

PUBLIC ACCOUNTABILITY COMMITTEE

IMPACT OF THE CBD AND SOUTH EAST LIGHT RAIL PROJECT

Responses to Questions on Notice

Hearing – 29 November 2018

Terms defined for the purposes of the answers in this document:

Ausgrid Deed	Final executed version of the Ausgrid Deed between TfNSW and Ausgrid dated 5 February 2015.
Acciona	Acciona Infrastructure Australia Pty Ltd as part of the joint venture forming the D&C Contractor.
ALTRAC	ALTRAC Light Rail Partnership (formerly known as Connecting Sydney consortium during the tender phase for the Project).
Ausgrid QoN	Ausgrid's answers to the Questions on Notice of the hearing dated 5 November 2018.
Ausgrid Supp Q	Ausgrid's answers to the Supplementary Questions relating to the hearing dated 5 November 2018.
D&C Contract	The D&C Contract between ALTRAC and the D&C Contractor.
D&C Contractor	A joint venture between Alstom Transport Australia Pty Ltd and Acciona.
Draft Ausgrid Deed	Draft version of the Ausgrid Deed referred to in the Project Deed and disclosed to tenderers in the data room prior to signing of the Project Deed.
Project	The CBD & South East Light Rail project.
Project Deed	The Sydney Light Rail Project Deed entered into between TfNSW and ALTRAC dated 17 December 2014.
TfNSW	Transport for NSW
TfNSW QoN	TfNSW answers to the Questions on Notice of the hearing dated 4 October 2018.
TfNSW Supp Q	TfNSW's answers to the Supplementary Questions relating to the hearing dated 4 October 2018.

1. The Hon. COURTNEY HOUSSOS: How many complaints are currently outstanding?

Mr STAPLES: Complaints?

The Hon. COURTNEY HOUSSOS: Claims, sorry.

Mr STAPLES: I would have to take the question on notice for the exact number. I think Mr Troughton gave some figures at the last hearing and I do not believe that that has changed, but I am happy to take that on notice to check.

Response:

Claims are managed in accordance with the Project Deed.

If a claim is made by ALTRAC, TfNSW assesses it in accordance with the Project Deed to determine entitlement and if entitlement exists, then determines the value of the claim and any extension of time.

Disputes have arisen with respect to a number of contractual claims made by ALTRAC and TfNSW is in confidential commercial discussions with ALTRAC and the D&C Contractor regarding these claims.

2. Ms CATE FAEHRMANN: What is the delay?

Ms PRENDERGAST: —on the dilapidation survey.

Ms CATE FAEHRMANN: Do you know?

Ms PRENDERGAST: It has not formally been referred for review. But I need to really check that with the project. At this point I will take it on notice, but we are committed to further review, and we have said that with our escalation process. But you have to understand, you cannot do the final assessment of damages until the major civil construction is complete.

Response:

TfNSW has put in an escalation process in place for the Project so that complaints and unresolved stakeholder issues such as property damage can be escalated to TfNSW for review.

Should a stakeholder wish to escalate their case, Acciona or ALTRAC should inform them of the dispute resolution process that has been put in place by TfNSW. If required an independent mediator would be engaged to try to achieve a mutually acceptable outcome.

As noted at the Committee hearing dated 29 November 2018, TfNSW is committed to working with the residents on Parkham Street, which includes the engagement of suitably qualified building representatives to assess damage.

Damage is assessed against dilapidation surveys undertaken.

3. Ms CATE FAEHRMANN: Thank you. I will move on quickly. Dealing with compensation for businesses, further to a question on notice taken from this inquiry in relation to businesses on Devonshire Street, Transport for NSW stated payments to 13 businesses were approved, yet only 11 payments were made because one business had closed and another had changed ownership. Why did a business closure prevent payment being received? What is the justification for that?

Ms PRENDERGAST: Because our criteria includes the business has to be actually in operation to receive the payment.

Ms CATE FAEHRMANN: Did that business close because of the light rail?

Ms PRENDERGAST: The business you would be referring to would be the business that we have discussed here previously, which closed six weeks after we commenced construction.

Ms CATE FAEHRMANN: It was approved to receive compensation but never received it because it closed before it was given the compensation, is that what you are saying?

Ms PRENDERGAST: Unless that is another case.

The Hon. TREVOR KHAN: That is not the case.

Ms PRENDERGAST: Can I take it on notice? I do not know the details, because that was not approved. There must be another one.

