Ms Rachel Simpson
Director
Joint Select Committee on the Cross City Tunnel
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Simpson

JOINT SELECT COMMITTEE ON THE CROSS CITY TUNNEL – TRANSCRIPT OF EVIDENCE OF RTA OFFICERS

I refer to your letter dated 8 December 2005, and to your letter to Mr Paul Forward of the same date.

As requested, attached is the transcript proof with suggested corrections marked by hand. These include Mr Forward's corrections.

Also attached are the documents requested in your letter and during the hearing (see page 10 of the transcript proof):

1. section on the Cross City Tunnel from the document entitled "Roads and Traffic Authority – Port Jackson Electorate";

2. advice obtained by the RTA from Bret Walker SC and tabled at the hearing on 6 December 2005;

3. surveys of bus travel times into the city prior to the opening of the Cross City Tunnel and subsequent to it; and

4. copy of the Cross City Tunnel project deed.

As previously advised, the RTA is preparing responses to questions raised in your letter and the attachments to it, as well as questions raised during the 6 December 2005 hearing itself. I anticipate being in a position to forward RTA's formal responses to you in mid-January 2006.

If you have any queries, please feel free to contact RTA's Acting Corporate Counsel, Helen Vickers, on 9218 6760.

Yours sincerely

21/12/05

Mike Hannon
Acting Chief Executive

Roads and Traffic Authority
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ROADS AND TRAFFIC AUTHORITY

BLIGH AND PORT JACKSON ELECTORATES

CROSS CITY TUNNEL

ISSUE:

Construction of the Cross City Tunnel (CCT).

BACKGROUND:

- The modified CCT proposal was approved on 12 December 2002, subject to 265 conditions.
- The Roads and Traffic Authority (RTA) signed an agreement with Cross City Motorway on 19 December 2002 to finance, design, construct and operate the Cross City Tunnel.
- Construction works on the Cross City Tunnel commenced on 28 January 2003.
- The Cross City Tunnel has created 1,600 direct jobs and approx 3,600 indirect jobs.

CURRENT POSITION:

Kings Cross/Rushcutters Bay

- Traffic changes were implemented from 14 April 2003. Changes included minor lane width reductions and temporary single lane closures (outside peak periods) on the approach and exit lanes to the Kings Cross Tunnel.
- Completed works include excavation of the eastbound exit and westbound entry ramps (pavement and civil works fit-out is in progress); the 40 metre eastern landbridge extension from Ward Avenue and the 6 metre western landbridge in Darlinghurst (landscaping is in progress); the Ward Avenue ramp construction; and the relocation of services (eg stormwater, water). Drainage and kerbing works are progressing.

Sydney Western Central Business District (CBD)

- Traffic changes have been implemented in the Sydney Western CBD including relocation and closures of traffic lanes. These changes are ongoing.

Darlinghurst/Woolloomooloo

- From July 2003 Bourke Street was closed at William Street to facilitate construction of the CCT. Pedestrian access from William Street to Bourke Street has been available since late October 2003. Bourke Street reopened to southbound traffic on 24 January 2005.
- Construction of the Tunnel Control Centre in Palmer Street is complete and the Cross City Motorway consortium now occupies the building.

William Street Upgrade

- William Street upgrade is in progress. The central median and some existing trees have been removed and new trees planted. More than 80 new Plane trees will be planted along both sides of William Street, doubling the current number of trees. Following the opening of the tunnel, footpaths will be widened, cycle lanes provided and the number of traffic lanes reduced.

Cahill Expressway/Sir John Young Crescent

- Works are in progress in the Cahill Expressway from north of Palmer Street to the Macquarie Street exit ramp. Works involve realigning the pavement of the Eastern Distributor/Macquarie Street exit immediately north of the Eastern Distributor toll booths. Realigning a section of Sir John Young Crescent to facilitate construction of the new toll free lane has been completed.

.../2

Toll Increase

- An agreement has been finalised to increase the nominal toll from $2.50 (1999) by 15 cents to fund $35 million of project changes.

Mitigation of traffic impacts

- A range of community consultation/communication activities have been used including press releases, media briefings, community letterbox drops, written advice to Government agencies, peak body associations, taxi companies, hire car companies and courier companies, as well as information via the project website, display centres, project 1800 information/complaints line and the community liaison groups.

