an Advisory Letter from EPA relating to failure to investigate a vibration complaint within two hours; and
- On 23 May 2017, Acciona was issued an Official Caution from EPA regarding inadequate community notification of out of hours works.

In relation to noise monitoring, TfNSW refers the Committee to the response provided for Question 10.

12. The CHAIR: It is probably difficult to assess some of the older buildings. What would the oldest buildings be on that light rail route?

Ms PRENDERGAST: They are very old. I would have to take that on notice.

Response:

Sydney Light Rail passes through a number of historic precincts. Some of the earlier buildings along the alignment include:

- Central Station (earliest structures) - 1855;
- Prince Of Wales Hospital Group (earliest building) - 1858;
- St Andrews Cathedral - 1868; and
- Terraces along Devonshire Street - 1870s.

13. The Hon. GREG DONNELLY: Special consultants of the respective parties at the table, okay. With respect to those meetings, and we have to work our way through 67 intersections, when do they commence the work for these intersections?

Mr TROUGHTON: They have already commenced.

The Hon. GREG DONNELLY: When did they commence?

Mr TROUGHTON: I will take that on notice.

Response:

Signalised intersections are designed to accommodate all road users, including light rail vehicles, pedestrians and general road traffic users.

These designs are called Traffic Control Systems (TCS) Plans. Once designs are prepared by ALTRAC (and its contractors) and confirmed with Roads & Maritime Services (RMS), they are then programmed by RMS into the intersection – that program is then called a “Personality”.

Detailed intersection designs were submitted to RMS in mid-2017 to commence work on the TCS Plans and Personalities.

Work to complete the individual Personalities for the 56 TCS Plans required for the 63 signalised intersections along the SLR 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.

14. The Hon. GREG DONNELLY: When you say the meetings are ongoing, and I presume they are at this critical time, when do you expect to have the negotiations over the 67 intersections essentially settled? I preface this by saying I understand there is always a bit of tweaking at the end. You have done 30 per cent. When do you expect the rest to be done?

Mr TROUGHTON: It will be done in phases. The whole of the bit will be done at the time. I think somebody endeavoured to take it on notice yesterday to provide you those details. Just a couple of things—

The Hon. GREG DONNELLY: No, I do not think that is right.

Mr TROUGHTON: I will take it on notice to provide you the date when we forecast that all the signals will be designed.

The Hon. GREG DONNELLY: I am talking about the signal priority and the junction optimisation, which was mentioned to us yesterday as essentially the settlement about which the whole phasing of the lights and the traffic is done and related matters for the light rail passing through the intersection. So 30 per cent of the 67 have been done. I am trying to find out when the difference will be complete.

Mr TROUGHTON: Yes, and I just said to you that I would take that on notice and provide you that information.

Response:

Please refer to the response provided for Question 13.

15. The Hon. DANIEL MOOKHEY: I have a very quick question, Mr Troughton. Were the Ausgrid guidelines presented to Acciona hours after financial completion?

Mr TROUGHTON: I do not know the exact timings.

The Hon. DANIEL MOOKHEY: Was it after financial completion?

Mr TROUGHTON: Let us be clear. There was a set of Ausgrid guidelines that were there during the tender process. These were amended and put in after financial completion. As I said before, they were not accepted by Transport for NSW, Acciona or all parties.

The Hon. DANIEL MOOKHEY: But the transmission of the revised guidelines took place after financial completion.

Mr TROUGHTON: I would have to take that on notice; I was not there.?

Response:

Financial Close under the SLR Project Deed was achieved on 25 February 2015. Ausgrid issued a document entitled "*CBD and South East Light Rail: Adjustment Guidelines for Ausgrid Network Assets*" ("Adjustment Guidelines") directly to Acciona on 27 February 2015 (a draft version) and on 1 May 2015 (a version signed by Ausgrid).

Neither the draft nor the signed version of the Adjustment Guidelines were endorsed or accepted by TfNSW.

For details as to the status and treatment of the Adjustment Guidelines after they were issued by Ausgrid, TfNSW refers the Committee to the response provided for Question 8

16. Ms CATE FAEHRMANN: Ms Prendergast, at the last hearing on 20 August you talked—I am not sure who asked the question—about the original construction schedule setting out start and finish dates for each zone, and you told this Committee that, I think, six to nine months—in your words—was not really what it was, and that the maximum was 380 days in some zones. Which zones in the original schedule had 380 days?

