

Our Ref: 5M3975

JSC CROSS CITY TUNNEL



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27 January 2006

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

Dear Ms Simpson

JOINT SELECT COMMITTEE INQUIRY INTO THE CROSS CITY TUNNEL

I refer to your letter dated 8 December 2005 requesting the RTA's response to certain questions on notice and to my response dated 21 December 2005.

Attached are RTA's responses to questions raised in your 8 December 2005 letter and the attachment to it, together with responses to questions taken on notice that were highlighted in the proof of transcript attached to your 8 December 2005 letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Hannon', written over a faint horizontal line.

Mike Hannon
Acting Chief Executive

Joint Select Committee Inquiry to the Cross City Tunnel

Responses to Questions on Notice

Additional toll increase

RTA assumes that the questions regarding the "additional toll increase" relate to the increase to the base toll under the First Amendment Deed.

- 1. Do you regard the toll increase as a significant change to the CCT project?**

The base toll increase of 15 cents for cars and 30 cents for heavy vehicles was approved to finance changes to the scope of works for the project required after contract execution. Changes to the scope of works are contemplated in the contract which entitles CCM to be paid for such changes that increase the work CCM must perform under the contract. Approval to fund those changes by way of an increase in the base toll was given by the then Minister for Roads and the then Treasurer prior to the First Amendment Deed being entered into by the RTA.

- 2. Were any changes to the tunnel's toll charges since the 2002 Supplementary EIS subjected to a community consultation process, or made available to the public for review or comment?**

If so, outline what changes were presented to the community, when it took place, how the consultation was carried out and who participated.

If not, why not?

Under the Environmental Planning and Assessment Act 1979, the proposed amendment to the toll did not require a modification to the existing planning approval.

Accordingly, there was no requirement to conduct a formal environmental impact assessment process.

- 3. Were any changes to the tunnel's toll charges since the 2002 Supplementary EIS subject to planning approval?**

If so, outline what changes underwent planning approval, when it took place and who assessed and granted the approval.

If not, why not.

Please refer to answer 2.

- 4. Do you regard the changes to tolling as a significant change to the project, given that they are significantly outside the tolling regime that was approved?**

Please refer to answers 1 and 2.

5. **Do you believe that the RTA should have sought a planning change for the toll increase that took place after the initial planning approval was granted?**

Please refer to answer 2.

6. **Given the extensive Environmental Management Systems that you are responsible for, did you discuss with any other government agency or CCM the possibility of seeking approval for the additional toll increase? If not, why not?**

Please refer to answer 1.

7. **Were the time pressures to complete the CCT contract negotiations a factor in the schedule for the community consultation process?**

No.

Road traffic changes:

8. **Was the RTA obliged to disclose the potential financial risk that may result in a Material Adverse Effect (MAE) under the contract with CCM in the original planning approval?**

The conditions of planning approval do not consider contractual matters such as the allocation of commercial risk.

9. **Did the RTA disclose these financial risks from removing road closures to any other government agency during the approval process?**

Representatives of NSW government agencies including Treasury, T-Corp and the State Contracts Control Board, were involved in the procurement process and were aware of the allocation of commercial risk for the project.

10. **Did you provide advice to any party on this subject? If so, what was it?**

In accordance with the "Working With Government Guidelines for Privately Financed Projects", submissions to the Budget Standing Committee of Cabinet contained information about the allocation of commercial risk for the project. Interaction consistent with normal processes occurred between RTA and its Minister.

11. **Will the RTA need to seek planning approval to reverse any of the road closures that were introduced under the project deed?**

Any change to traffic arrangements would require consideration of whether the proposed change is consistent with current planning approvals. A request for modification to the planning approval would be required if the proposed change would be inconsistent with the planning approval.

12. Will the RTA be obliged to disclose the potential financial risk is (sic) road closures may result in a Material Adverse Effect (MAE) under their contract with CCM?

In accordance with applicable Australian Accounting Standards, the RTA makes relevant disclosures in its financial statements.

13. Are there any other road, tunnel or major infrastructure projects where a government agency has faced a potential financial penalty under a contract with the private sector for making road or traffic changes? If so, please list them.