Ms CATE FAEHRMANN: Right, that is a different one?

Ms PRENDERGAST: Yes.

Response:

The business in question received a payment in January 2018 following their initial application for small business assistance.

The business closed over the 2017/18 Christmas period, before the next review for assistance commenced.

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. The focus of the small assistance program is to support businesses during construction impacts.

4. The CHAIR: The third paragraph says that we note that the deed makes reference to certain Ausgrid adjustment guidelines and the draft set of those guidelines was the subject of discussion during the proposal period. Who was involved in that discussion?

Mr STAPLES: I would have to take that on notice.

The CHAIR: Just from your experience, who do you think

Response:

Please refer to answer to Question 1 of the Supplementary Questions. TfNSW first received a draft of the Ausgrid Guidelines from Ausgrid on 3 February 2015, after the Proposal Period had expired.

5. Mr STAPLES: I think there is some caution in the review about being careful and how helpful we are because what happens then is that the contractor can, in certain circumstances, become reliant on that overly helpful behaviour and then expect the contractor to keep doing it. So there is a caution offered in here about it looks like we are doing too much and we were prepared to start being very careful here about whether we keep doing it. That says to me at that point in time that the contractor was having difficulty in its delivery, that there was an adversarial relationship but there was an attempt on the part of Transport to see whether or not we could help them get through what was obviously a difficult time.

The Hon. MATTHEW MASON-COX: Were these issues identified in February 2016 as well?

Mr STAPLES: I would have to take that on notice, but clearly this sort of thing would not come out overnight; these are the sorts of things that emerge over time, so I would be comfortable to think that they would have been talked about in a previous review.

The Hon. MATTHEW MASON-COX: Would you provide us with that review from February 2016? I think that would be useful for the committee's deliberation.

Mr STAPLES: Can I take that on notice in terms of the status because we just have to go through an internal review of the status of the document and its appropriateness to release before we did that. But certainly the extent to which it has the same status of the document then, yes, of course we would.

Response:

Transport for NSW welcomes the strategic oversight Infrastructure NSW provides.

Following the first 'In Delivery' Health Check in February 2016, TfNSW continued to closely monitor and work with ALTRAC regarding sequencing of construction work and construction activities, in particular in Surry Hills, with a senior project manager being appointed to address issues impacting Devonshire Street.

Focus intensified on clarifying and reducing scope uncertainty, including the project team and the SLR Advisory Board and Coordinator General working closer with stakeholders to manage expectations and improve negotiations.

The Project team continued to manage any claims and modifications in accordance with the Project Deed.

Please see attached preliminary draft report titled "Gateway Health Check Report – CBD and South East Light Rail Project" dated February 2016.

6. Mr STAPLES: It would appear, based on the review at the time, that there was concern from the reviewers that we were stepping into places that ALTRAC and Acciona should have been doing this.

The Hon. MATTHEW MASON-COX: It appears, and you might like to take this on notice, that that was the position in February 2016 as well.

Mr STAPLES: Certainly from the words here and the referencing, you would expect that that is referenced in the report, but we can confirm it.

The Hon. MATTHEW MASON-COX: If you could.

Response:

Please refer to the answer to Question 5 above.

7. The Hon. MATTHEW MASON-COX: Did you bring further resources into the contract management side of things in response to these reports from Infrastructure NSW?

Mr STAPLES: I do not know what was done in 2016. I would imagine, given what was happening at the time, there would have been more resource put in. When you have significant difficulties on a project, then Transport moves its resources to the areas that are most under pressure.

The Hon. MATTHEW MASON-COX: Can you clarify that for us, just in terms of response.

The Hon. ADAM SEARLE: I would not bet on it. **Mr STAPLES:** I am happy to do that.

The Hon. MATTHEW MASON-COX: It is a very serious report and pretty much in the majority of key areas the prognosis is a weak situation. I would be very interested in understanding what actions were taken by Transport for NSW to improve in each of those areas, and you may have something in that respect.

Response:

Following the October 2016 Health Check, TfNSW commenced a resolution process with ALTRAC and its contractor Acciona in an effort to mitigate any delays and to ensure the project was on track for completion by March 2019.

ALTRAC and Acciona confirmed they were working towards delivering the project on time; this was evidenced by subsequent monthly reports (received between January and September 2017) that confirmed they were working towards a completion date of 16 March 2019.

During these negotiations, TfNSW focused on addressing key areas which were identified as weak by INSW.