Ms PRENDERGAST: Zone 4 was always well over a year. Other zones were shorter than the six months. It was an averaging figure. I would have to take it on notice. We have tabled the actual schedule. The maximum was something like 380 or 390 days.

Ms CATE FAEHRMANN: Was that for just one zone? You told the Committee that the maximum was 380 days in some zones. Are you correcting that? It is one zone; is that right?

Ms PRENDERGAST: I will have to go back and check the exact schedule. Zone 4, I know.

Response:

Refer to the original schedule, detailing commencement date, end date and duration (table 1) and a comparison of the original schedule and actual commencement dates (table 2) below.

Table 1. 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 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 Street	19-Feb-16	6-Sep-16	200
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

Table 2. 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

17. Mr BRAXTON-SMITH: Yes. We have an allocation which has been revised and it has been increased as it has become evident that the overstay is longer than initially anticipated, and we have continued to adjust the scheme to make sure that we are addressing those businesses that have been affected. In relation to a statement that was made previously, I point out that we have at times identified proactively where businesses are particularly impacted—for example, in Devonshire Street we did not wait until such time as we had all of the information and had clarity about the amount of impact to them. It was clear that Devonshire Street was going to be particularly impacted, so in the case of Devonshire Street we made advance payments to 13 businesses, totalling \$690,00, which, in effect, was covering their rent for a six-month period of overstay. For the record, we have moved when we have understood what the impact is and understood what the likely knock-on impact could be on other businesses; we have moved very promptly to assist and support those businesses by every practical means.

Ms CATE FAEHRMANN: Can I get a clarification of what date that payment was made to those six businesses in Devonshire Street?

Mr BRAXTON-SMITH: It was 13 businesses, and we will have to take that question on notice as to the time of that.

Response:

Proactive ex gratia payments were made in April 2018 to 11 businesses located on or near Devonshire Street, Surry Hills, which were particularly impacted by construction overstay.

Although payments to 13 businesses were approved, 11 payments were made totalling \$742,725 as one business had closed and another had changed ownership prior to approval.

18. The Hon. MATTHEW MASON-COX: I want to put something to you and you can either reflect on it or give me your response. In the case of liquidated damages, although that is a small amount maybe if you had your time again you might look at a larger liquidated damages component but that is in another perfect world.

The Hon. SHAYNE MALLARD: Was that per zone?

Mr TROUGHTON: No, it varies per zone.

The Hon. MATTHEW MASON-COX: Let us not go into that detail. I put to you a model in a future complex project like this where there is a foreseeable impact of a delay on businesses and residents. We all know that these projects are difficult to complete and sometimes things go wrong. When they do go wrong would it be unreasonable to suggest that if the appropriate or agreed delay is exceeded by a significant threshold moneys by way of liquidated damages could go into a fund to compensate those businesses and residents that are affected by that delay—to be given out through a process that is accountable and transparent?

Mr TROUGHTON: Certainly that is an option. There is a balance in all of these things. If you put significant penalties on the contractors around that space we, as a government, would pay upfront for that.

The Hon. MATTHEW MASON-COX: You do that now; that is what I am saying to you. That money will now go into consolidated revenue when you claim it, should that be the case, or it will be set off against other counterclaims.

Mr TROUGHTON: Yes. So we have already spent more than the \$7.5 million.

The Hon. MATTHEW MASON-COX: That is right. In the future these things are foreseeable. I am putting to you another model. If you look at liquidated damages in the future you can dedicate that to dealing with delays in a way that compensates those people who are affected by it—the residents and the businesses. Have a think about that. I will be interested in your response either now or on notice.

Mr TROUGHTON: I am happy to think about that.

Response:

The \$7.5 million figure, which was referred to during an earlier hearing of this Inquiry relates to the aggregate cap on the total amount of Daily Fees payable for the occupation of individual Fee Zones by ALTRAC and/or its contractors (including Acciona), for a period over and above that specified in the Project Deed as “Base Fee Zone Occupation Period”. Note that the “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.

With respect to “liquidated damages” for delayed or late completion, as opposed to incentive scheme payments, 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).

TfNSW continuously applies lessons learnt from previous and existing projects to new projects to be procured. Contracts for major projects are complex commercial and legal arrangements. Decisions about specific models or regimes for dealing with

delay must be made on a case-by-case basis having regard to the particularities of each project.