Tunnel opening

- RTA has received advice that the earliest opening date for the CCT is 12 June 2005.

Darling Harbour

- Construction of the CCT ventilation stack in Darling Harbour is complete. A decision has been made not to illuminate the stack.
- Works on the footbridge linking Darling Harbour and Bathurst Street are near completion.
- Cross City Motorway is working closely with the Sydney Harbour Foreshore Authority to ensure that disruptions are minimised.
- Cut and cover works continue adjacent to Bathurst, Harbour, Day, Sussex and Druitt Streets.

Pyrmont/Ultimo

- Following the opening of the tunnel buses will use bus lanes on the Druitt Street viaduct to travel to and from the Queen Victoria Building at George Street.

Anzac Bridge

- A new pedestrian/cycleway bridge over the White Bay intersection is under construction.

Identification Technology

- Testing of a hi-tech vehicle identification system proposed for use in the Cross City Tunnel by the RTA and Cross City Motorway has been completed.

Community Consultation

- Following consultation with strategic stakeholders such as Woollahra Council, the Paddington Society and the Paddington Traffic Working Party as well as community groups, traffic calming options for Brown Street/Neild Avenue and Glenmore Road were developed and approved by the RTA. Implementation of the traffic calming measures will be undertaken in 2005.
- The Department of Infrastructure Planning and Natural Resources has indicated its agreement with the RTA's recommendation of Option 3 of the feasibility study report on the right turn ban from William Street to Bourke Street, which permits a right turn from William Street to Bourke Street, a half road closure immediately north of the entry ramp to the Eastern Distributor and a full closure of Bourke Street south of William Street.
- Members of the Ultimo Community expressed concerns and requested re-instatement of high level pedestrian access through Darling Harbour. This is not possible as the Western Distributor viaduct has been widened to accommodate an additional traffic lane.

Contact: Garry Humphrey
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Date: April 2005

ROADS AND TRAFFIC AUTHORITY OF

NEW SOUTH WALES

CONTRACTUAL ARRANGEMENTS FOR THE CROSS CITY TUNNEL

MEMORANDUM OF ADVICE

5th December 2005

ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES

CONTRACTUAL ARRANGEMENTS FOR THE CROSS CITY TUNNEL

MEMORANDUM OF ADVICE

1. My instructions concern the contractual arrangements for the Cross City Tunnel ("**CCT**"), a major road infrastructure project in Sydney which commenced operation on 28 August 2005. The CCT is owned by the Roads and Traffic Authority of NSW ("**RTA**"), but is operated by companies forming part of the CrossCity Motorway consortium ("**CCM**"), under contractual arrangements between the RTA and those companies.

2. In this context, I have been asked by the RTA to consider the following issues:

   (a) Does the RTA have power to enter into the CCT contractual arrangements?

   (b) Do the CCT contractual arrangements purport to fetter the RTA's statutory discretion in relation to the management of the road network - in other words, do they seek to preclude the RTA from exercising discretionary powers or performing public duties conferred or imposed on it in respect of the road network?

   (c) Does the principle of law that a public authority cannot fetter its discretion (that is, preclude itself from exercising discretionary powers or performing public duties) by contractual or other undertakings apply to the CCT contractual arrangements?

   (d) In the event that the RTA were to revoke or alter certain traffic restrictions to which the CCT contractual arrangements refer, would the RTA be liable to pay compensation or provide other relief to the companies who are parties to those arrangements?

BACKGROUND

3. I am instructed that the relevant background is as follows.

Contractual arrangements

4. The RTA has entered into a series of agreements in relation to the CCT, which include:

   (a) the Cross City Tunnel Project Deed dated 18 December 2002, to which the RTA, Cross City Tunnel Nominees No 2 Pty Limited ("**Trustee**") and Cross City Motorway Pty Limited ("**Company**") are parties ("**Project Deed**");

   (b) the Cross City Tunnel Project First Amendment Deed dated 23 December 2004, which has been executed by the parties to the Project Deed ("**Amendment Deed**"); and

   (c) a Deed of Guarantee dated 18 December 2002, to which the Minister for Roads, the Company, the Trustee, Cross City Motorway Finance Pty Limited ("**Borrower**"), Westpac Administration Pty Limited ("**Security Trustee**"), Westpac Banking Corporation ("**Senior Agent**") and the RTA are parties.