All third party agreements were finalised by the end of 2016.

Modifications and claims were anticipated for the Project and the Project team continued to manage any claims in accordance with the Project Deed.

If a claim is made by ALTRAC, TfNSW assesses it in accordance with the Project Deed to determine entitlement and if entitlement exists, then determines the value of the claim and any extension of time. One of the key issues for TfNSW was the lack of appropriate supporting information to justify claims made by ALTRAC and Acciona. Despite the paucity of information, TfNSW endeavoured to determine claims on their merits as best it could with the information available in 2016 and 2017.

At the recommendation of INSW, the Project team moved its focus on key areas, including hydrology, engineering and governance.

TfNSW was advised by ALTRAC that both Acciona and ALTRAC reviewed their respective project organisational structure and implemented changes to their management team at the end of 2016. Further, TfNSW established an engagement process to bring the teams together.

The parties participated in discussions between December 2016 and September 2017. ALTRAC and Acciona terminated the negotiations on a resolution process in September 2017.

In the past six months, executives of TfNSW, together with executives of ALTRAC and the D&C Contractor, have been working to resolve project issues and progress works.

8. The Hon. MATTHEW MASON-COX: Would you be prepared to provide a bit more detail in relation to each of those recommendations?

Mr STAPLES: We can have a look at that. This was done at the time of the report being produced. We can see whether we can provide some further information. I can take on notice what information we can provide.

The Hon. MATTHEW MASON-COX: That would be excellent. I think it is important to clarify and it is important that this Committee understands the steps taken by Transport for NSW to risk manage this and to action the recommendations to give us confidence.

Mr STAPLES: Okay.

Response:

Please refer to pages 27 – 32 of the *Health Check – In Delivery Report* dated 24 November 2016

Please also refer to the answer to Question 7 above.

9. Ms CATE FAEHRMANN: Going back to those meetings in February 2015 that took place between Transport for NSW and Ausgrid, is it correct that they were the two agencies that were—

Mr STAPLES: Yes. I characterise that we received them in early February and then we would have had some interaction. I do not know what meetings there were. I would have to take on notice the specifics of meetings.

Ms CATE FAEHRMANN: I think the Committee has received the dates of those already, being 9, 19, 20 and 23 February.

Mr STAPLES: Yes, that sounds correct.

Ms CATE FAEHRMANN: I understand at those meetings there were several iterations of the adjustment guidelines, is that correct?

Mr STAPLES: I would need to clarify exactly what changes were made along the way there, but I go back to my point that I think there is an over-emphasis on the importance of these guidelines at this point in time because there was a mechanism in the contract to adjust for any differences that might emerge out of the design process anyway.

Response:

Please refer to the answer to TfNSW Supp Q 6.

Enquires made by TfNSW to date suggest the guidelines were discussed at the meetings on 19 and 24 February 2015.

10. Ms CATE FAEHRMANN: Did Transport for NSW express any concerns to Ausgrid at the time about those adjustment guidelines at any stage?

Mr STAPLES: I am not aware of that but, as you know, I was not involved in the meetings so I have to take on notice whether there were concerns.

Ms CATE FAEHRMANN: If you could take it on notice. I think it would be particularly helpful for the Committee to know what the iterative stages were. If you had four meetings between Transport for NSW and Ausgrid working on these guidelines, going backwards and forwards on various drafts, and then, as we understand it, obviously Acciona were not brought into those discussions but also the adjustment guidelines were not endorsed or accepted by Transport for NSW, we have heard in evidence here.

Mr STAPLES: Yes.

Ms CATE FAEHRMANN: Given Acciona's testimony, could you take on notice to provide the Committee with any concerns at all that Transport for NSW had and could the Committee also receive copies of the guidelines and the process during those meetings in terms of the draft guidelines and what the issues were?

Mr STAPLES: I am happy to take that on notice and have a look at what records we have around the interaction in relation to that.

Response:

Please refer to the answer to TfNSW Supp Q 6.

