

PUBLIC ACCOUNTABILITY COMMITTEE

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

Responses to Supplementary Questions

Hearing – 29 November 2018

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

Ausgrid Deed	Final executed version of the Ausgrid Deed entered into 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. At the hearing to this inquiry on Thursday, 4th October 2018 Mr Stephen Troughton, Deputy Secretary, Infrastructure and Services, Transport for NSW on page 50 of Hansard gave the following evidence:

“The CHAIR: They changed the guidelines at the last minute.

Mr TROUGHTON: I think it is important to understand that the revised guidelines that came through were never accepted. Mr Bede Noonan never mentioned that to you this morning. They were never accepted.

The Hon. GREG DONNELLY: By whom?

Mr TROUGHTON: By Transport and Acciona—by the project. We went then to, as Mr Noonan said, start having a working group to work through. There are significant clauses in the contract that allow us to deal with any change to Ausgrid requirements, and they are then on a risk-shared basis between the Government and Acciona and ALTRAC. So the contract actually deals with all the eventualities around a change to any utility, not just Ausgrid.

The CHAIR: Did you encourage or force Ausgrid to change some of the guidelines, which apparently caused a lot of problems?

Mr TROUGHTON: We did not force Ausgrid to change any of the guidelines. The guidelines that were there beforehand, as I said, we amended and the project did not accept them. We then went into a process working with Ausgrid, which essentially all parties agreed to move forward on, and, as I said, under the contract the mechanism for dealing with any change to any utility which is different from the schedules that were completed by Acciona is absolutely covered for in the contract and we are standing by how they are dealt with in the contract.”

a) In saying that Transport for NSW never accepted the revised Ausgrid guidelines, was this communicated to Ausgrid in writing?

i If so, to whom?

ii If so, when?

b) In saying that Transport for NSW never accepted the revised Ausgrid guidelines, was this communicated to Acciona in writing?

i If so, to whom?

ii If so, when?

c) In his evidence Mr Troughton said: “We did not force Ausgrid to change any of the guidelines. The guidelines that were there beforehand, as I said, we amended and the project did not accept them.” In stating in this sentence that “... , as I said, we amended ... ”, why did Transport for NSW, after being involved in negotiations with Ausgrid to amend its revised Ausgrid guidelines reject what it had negotiated?

d) In his evidence Mr Troughton said: “We did not force Ausgrid to change any of the guidelines. The guidelines that were there beforehand, as I said, we amended and the project did not accept them.” In stating in this sentence that “... the project did not accept them ... ”, did Transport for NSW communicate to all parties associated with the project that the revised Ausgrid guidelines were not applicable and did not have to be followed?

i If not, why not?

ii If so, to whom?

iii If so, when?

Response:

A. TfNSW responds as follows:

- a. The Draft Ausgrid Deed disclosed to tenderers in the data room prior to signing of the Project Deed already required a collaborative process between Ausgrid, TfNSW and the successful tenderer for the development by the successful tenderer of treatment plans for Ausgrid assets .
- b. Under the Draft Ausgrid Deed, treatment plans prepared by the successful tenderer were always required to be approved by Ausgrid and comply with Ausgrid's requirements, including Ausgrid's network standards. Refer also to Ausgrid QoN 19.
- c. The final Ausgrid Deed did not relevantly differ from the Draft Ausgrid Deed.
- d. ALTRAC and Acciona were always required to comply with the relevant requirements of the Draft Ausgrid Deed. Refer also to Ausgrid QoN 12 and Ausgrid Supp Q S4.
- e. ALTRAC and Acciona both incorporated the final Ausgrid Deed into the Project Deed (on 17 March 2015) and the D&C Contract (on 25 March 2015) respectively (by way of an Amendment Deed), after they had received the draft Ausgrid Guidelines.
- f. Under the Draft Ausgrid Deed (as disclosed to tenderers before the Project Deed was signed), the Ausgrid Guidelines were intended to be developed and agreed between Ausgrid and TfNSW in the "Proposal Period" which expired on the execution of the SLR Project Deed, i.e. 17 December 2014.
- g. The draft Ausgrid Guidelines, if agreed (which they were not), would not have changed the process of developing and agreeing treatment plans. The treatment plans developed by ALTRAC and Acciona always needed to comply with Ausgrid's requirements, whether or not any Ausgrid Guidelines were issued and Ausgrid always retained final approval of treatment plans.
- h. To deal with the possibility that changes may arise as a result of the process referenced at paragraph g above, TfNSW negotiated a risk sharing regime with ALTRAC during the tender phase, which was included in the Project Deed and also in the D&C Contract between ALTRAC and Acciona.
- i. TfNSW first received a draft of the Ausgrid Guidelines on 3 February 2015 from Ausgrid (refer also Ausgrid Supp Q S3), i.e. after the Proposal Period had expired.
- j. When TfNSW received a draft of the Ausgrid Guidelines, it engaged with Ausgrid initially and made comments on the draft.