Consistent with Government's policy document for private sector projects "Working with Government: Guidelines for Privately Financed Projects", government may take network risk where that represents value for money. Examples of this in NSW projects include:

- Eastern Distributor (Project Deed, clause 2.6A)
- M2 Motorway (Project Deed, clause 2.1(d)(iv))
- M5 Motorway (Project Deed, clauses 2.5 and 2.6)

The Victorian government also bears some network risk on its tollroad projects. See for example:

- Eastlink (Mitcham to Frankston Freeway) (clauses 36.1 and 36.4)
- Citylink

14. Did Premier lemma seek your advice in this matter before making statements to the media that the Government's position on road changes under the contract was watertight?

The portfolio Minister to whom the RTA is responsible is the Minister for Roads.

15. When did you first receive advice from Clayton Utz about the potential financial risk to the RTA related to road closures?

Following a competitive tender process, Clayton Utz was retained by the RTA, to provide external legal assistance for the Cross City Tunnel project. Clayton Utz has provided ongoing advice to the RTA since that time.

16. Will the RTA be required to submit a planning approval for the removal or reversal of traffic changes if they decide to proceed with any changes?

Please refer to answer 11.

- 17. Do you know what the potential financial risk associated with each of the 22 road changes that Clayton Utz classified as Category A in its advice to the RTA dated 8th October 2005?**

RTA has not undertaken detailed financial analysis of the financial impact of the 22 road changes.

- 18. Why was there no public consultation about the financial penalties that apply if the RTA seeks to reverse the tunnel related road closures?**

Please refer to answer 8.

- 19. Why did the RTA not disclose these as part of Risk Management considerations.**

Please refer to answer 8.

- 20. Given the financial penalties apply to removing road closures that do not have planning approval, to what extent is the RTA's contract with CCM void regarding the financial penalties for removing road closures?**

The Project Deed is not void in any respect. Please refer to advice from Bret Walker SC tabled by the RTA on 6 December 2005.

Ventilation stack:

- 21. Why didn't the requirement to change the ventilation system operation undergo community consultation? (refer to 2003 Summary of Contract, Section 3.3.1 Operations & Maintenance extract).**

The requirement for CCM to operate the tunnel's ventilation system so as to achieve a specified minimum discharge velocity at the top of the Darling Harbour ventilation stack during the first five years of operation, was required by the RTA to provide additional assurance that the requirements of the planning approval in relation to ambient air quality would be achieved at the outset. The additional discharge velocity provided was not required by the planning approval and was imposed by the RTA as an additional safeguard, accordingly no community consultation was required.

- 22. Why would the ventilation system operation be expected to change after five years?**

CCM is contractually obliged to meet the air quality requirements of the planning approval. During contractual negotiations, CCM indicated that they did not consider the additional discharge velocity was required to meet the planning approval. Notwithstanding CCM's assurance, RTA was concerned that an additional safeguard be imposed during the early stages of tunnel operation. At the end of the five years, it will be a matter for CCM to ensure that

the discharge velocity employed for the ventilation stack is sufficient to meet the planning approval conditions.

Environmental agencies such as the Department of Environment and Conservation have also projected a decrease in pollutant levels from vehicle emissions in future years, due to new improved fuel standards, engine technology etc.

General:

23. Did any of the changes to the CCT tunnel project post the 2002 Planning approval trigger a modification to the planning approval?

Two changes to the project required a modification to the planning approval. These were in relation to the Tunnel Control Centre and the method of measuring Carbon Monoxide levels inside the tunnel.

24. If yes, can you outline what changes did trigger a planning approval modification.

On 26 February 2004 the planning approval was modified in relation to the Tunnel Control Centre by the Minister for Infrastructure and Planning.

On 24 September 2004 the planning approval was modified in relation to the method of measurement of in tunnel Carbon Monoxide levels, by the Minister for Infrastructure and Planning.

25. If not, do you regard this as a problem or do you support the conduct of your department in not subjecting any of the project changes to further planning approval?

Not applicable.

26. Has your department received any representations from the Department of Planning after 2002 regarding subsequent planning approvals for the Cross City Tunnel project? If so, please list them.

The only correspondence relating to a modification to the planning approval was in relation to the following:

- Tunnel Control Centre. Correspondence dated 23 January 2004 and 26 February 2004; and
- Method of measurement of Carbon Monoxide inside the Tunnel, correspondence dated 24 September 2004.