5. The agreements I have identified above contain a number of defined terms. I have identified those terms in this memorandum, where relevant for the purposes of my advice, by initial capital letters.

6. The Project Deed expressly provides (in clause 18.1) that nothing in it in any way limits or restricts the ability or power of the RTA or the Government, directly or through any Authority, to:

   (a) change the Sydney road and transport network or any traffic or Transport System;

   (b) extend, alter, close or upgrade existing tollways, freeways and other roads;

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

(d) construct new transport routes or establish new transport services;

(e) implement Government policies; or

(f) otherwise do anything which, subject to the Project Deed, they are empowered to do by Law.

7. Under the Project Deed, the parties acknowledge and agree (in clause 18.2) that the Company's Work includes obligations on the Trustee to carry out certain local road works that involve:

(a) specified restrictions on traffic movements for both eastbound and westbound traffic in William Street;

(b) specified restrictions on traffic movements on both the western and eastern parts of Park Street;

(c) specified closures of Druitt Street to through traffic for both westbound and eastbound traffic; and

(d) the restriction of the number of lanes available in the Kings Cross Tunnel for both westbound and eastbound traffic.

8. The Project Deed also provides (in clause 19) a regime to address the consequences of the removal of any of the traffic restrictions to which I refer in paragraph 7 above and in the event that certain other specified actions are taken by the RTA (which are identified in clause 18.3 to 18.6), if those consequences involve a Material Adverse Effect.

9. A Material Adverse Effect will occur when there is a material and adverse effect on:

(a) the ability of the Trustee and the Company (viewed collectively) to carry out the CCT project in accordance with the RTA Project Documents;

(b) the ability of the Borrower, the Trustee or the Company to pay to its financier

under the Debt Financing Documents the amounts due under, and substantially in accordance with, the Debt Financing Documents (including their ability to repay principal on its maturity); or

(c) Equity Return.

10. The regime includes requirements for notice to be given, for the Trustee and the Company to use all reasonable endeavours to mitigate the consequences of any such event or circumstance, and for negotiations between the parties in good faith with a view to enabling the repayment of debt and a return on equity on basis set out in the Project Deed.

PAFA Act approval

11. On 6 December 2002 the Minister for Roads sought the approval of the Treasurer for the RTA to enter into a joint financing arrangement that involved the financing, designing, construction, operation, maintenance and repair of the CCT. The approval sought related to arrangements described in documents supplied to the Treasury Those documents provide for traffic restrictions to which I refer in paragraph 7 above.

12 On 16 December 2002 the Treasurer approved the arrangements for the Cross City Motorway Project as a *"joint financing arrangement"* pursuant to section 20(1) of the *Public Authorities (Financial Arrangements) Act* 1987 (**"PAFA Act"**).

13. The arrangement which the Treasurer approved included a statutory guarantee by the Government of New South Wales for the due performance of the RTA's obligations under the joint financing arrangement. The Treasurer appointed the Minister for Roads as the person who was to execute the guarantee on behalf of the Government. On 18 December, 2002 the Minister for Roads executed the Deed of Guarantee pursuant to section 22B of the PAFA Act.

Planning approval

14. On 3 October 2001, the Minister for Planning issued an approval for the construction and operation of the CCT pursuant to section 115B(2) of the *Environmental Planning and Assessment Act* 1979 (the **"Planning Approval"**). The Planning Approval was modified by the Minister for Planning on 12 December 2002, to accommodate changes to the CCT which arose in the course of the tender process.

ADVICE

15. I have addressed below each of the issues which I have been asked to consider in turn.

Issue (a) - Does the RTA have power to enter into the CCT contractual arrangements?

16 Yes.

17. The RTA is constituted under the *Transport Administration Act* 1988 (**"Transport Act"**) as a statutory body representing the Crown, and as a body corporate capable of entering into contracts.