- k. Without Ausgrid and TfNSW agreeing the content of the document, Ausgrid issued its version of the draft Ausgrid Guidelines to Acciona on 27 February 2015, copying TfNSW.
 - l. Ausgrid then issued a signed version of the Ausgrid Guidelines to TfNSW and Acciona on 1 May 2015. Apart from being submitted to TfNSW after the Proposal Period had expired, TfNSW never agreed to the document that Ausgrid issued on 1 May 2015. Consequently, TfNSW formally responded to ALTRAC a number of times advising, as between TfNSW and ALTRAC, that the Ausgrid Guidelines have no contractual standing.
 - m. ALTRAC (and in turn Acciona as part of the D&C Contractor) remains responsible for carrying out any changes or treatments to Ausgrid's assets and any commercial consequences of such change or treatment are managed under the Project Deed (and, in turn, the D&C Contract entered into by Acciona).
- B. See A above. After Ausgrid issued signed guidelines to Acciona on 1 May 2015, TfNSW responded to ALTRAC a number of times confirming that it had not given any direction to apply the signed Ausgrid Guidelines, that they have no contractual standing and that ALTRAC must otherwise comply with the provisions of the Ausgrid Deed in the development of treatment plans.
- C. See A above. Any negotiations that TfNSW had with Ausgrid after TfNSW first received the draft Ausgrid Guidelines did not result in any agreement.
- D. See B above. TfNSW advised ALTRAC. ALTRAC in turn advised the D&C Contractor, Acciona and Alstom. There are no other project participants that would need to be made aware.

2. Negotiations between Ausgrid and Transport for NSW over the revised Ausgrid guidelines commenced sometime in 2014, when did the first meeting between the two parties take place?

- a) Who represented Transport for NSW at that meeting?
- b) Who represented Ausgrid at that meeting?

Response:

Please refer to the answer to Question 1 above. TfNSW first received a draft of the Ausgrid Guidelines from Ausgrid on 3 February 2015.

3. Given that any amendments to the revised Ausgrid guidelines were guaranteed to have potentially significant implications for Acciona in the construction of the CBD and South East Light Rail project, and that negotiations over the amendments commenced in 2014, why was Acciona not directly involved in being a party to those negotiations?

Response:

Please refer to answers to Questions 1 and 2 above. TfNSW first received a draft of the Ausgrid Guidelines from Ausgrid on 3 February 2015. TfNSW therefore did not commence negotiations on the document in 2014.

Please refer to the evidence provided by Chief Operating Officer of Ausgrid, Trevor Armstrong at the hearing for this inquiry on Monday, 5 November 2018 (page 25 of Hansard) where he stated:

“The guidelines were there to assist in the understanding of the network standards.”

The assumption contained in the question is the subject of current Supreme Court proceedings and is expected to be determined by the Court in due course.

4. Did Transport for NSW negotiate with Ausgrid regarding the guidelines and the application of their network standards to the Light Rail project following the signing of the Ausgrid Memorandum of Understanding with Transport for NSW in February 2014?

Response:

Please refer to answers to Questions 1 to 3 above and TfNSW Supp Q 11. Please also refer to Ausgrid QoN 5 and 6.

TfNSW first received a draft of the Ausgrid Guidelines from Ausgrid on 3 February 2015.