- 27. In January 2003, the Gateway Deed was signed between the RTA and the City of Sydney for works on five major projects in the City. Is it correct that two of these projects, the William Street works and the Queens Cross works (top of William Street in Kings Cross) were directly related to the Cross City Tunnel?**

The William Street works and Queens Cross works were required to be carried out by CCM as part of the Cross City Tunnel project work. The traffic arrangements for the Queens Cross works were developed by City of Sydney Council following the signing of the Gateways Agreement.

- 28. What public consultation was carried out about the works at Queens Cross?
When were the consultations done, and who was consulted?
What are the exact dates and the people and groups involved in these consultations?
What role did the City of Sydney have in these consultations?**

Following consultation with, and at the request of the City of Sydney changes to the traffic arrangements at Queens Cross were incorporated into the Cross City Tunnel Urban Design and Landscape Plan. The Plan was prepared "to the satisfaction of the Director General" pursuant to Condition of Approval No. 166. Although Condition of Approval 166 did not oblige RTA to consult the community, the Kings Cross Community Liaison Group was provided information about the Plan.

As the roads authority for Queens Cross, City of Sydney Council was responsible for community consultation in relation to the Queens Cross works.

- 29. Would you please describe the road works agreed upon in the Queens Cross project?
Are these works being undertaken to funnel traffic into the Cross City Tunnel?**

Please see the **attached** plan of the works at Queens Cross. The works at Queens Cross are being undertaken to further the objectives of the Gateways Agreement. The objectives of the Gateways Agreement for Queens Cross are stated as: "Modification of the traffic and pedestrian movements in the Queens Cross Square area in conjunction with the Cross City Tunnel, including the following works; reduction of carriageways to release an island zone suitable for a major sculpture of water element, realignment of the carriageways to devolve "freeway" alignments and to maximise the pedestrian ground plane, possible introduction of new building elements to redefine streetscape spaces and organise key vistas, improvement of pedestrian access and street front / local business activities, introduction of new smartpoles, street trees and granite paving, possible refurbishment and / or replacement of awnings, possible façade treatments / improvements, possible public art works."

- 30. How can the street changes at Queens Cross be changed? Would it be the responsibility of the RTA or City of Sydney to make these changes? Would you please explain the process involved for making these changes?**

As the responsible roads authority, City of Sydney Council could resolve to change the Queens Cross area. Council has some delegated powers from the RTA through its Local Traffic

Committee for the regulation of traffic on public streets. Traffic changes resolved by City Of Sydney Council would require the concurrence of the RTA at the Local Traffic Committee.

- 31. Are you aware that at the one public meeting on the Bourke Street closure the majority of people present voted to keep Bourke Street open? Is it true that the Cross City Motorway consortium didn't ask for Bourke Street to be closed as part of the William Street project? So why was Bourke Street closed? Was an economic study done before you closed Bourke Street and narrowed other streets in the vicinity?**

The process to determine the traffic arrangements at Bourke Street included community consultation as required by condition 288 of the planning approval.

At the first community meeting that was held in relation to Bourke Street on 30 June 2004, RTA's preferred option at that time, which included no closure of Bourke Street to the south of William St, was not favoured. There was near unanimous support for RTA to develop an option that included the closure of Bourke Street to the south of William St.

At the second community meeting held on 20 October 2004, opinion was evenly divided over whether to close Bourke Street to the south of William St, although some members of the community did not appear to understand the tradeoffs available and voted for an option which was not possible, i.e. removing the G loop and keeping Bourke St open. The condition 288 report demonstrates that it was not feasible to both install a right turn into Bourke Street and retain all traffic options.

In the event, the traffic arrangements for local streets are not determined by vote at a public meeting, but rather through a wider process of community consultation and issues investigation.

A detailed report was prepared pursuant to condition 288 of the planning approval in relation to the traffic arrangements at Bourke Street. This is available on RTA's website.

- 32. Are you aware that businesses have gone bankrupt due to the unnecessary closure of Bourke St?
Are you aware that other business owners have said they will have to close very soon due to the unnecessary closure of Bourke St?**

No.