18. Under the *Roads Act* 1993 (**"Roads Act"**) a roads authority may carry out road works on any public road for which it is the roads authority and on any other land under its control. That power extends to the soil beneath the surface of the road and the airspace above such surface as well as any tunnel forming part of a road (Roads Act Schedule 1 Part 3). The term *"road work"* is defined to include any kind of work, building or structure (including a tunnel) that is constructed in or installed on or in the vicinity of a road.

19. Furthermore, under section 52 of the Roads Act, the Minister for Roads may declare any road proposed to be constructed on land owned or to be owned by the RTA to be a tollway and toll may be imposed on users of such tollway Although such a declaration has the effect that any existing public road the subject of the declaration ceases to be a public road, it nonetheless remains *"a road"* following such declaration (section 52(2)). As a matter of statutory construction, section 52(2) cannot have application to a *"road proposed to be constructed"*. However, when a road that is proposed to be constructed has been constructed, it is then a *"road"* for the purposes of the Roads Act.

20. It is thus within the power of the RTA and the Minister for Roads to cause the CCT to be built and to authorise the imposition of a toll on its users.

21. Under the Transport Act, the RTA has the functions conferred on it by or under the Transport Act, as well as under the Roads Act and certain other Acts which are not relevant for present purposes (section 46). In particular, the RTA also has the power to perform the functions referred to in section 52A of the Transport Act, which include reviewing the traffic arrangements in connection with the movement, regulation and control of traffic and formulating and adopting plans and proposals for the improvement of such arrangements. The Transport Act further empowers the RTA to enter into contracts or arrangements for the carrying out of works, the performance of services and the supply of goods or materials within New South Wales and beyond (section 53).

22. Under the Transport Act, the affairs of the RTA are managed and controlled by its Chief Executive and any act, matter or thing done by the Chief Executive in the name of, or on behalf of the RTA is taken to have been done by the RTA (section 48). In addition, the Chief Executive is, in the exercise of his or her functions, subject to the control and direction of the Minister for Roads (section 49).

23. The RTA thus has power to construct roads, tollways and road tunnels and the Chief Executive has power to enter into contracts for the performance of such functions, subject to the control of, and any direction from, the Minister for Roads.

24. The PAFA Act enables the Treasurer, by order in writing, to authorise a specified authority (which includes the RTA) to exercise functions that include entry into and maintenance of financial arrangements or joint venture arrangements (section 2B). The PAFA Act applies despite anything in any Act or statutory rule enacted before the commencement of the PAFA Act (section 2C(1)). Furthermore, any Act or statutory rule enacted after the commencement of section 2C of the PAFA Act is to be construed as having effect subject to the PAFA Act, except to the extent that any later Act *expressly* overrides the provisions of section 2C of the PAFA Act (section 2C(2)). There is no such

express overriding provision in any relevant statute.

25. The arrangements entered into between the RTA on the one hand and the Company and Trustee on the other are a *"joint financing arrangement"* within the meaning of section 5A of the PAFA Act and are also a *"financial arrangement"* within the meaning of section 3 of the PAFA Act.

26. Relevantly, the PAFA Act provides (in section 20(2)) that the RTA may do all things necessary or convenient to be done in connection with a *"joint financing arrangement"*. In particular, the RTA is empowered to *"enter into any contract, agreement or other transaction"* (section 20(3)(a)), *"incur any obligations under a contract, agreement or other transaction"* (section 20(3)(b)) and *"make any covenants or promises, including those which are absolute and unconditional"* (section 20(2)(d)).

27. The PAFA Act further provides that the Treasurer may give his or her approval to the entry into a specific joint financing arrangement by the RTA (section 20(1)). The entry by the RTA into such a specific joint financing arrangement requires a recommendation from the Minister for Roads and the written approval of the Treasurer beforehand (section 20(1)). When given, the written approval of the Treasurer for the entry into the particular joint financing arrangement is conclusive evidence that anything done by the RTA in accordance with such approval is authorised by the PAFA Act (section 21(1)).

28. The Government of New South Wales is empowered to be a statutory guarantor for the RTA in respect of the performance of any obligations incurred by the RTA as a result of or in connection with its entry into, or participation in, any arrangement or transaction as authorised by the PAFA Act (section 22B(1)). Relevantly, the Government is empowered to guarantee the due performance by the RTA of any obligations incurred by it as a result of, or in connection with its entering into, or participating in, any arrangement or

transaction as authorised by the PAFA Act. (section 22B). This was done by the Minister for Roads in connection with the CCT by a Deed of Guarantee dated 18 December 2002.