5. Did any such negotiations with Ausgrid occur before signing the contract with Connect Sydney on 17th December 2017?

Response:

The Project Deed was signed on 17 December 2014.

As stated in answers to Questions 1 to 4 above, TfNSW did not receive any draft Ausgrid Guidelines until 3 February 2015.

6. Please provide the Portfolio Committee No. 2 with unredacted copies of all of the versions of the Ausgrid Guidelines received by Transport for NSW; the dates they were received and who in Transport for NSW received them?

Response:

TfNSW received the following versions of the Ausgrid Guidelines from Ausgrid:

Date Received	Received by	Document
3 February 2015	Stephen Lewcock	Refer to document Draft Ausgrid Guidelines_version 1
20 February 2015	Stephen Lewcock	Refer to document Draft Ausgrid Guidelines_version 2
23 February 2015	Stephen Lewcock	Refer to document Draft Ausgrid Guidelines_version 3
24 February 2015	Stephen Lewcock	Refer to document Draft Ausgrid Guidelines_version 4
27 February 2015	Email addressed to Guillem Clemente (Acciona), copied to Michael Barnfield (TfNSW)	Refer to document Draft Ausgrid Guidelines_version 5
1 May 2015	Stephen Lewcock (TfNSW), copied to Guillem Clemente (Acciona) and others	Refer to document Draft Ausgrid Guidelines_version 6

7. Please provide the Portfolio Committee No. 2 with all correspondence and file notes of conversations and meetings between Ausgrid and Transport for NSW or contractors working on their behalf, regarding the treatment of Ausgrid assets on the proposed route of the SLR from the signing of the Ausgrid/Transport for NSW MOU till the delivery of the signed version of the Ausgrid Guidelines to ALTRAC in May 2015.

Response:

Please refer to our covering letter dated 12 December 2018.

8. Please provide a copy of the report that was prepared by Ausgrid for Transport for NSW which costed the impact on Ausgrid's assets at approximately \$700 million referred to in Ms Faehrmann's question to Mr Staples at the bottom of page 48 of Hansard.

Response:

Please refer to the report attached titled "CBD and South East Light Rail: Preliminary Ausgrid Asset Assessment, Treatments and Supply Advice" dated September 2013, noting that the report does not contain any costing or figure of approximately \$600m - \$700 million (as first referenced in The Hon. Courtney Houssos' question to Mr Trevor Armstrong on 5 November 2018 (page 21 Hansard). Please also refer to Ausgrid Supp Q S14, paragraph A in that regard.

Please also note that the attached report was disclosed to tenderers (including Acciona as part of the Connecting Sydney Consortium) in the TfNSW data room.

Please refer also to the evidence provided by Chief Operating Officer, Ausgrid, Trevor Armstrong at the hearing for this inquiry on Monday, 5 November 2018 (page 24 of Hansard) regarding this report:

"That very early report referred to was very much about the assets that are under the rail track being moved outside... It is not what we have set about doing now";

9. On page 9 of Hansard in response to a question from Mr Donnelly, Mr Noonan, part way through his answer said: "We than did have a collaboration process between Transport and Ausgrid and ourselves. Make no mistake, Ausgrid had no intention to do anything but apply the guidelines and that is effectively what got applied." Did the collaboration process result in Ausgrid's guidelines requirements being relaxed?

- a) Why did Transport for NSW state that it did not accept the Ausgrid guidelines?
- b) What was the purpose of the Collaboration Process if the Ausgrid guidelines were required to be applied?
- c) Did the Collaboration Process delay the project?

Response:

Please refer to the answer to Question 1 above.

Both the Draft Ausgrid Deed and the final Ausgrid Deed contained a process whereby, Ausgrid would consult with TfNSW and the successful Contractor for the Project with the aim of assisting the Contractor in the development of treatment plans that complied with Ausgrid's requirements (including Ausgrid's Network Standards) and specified Access Requirements (**Ausgrid's Requirements**).