- 33. What consultation has taken place with Emergency Services with regard to street changes in Darlinghurst?**
- 34. What consultation has taken place with Emergency Services with regard to street changes in Woollahra?**
- 35. What consultation has taken place with Emergency Services with regard to street changes in Paddington?**

The design and construction contractors for the project, Baulderstone Hornibrook Bilfinger Berger joint venture consulted with the Police, Ambulance and Fire Brigade services regarding traffic arrangements relating to the project.

The NSW Police have also been consulted through Sydney and Woollahra council traffic committees.

Police and Ambulance services were also contacted during the initial environmental impact assessment process.

The RTA's Traffic Management Centre is also in regular communication with Emergency Services with respect to traffic arrangements on the road network that might impact on their services.

36. Have representatives of the Fire Brigade met with RTA representatives to raise concerns about a closure of the Cross City Tunnel due to an accident or other event?

No.

37. As any closure of the tunnel would result in the few remaining open streets gridlocked and emergency services delayed or prevented from undertaking their work, what plans have you made to ensure the health and safety of people is not put at risk and properties not destroyed in fires if such gridlock on above ground streets eventuates? Why don't you immediately re-open closed roads and widen the narrowed streets so such tragedies won't occur? Will you wait until there are tragedies before making the required changes?

In an emergency, there are a number of measures RTA and emergency services take to facilitate the continued accessibility of emergency services vehicles. These include:

- emergency services vehicles utilising transit lanes
- RTA utilising its network of variable message signs and signal controls to manage traffic (eg setting traffic signals to prevent new traffic from entering an area and to evacuate existing traffic)
- RTA monitoring of the road network from Transport Management Centre using a network of surveillance cameras
- RTA keeping in constant contact with the media to ensure the community has access to current information about changing traffic conditions

These measures are used throughout the Sydney road network on a daily basis.

**38. What consultations have taken place with the ambulance services in Sydney about these street changes?
If such consultations occurred what were the dates of such meetings and what are the names of the persons with whom you consulted?**

RTA consults daily with emergency services about accessibility issues across the road network. RTA also consulted with emergency services during the environmental impact assessment process.

39. If the Government provided filtration in the Tunnel would this be seen as an MAE under the Project Deed?

Generally, the MAE regime in the Cross City Tunnel contract sets out specific events (called MAE Events) which could have a material adverse effect on:

- the ability of the trustee and Cross City Motorway to carry out the project in accordance with the project documents;
- the ability of CCM Finance, the trustee or Cross City Motorway to pay financiers under the debt financing documents in accordance with the terms of those documents; or
- the equity return.

Specific MAE Events include, for example, a change to a condition of planning approval if it requires a change to the Project Works, or a change to the tunnel, or discriminates against the tollway. Project works is a term defined in the contract to mean the physical works the trustee and Cross City Motorway must design construct and complete.

The detail of how any proposed filtration would be required to be carried out, would need to be closely analysed to determine firstly whether it would be an MAE Event under the contract and secondly, whether it would trigger a right to relief under the MAE clauses.

40. Can you explain what the Road User Benefit Cost Analysis is (ref to on p5 of the submission) what it takes into consideration and how it is calculated?

RTA undertakes a Road User Benefit Cost Analysis as part of the environmental impact assessment process. This analysis, which is consistent with Treasury guidelines, looks at the value of travel time savings, savings due to reduced accidents and savings due to reduced vehicle running costs and compares these benefits to the costs of the project represented by the toll charges over the toll concession period.

The Road User Benefit Cost Ratio derived from the analysis, is calculated by dividing total anticipated benefits over total anticipated costs. If the ratio is 3 (at 7% discounting) as is the case with Cross City Tunnel, the total anticipated benefit to users is approximately 3 times the cost to users.

