



NSW GOVERNMENT  
**Department of Planning**

**Office of the Director General**

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

DGC06/674

JSC CROSS CITY TUNNEL

12 APR 2006

RECEIVED

Dear Ms Simpson

I refer to your letter of 4 April 2006, concerning questions on notice taken during the Inquiry into the Cross City Tunnel on 31 March 2006.

I am pleased to provide the attached responses to the questions raised.

In relation to the issue of the relationship between the Department and the RTA, which was raised by Ms Rhiannon at the hearing, she undertook to provide further information as to specific cases.

As no details have been forthcoming, it is not possible to provide any response in that regard.

I trust this information clarifies these issues for the Committee.

Yours sincerely

*SHaddad*

Sam Haddad  
Director General

12.4.2006.

## INQUIRY INTO THE CROSS CITY TUNNEL 31 MARCH 2006 – QUESTION ON NOTICE

**Ms LEE RHIANNON:** How do you regulate if tunnel operators and the RTA abide by the conditions of approval or have the conditions of approval proved to be unenforceable?

**Mr HADDAD:** As I said, the obligations of complying with the conditions of approval rest with the RTA. The RTA has the statutory responsibility and obligation to make sure that the conditions are being complied with. What happened between the RTA and the contractors is a matter for them to decide. If there is a non-compliance issue, it is for the RTA.

**Ms LEE RHIANNON:** Planning has no responsibility to ensure that planning conditions, such as the monitoring of pollutants, are enforced?

**Mr HADDAD:** We do. We try our best to verify and we request reports from the RTA essentially to be able to ensure that they are being complied with.

**Ms LEE RHIANNON:** I thought you said at the start of your answer it was the RTA's responsibility.

**Mr HADDAD:** Yes.

**Ms LEE RHIANNON:** Then you said there is a role for Planning. Can you differentiate when it is your responsibility? I would like examples when you have enforced the conditions.

**Mr HADDAD:** There is a set of conditions that has been imposed on the approval itself. The proponent is the RTA. They have to comply with those conditions. There are obligations on them to give us auditing reports independently conducted or for us to conduct certain auditing.

**Ms LEE RHIANNON:** Do you ever conduct them yourself?

**Mr HADDAD:** I will have to double check. We have a specialised unit in the department. As an example, I know people may not accept entirely the outcome, but we have conducted auditing on the M5 East, as an example.

**Ms LEE RHIANNON:** You said you would have to check. Will you take that on notice?

**Mr HADDAD:** Yes, I am happy to take on notice exactly what has been done on the cross city tunnel because they have done a number of verifications and the rest of it. I am happy to come back to the Committee with those details.

**CHAIR:** When you say "they", do you mean the RTA?

**Mr HADDAD:** No, our department, as well as the RTA, which is under obligation to comply with the conditions of consent and reporting mechanisms to the department. I am more than happy to take that on notice.

**Ms LEE RHIANNON:** When we look at all the documents that have come to Parliament, we see many examples where Planning does not monitor but relies on the RTA to confess and report. They are the examples we are seeing. Do you have any examples where you have done it yourself?

**Mr HADDAD:** Yes.

**Ms LEE RHIANNON:** I am also interested in the legal advice. The documents before Parliament also show that Planning accepts the RTA's legal advice. Is that the case when it comes to assessing any breaches of the conditions? Do you rely on the RTA's advice? Would you be able to give us examples where you have your own independent legal advice?

**Mr HADDAD:** We do have our independent legal advice. The immediate example that comes to mind is what we have done on the M5 East where we have questioned the legal advice that was provided by the RTA and have different legal advice. That is one example. In the context of the cross-city tunnel, I am more than happy to verify whether the situation has arisen and I will come back to the Committee.

**ANSWER:**

**The Department has undertaken a review of the RTA's compliance with conditions, prior to opening of the Cross City Tunnel. The review indicated substantive compliance with all the conditions. The Department is not aware of any issues or events that would warrant an audit of this approval being undertaken at this time.**

**The Department will program an audit of the facility in due course and when circumstances warrant it.**

**INQUIRY INTO THE CROSS CITY TUNNEL  
31 MARCH 2006 – QUESTION ON NOTICE**

**The Hon. GREG PEARCE:** I will put the question anyway and that is: Is there a conflict of interest between you in doing the strategic planning and being the approval body later on when the actual projects come up, given that you have drawn them in the strategic plan itself?

**CHAIR:** You can take that question on notice.

**The Hon. GREG PEARCE:** Take it on notice.

**Mr HADDAD:** I can take it on notice, if you like.

**CHAIR:** We cannot continue without a quorum.

**Mr HADDAD:** It is an important issue, but I am happy to come back.

**ANSWER:**

**No. There is no, and ought not to be, an inherent conflict. Complementing both functions (the strategic and the regulatory) should result in a better and more efficient outcome. Strategic planning should deal with the big picture setting and should include an assessment of the need/justification, land use integration, alternatives (social, economic and environmental impacts) – and an appropriate level of community and other input. The approval/regulatory function should then complement the strategic planning by assessing the more detailed environmental and amenity issues at the local/sub-regional levels.**

**INQUIRY INTO THE CROSS CITY TUNNEL  
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**Ms LEE RHIANNON:** Mr Haddad, it is true that the Department of Planning has the power to prosecute, is it not?

**Mr HADDAD:** Yes.

**Ms LEE RHIANNON:** But I cannot find examples where there has been punitive action taken. Can you give us any?

**Mr HADDAD:** No, we have not, against the RTA, to the best of my knowledge, but it does not mean that we do not, or that we are not prepared to take the necessary action, if the impact is demonstrated to be significant. Then our philosophy generally, whether that is right or wrong I do not know, is to first of all try to remedy the action and to convince them, and then after the convincing, if there is a serious breach, a very significant breach, well, our duty is to advise the Government, and them of course, to cease the breach.

**Ms LEE RHIANNON:** If there is a serious breach, would the Department of Planning prosecute—because we cannot find any examples of it?

**Mr HADDAD:** Yes, we will recommend that but, as I am saying, I am not aware of any conditions whereby it was necessary for us to take that action.

**Ms LEE RHIANNON:** But I am just wondering why you would use the word recommend because I do not understand you need to recommend. I just understand you can do it.

**Mr HADDAD:** Yes, we will do it in terms of imposing the conditions and I am implementing those conditions.

**Ms LEE RHIANNON:** Mr Haddad, it is interesting you just spoke about your relationship with the RTA because you must have been in many meetings with the RTA senior staff. Looking at the documents released to the Legislative Council over recent years, one sees many examples where planning representative are overruled by the RTA, or comply with their requirements to change regulations, or to massage regulations to comply with changed circumstances. I am just interested in your comments about your relationship with the RTA because it seems that they are senior in determining the outcomes of these complicated projects.

**Mr HADDAD:** I am more than happy to look into the specific circumstances, but I can assure you that the relationship with the RTA is one of a regulator subjecting proponents to the merit assessment that is appropriate to the case. That is all I can say. If there are some cases where we did not do that or an officer did not do that, I am more than happy to look into it.

**CHAIR:** Do you have any specific cases?

**Ms LEE RHIANNON:** Yes, I have. I will get them together and get them to him. I will put them on notice.

**CHAIR:** So you will send those as questions?

**Ms LEE RHIANNON:** Yes.

**CHAIR:** A member will put those into writing and send them to you following the hearing today.

**Mr HADDAD:** Yes, sure.

**ANSWER:**

To date, the Department has not received any specific questions nor specific case examples from Ms Rhiannon.