Irrespective of whether the Ausgrid Guidelines were going to be agreed in the Proposal Period, all tenderers were aware of the process and requirements, as the Draft Ausgrid Deed was disclosed to tenderers in the data room. Further, ALTRAC and Acciona each formally agreed to the terms of the final Ausgrid Deed on 17 March 2015 and 25 March 2015 respectively.

10. On page 30 of Hansard Mr Staples says part of the way through his answer to a question from Ms Houssos: "I am aware of only one other claim in the terms of a misrepresentation claim that Transport has ever had, and that was on a minor contract of about \$7 million that I am aware of." What was the claim referred to by Mr Staples?

- a) Did it also relate to the SLR Project?
- b) If so, what was the outcome of the claim?

Response:

- a) The claim Mr Staples referred to was made by VAC Group who undertook early trenching works in connection with the Sydney Light Rail Project.
- b) A Settlement Deed has been entered into between TfNSW and relevant VAC Group entities where it was agreed that the terms would remain confidential. The position of both TfNSW and VAC Group is as follows:

"Following the settlement of the dispute between TfNSW and the VAC Group entities regarding the early trenching works carried out by the VAC Group entities in connection with the Sydney Light Rail Project, the Federal Court of Australia has made orders dismissing the proceedings commenced by the VAC Group entities against TfNSW. The terms of settlement are commercial in confidence."

11. When was the signed version of the Ausgrid guidelines which were provided to Acciona in draft on 27th February provided to you?

Response:

Please refer to the answer to Question 1 above.

The signed version of the Ausgrid Guidelines were provided to Acciona by email from Ausgrid dated 1 May 2015. TfNSW received the signed Ausgrid Guidelines at the same time as Acciona.

12. In answer to a question from Ms Houssos on page 31 of Hansard, Mr Staples said: “The chain of events are we received the Ausgrid guidelines in early February. We had interactions with Ausgrid. We subsequently shared the Ausgrid guidelines with Acciona and ALTRAC.”

- a) Who provided the draft guidelines to Acciona and ALTRAC?
- b) Did Acciona ask Transport for NSW about the status of the guidelines sent on 27th February?
- c) What was Transport for NSW response to this inquiry?

Response:

a) Please refer to the answer to Question 1 above.

b) and c) TfNSW held meetings with Ausgrid and ALTRAC on 27 March 2015, 1 April 2015 and 15 April 2015 during which the draft Ausgrid Guidelines were discussed. ALTRAC undertook to provide Ausgrid and TfNSW with a mark-up of the draft guidelines identifying it and Acciona’s concerns but ultimately never provided any such mark-up.

13. Have any sections of the light rail track had to be jackhammered and dug up because someone forgot to do the waterproofing?

a) What were the delays as a result of this?

b) What was the cost of this mistake?

Response:

TfNSW is not aware of any track which has been jackhammered and dug up to facilitate waterproofing.

14. In your first opening statement on Monday 20 August, said you had saved 120 trees. Have any of those trees now had to be removed because someone forgot to put the root protection in to stop the roots from getting in to the electrical system?

a) What were the delays as a result of this?

Response:

More than 120 trees that were originally identified for removal have been saved to date on the Sydney Light Rail Project – either by relocation for future transplanting or retained in situ through redesign. None of these 120 trees, nor any other tree, has been removed to facilitate root protection to utilities.

15. Has there been any other rework done?

a) What has been the delay as a result of this?

Response:

TfNSW advises that construction rework has been carried out across the alignment of the CBD and South East Light Rail project. This construction rework is carried out in line with the Independent Certification process and is standard practice on infrastructure projects.

16. Is it true that water main burst on Devonshire St on Monday 26 November, flooding several shops?

a) What compensation or support has been provided to these shops

Response:

At approximately 4pm on Monday 26 November 2018, Acciona advised TfNSW that “during the removal of a standpipe from a hydrant at Devonshire St/Holt St, a valve failed causing a gush of water to the site for approximately 20 minutes. An excavation filled and overtopped resulting in the loss of potable water and potentially sediment to stormwater. As such, the incident has been notified to the EPA.”

On that Monday evening, ALTRAC advised TfNSW that the issue had been fixed and that “there was no damage to property”.