29 The joint financing arrangement entered into by the RTA in relation to the CCT was one which was approved by the Treasurer as contemplated by sections 20 and 21 of the PAFA Act and, as a consequence, the powers conferred on the RTA by section 20(2) and section 20(3) of the PAFA Act took effect. The relevant arrangements included the traffic restrictions presently under discussion. Such restrictions were thus authorised by the PAFA Act.

Issue (b) - Do the CCT contractual arrangements purport to fetter the RTA's statutory discretion in relation to the management of the road network - in other words, do they seek to preclude the RTA from exercising discretionary powers or performing public duties conferred or imposed on it in respect of the road network?

30. No.

31 The provision made by clause 18.1 of the Project Deed is clear and unequivocal. The Project Deed expressly preserves all existing discretions and permits their due exercise. This provision does not infringe the common law principle to which issue (c) refers - rather, it conforms with it. I have addressed the common law principle in my response to issue (c) below.

32 Furthermore, it should be noted that it is the Company and the Trustee on whom the obligation to carry out the restrictions on traffic movements and relevant road works is cast. The agreement proceeds on the assumption that those works and the consequences that flow from them will be permitted by the RTA. However, neither the Government nor the RTA has bound itself *not* to exercise any statutory discretions in such a way as to prevent those works from being done or maintained in place.

33. Indeed, clause 18.5 of the Project Deed contemplates that the RTA may depart from the traffic restrictions contemplated by clause 18.2, and clause 18.4 contemplates that the RTA may make other changes to traffic and transit lanes. Similarly, clause 18 5 expressly provides for the consequences of the traffic restrictions referred to in clauses 18.2(a) and 18.3 not being maintained during the term of the Project Deed.

34. Nothing in the Project Deed suggests that the remedy of specific performance or injunction would be available against the RTA or the Government in respect of changes to the relevant traffic restrictions.

35. A remedy by way of negotiation of the contractual provisions is contemplated, although such entitlement is subject to certain conditions and limitations. Importantly, the remedy in the Project Deed does not contemplate any breach of obligation if the RTA or the Government alters the traffic restriction in the exercise of its statutory functions and powers. Rather, it provides for the negotiation of a compensatory outcome for the exercise of such statutory functions and powers.

Issue (c) - Does the principle of law that a public authority cannot fetter its discretion, (that is, preclude itself from exercising discretionary powers or performing public duties) by contractual or other undertakings apply to the CCT contractual arrangements?

36. The principle applies, because it is of general application. But it has not been infringed. And the PAFA Act affects its possible application, in any event.

37. I am instructed that, notwithstanding the existence of clause 18.1 of the Project Deed, a question has been raised as to whether the substance of the Project Deed nevertheless unlawfully imposes a fetter on the discretion of the RTA. Presumably, such a question relies on the legal doctrine by which the powers of government are said to be subject to the limitation that the executive cannot, by contract, fetter its freedom of action in matters which concern the welfare of the state. That doctrine has been described as *"executive necessity"* (Hogg & Monahan: *Liability of the Crown*, 3rd Ed 227; Aronson & Whitmore: *Public Torts and Contracts* 183).

38. The doctrine of executive necessity has been subject to considerable judicial comment in Australia and the United Kingdom. I have reviewed a number of the authorities in this regard, including (among others) *Ayr Harbour Trustees v Oswald* (1883) 8 App. Cas. 623, *Rederiaktiebolaget Amphitrite v The King* [1921] 3 KB 500, *William Cory & Son v London Corporation* [1951] 2 KB 476, *Commissioner of Crown Lands v Page* [1960] 2 QB 274, *Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth* (1977) 139 CLR 54, *A and Ors v Hayden & Ors* (No. 2) (1985) 59 ALJR 6, *South Australia v The Commonwealth* (1962) 108 CLR, *Attorney General (NSW) v Quin* (1990) 170 CLR 1 and *L'Huillier v State of Victoria* [1996] 2 VR 465.

39. From an examination of these cases, I am of opinion that the law in Australia does include a limiting principle relating to contracts by the Crown and public authorities that, on their true construction, prevent or fetter the future exercise of statutory or other governmental discretions.