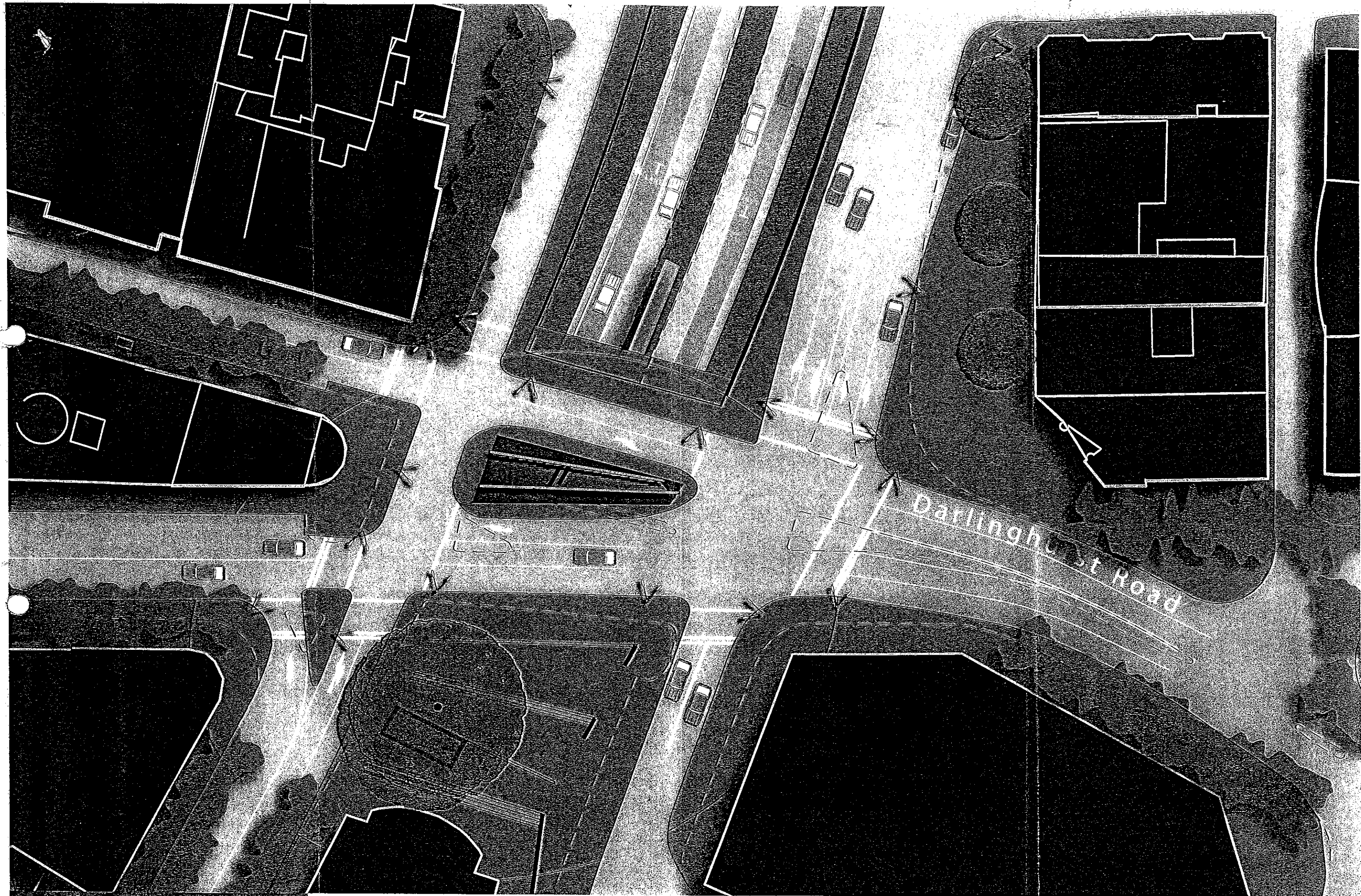
The CCT EIS Chapter 14 (Volume1) provides a description of the Benefit Cost Ratio analysis and Technical paper No. 22 (Volume 7) provides a detailed description of the analysis.

41. Will you supply a copy of the final Cross City Tunnel deed to the inquiry?

All contractual documents relating to the Cross City Tunnel project have been provided to the Parliament. On 21 December 2005 I provided you with a further bound copy of the project deed and relevant attachments (the First Amendment Deed, RTA Consent Deed, Deed of Agreement to Lease and Scope of Works and Technical Criteria).

42. How much has the RTA paid Clayton Utz in legal Fees for the Cross City Tunnel project?

Up to financial close (ie between May 2000 and December 2002) RTA had incurred \$4,680,636 in legal costs and \$61,291 in disbursements. Legal advice included advice on planning processes, development of the project deed and advice on the tendering process.



Queens Cross Streetscape Improvements;