11. Ms PRENDERGAST: There is a very firm protocol set out in the heritage management plan for construction. It is conditions B53 and B54. I am quite happy to provide this,

Response:

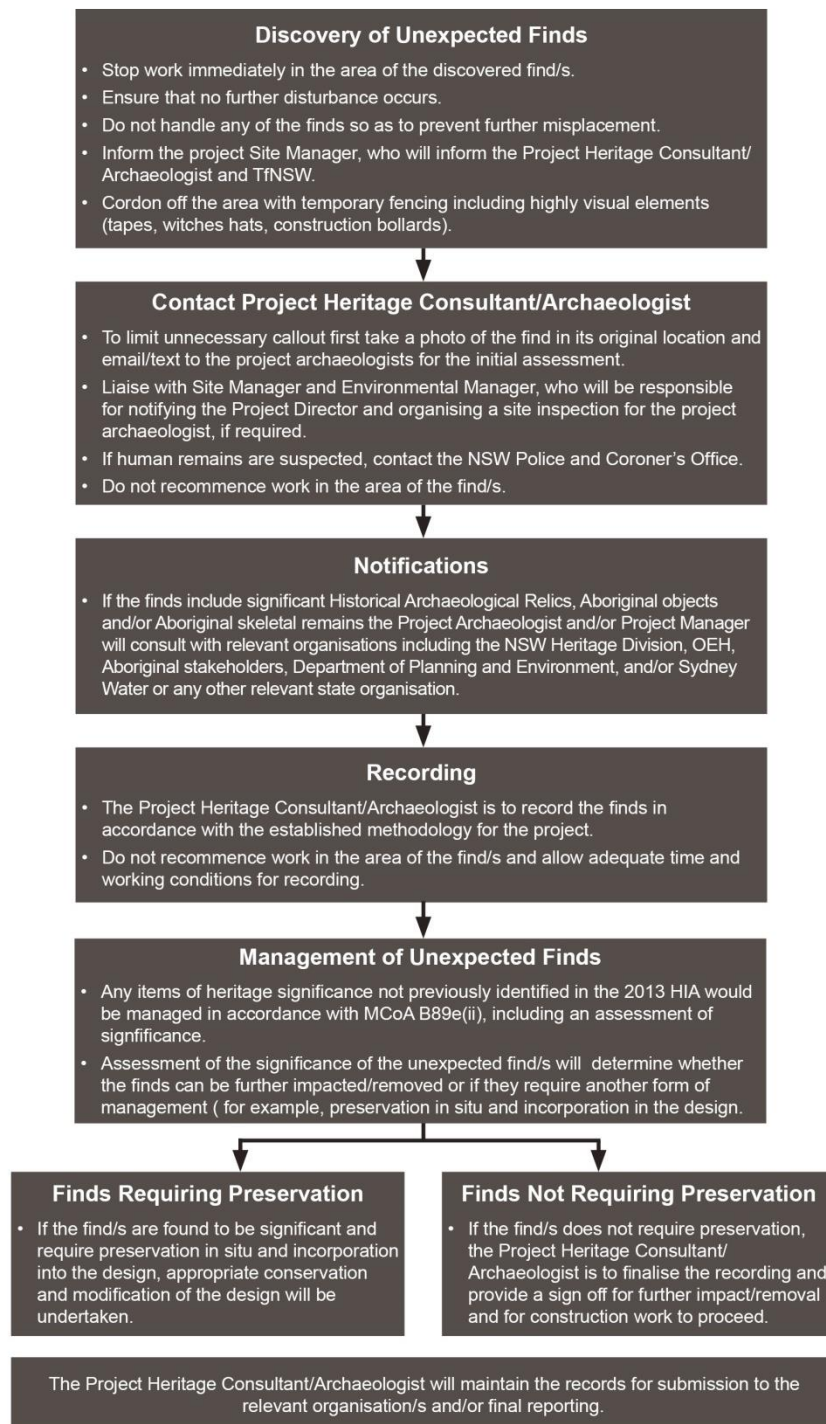
As part of the conditions of approval of the Sydney Light Rail Project, the below is provided in regards to heritage and human remains.

B53: This approval does not allow the Proponent to destroy, modify or otherwise physically affect human remains as part of the SSI.

B54: All human remains discovered during construction must be managed in accordance with the *Heritage Council of NSW Skeletal Remains: Guidelines for Management of Human Remains* and exhumed and reinterred at an appropriate location. Where remains are identified, consultation with the Office of Environment and Heritage (Heritage Branch) must be undertaken.

In addition to this, an *Unexpected Heritage Finds Protocol* is included in the *Construction Heritage Management Plan* as required under B89(e). This document has been attached.

Appendix 3 Unexpected Heritage Finds Protocol



Note: The Project Archaeologist will advise when work can commence following discussions with relevant stakeholders (e.g. OEH, police etc).