40. The correct statement of the principle for Australia is, in my opinion, that set out by Mason J in *Ansett Transport Industries*, namely that:

> *"There is a general principle of law that a public authority cannot preclude itself from exercising important discretionary powers or performing public duties by incompatible contractual or other undertakings"* (at 74)

41. The policy underlying the principle involves the balancing of two competing considerations:

- on the one hand, public confidence in government contracts would be significantly impaired if all contracts affecting the public welfare or future executive action were not to be binding on the Government or its authorities merely because they may affect the public welfare; and

- on the other hand, it is not in the public interest that either the Government or a public authority should disentitle itself or its successor from performing a statutory duty or from exercising a discretionary power conferred by statute, by a contract which seeks to bind it not to perform the duty or to exercise the discretion in a particular way in the future.

The conflict between these two considerations is discussed by Mason J in *Ansett*

Transport Industries (supra at 74-75).

42. In any arrangement pursuant to which a government procures goods, services or infrastructure, there may be circumstances in which a change by government in its requirements will affect the returns which the provider of those goods or services or that infrastructure will receive under the arrangement. In such arrangements it is not, as a matter of form or substance, a fetter on the discretion of a government for a contract to provide that a consequence of a change by government of its requirements, in particular a change which is specifically contemplated in that contract, may give rise to an adjustment of the position of the parties under that contract.

43. As I have indicated in response to issue (b) above, that is the approach which is taken in the terms of the Project Deed.

44. In these circumstances, I am of the opinion that the Project Deed does not:

(a) directly fetter a statutory or other relevant discretion conferred on the RTA in relation to the control of traffic or public transport; or

(b) prevent the RTA from exercising its discretions in a manner inconsistent with the provisions of clauses 18.2 to 18.5 of the Project Deed; or

(c) indirectly do either of the foregoing.

45. The provisions of the Project Deed do not conflict with the doctrine of executive necessity and, in my opinion, the RTA's entry into the Project Deed is not rendered invalid by reference to that doctrine.

46. Even if the doctrine of executive necessity could otherwise have had an ambit of operation in respect of the arrangements between the RTA, the Trustee and the Company (which, as I have stated, I do not consider to be the case here), then the written approval

of the Treasurer that the arrangements contained in the CCT documentation provided to him under the PAFA Act would effectively override the operation of that doctrine. This is because the PAFA Act expressly provides that such an approval operates despite the provisions of any other law (sections 2C(1), 20(1) and 21(1)).

Issue (d) - In the event that the RTA were to revoke or alter certain traffic restrictions to which the CCT contractual arrangements refer, would the RTA be liable to pay compensation or provide other relief to the companies who are parties to those arrangements?

47. As I have already indicated, the Project Deed contemplates that the traffic arrangements specified in clause 18 may be changed. Any such change would trigger the application of clause 19.1 of the Project Deed, as would a series of events within the control of the RTA that are detailed in clauses 18.5 and 18.6. The consequences specified in the Project Deed differ to some extent for each of the various changes which are contemplated.

48. Thus, where the change involves connection of roads, tunnels or other means of vehicular or pedestrian access to the tunnel, the RTA must indemnify the Trustee and the Company against any loss suffered or incurred by the Trustee or the Company in respect of physical damage to the tunnel caused thereby (clause 18.6(d)).

49. Alternatively, when changes in the traffic restrictions referred to in clause 18.2(a) of the Project Deed are made and these have a Material Adverse Effect then, subject to certain conditions, the Trustee or the Company must give notice to the RTA and both the Company and the Trustee must use all reasonable endeavours to mitigate the adverse consequences and ensure that the redress afforded under the Project Deed is efficiently applied and structured and must enter into negotiations with the RTA (clause 19.1). Such negotiations involve giving consideration to:

(a) amending the RTA project documents and making consequential amendments

to the other project documents;

(b) varying the term of 30 years and two months under the existing agreements;

(c) varying the financial or other contributions of the parties;

(d) adjusting the Toll Schedule; and/or

(e) taking such other action as may be appropriate

50. It is important to note that, under the Project Deed, a Material Adverse Effect will occur only when there is an effect on the specified matters which is both material and adverse.

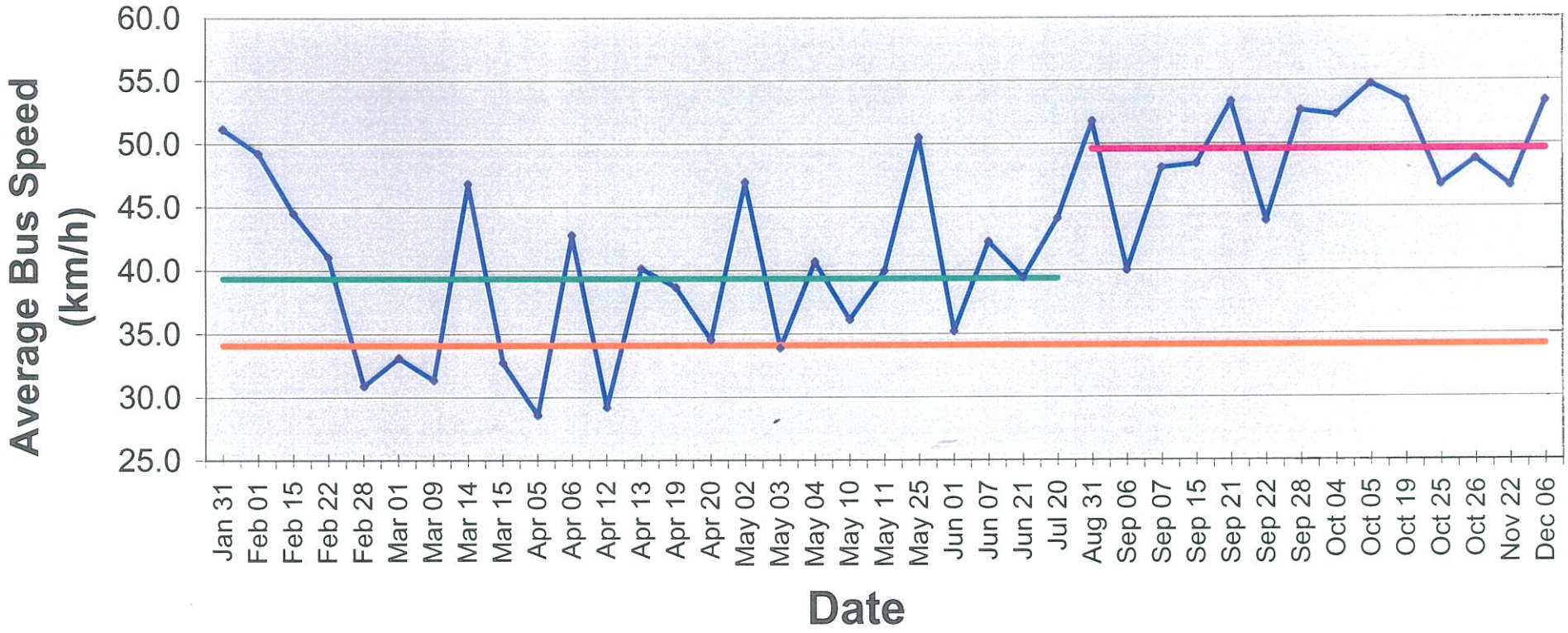
51. There is thus a number of remedies available to the Trustee and the Company if the traffic arrangements contemplated by the Project Deed were to be altered by the RTA. It is not possible to determine whether the RTA be liable to pay compensation to the Trustee or the Company or provide other relief to them under the Project Deed without specific information on the traffic restrictions concerned and the consequences of the revocation or alteration for those parties.

Bret Walker

CHAMBERS

5th December 2005

Anzac Bridge - Bus travel Time Survey - 2005



- 2005 Bus travel time daily survey averages
- March 2004 Avg Speed From T.T Survey - 34.1 km/h
- Average of 2005 Daily figures (post CCT opening) - 49.6 km/h
- Average of 2005 Daily figures (pre CCT opening) - 39.3 km/h
- Note 1: Cross City Tunnel Open on August 29 2005
- Note 2: Anzac Bridge Reconfiguration to 8 lanes (incl. removal of T2 lane eastbound) was completed 26 January 2005