

INQUIRY INTO CROSS CITY TUNNEL

Organisation: Cross City Tunnel Action Group
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Telephone:
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Theme:

Summary

18 January 2006

The Director
Joint Select Committee on the Cross City Tunnel
Parliament House
Macquarie Street
Sydney 2000

Dear Ms Simpson

The Cross City Tunnel Action Group (CCTAG) wishes to make a submission to the Inquiry into the Cross City Tunnel (CCT) in relation to the following Terms of Reference:

(a) the role of Government agencies in relation to the negotiation of the contract with the Cross City Tunnel Consortium

The RTA is the proponent for the CCT and therefore holds most of the cards. They negotiated the contracts with the CCT Consortium. It appears to community members that the RTA is the dominant department and other departments such as Health, Department of Environment and Conservation (DEC, formerly EPA), and Planning (formerly Department of Infrastructure Planning and Natural Resources (DIPNR) play second fiddle.

Predictions and Assessments of impacts are carried out by consultants working for the RTA who owe their allegiance to the RTA rather than to the community. There is very little independent, rigorous assessment of this spin doctored advice, apart from that which community groups and councils can muster the funds to carry out.

There is also a fundamental flaw in the assessment process in the piecemeal way that each project's impacts are assessed without reference to the overall longterm and cumulative impacts on the community. No government agency seems to be responsible for assessing the real, long term and cumulative impacts of such projects. DIPNR has completely failed to address this issue in their consideration of Sydney's road tunnels in general and the CCT in particular. For example, there were no assessments of the cumulative impact of multiple tunnel/roadway trips on drivers and passengers travelling through Sydney's road tunnels. While a great deal of attention has been paid to the economic impact of tolls, very little attention has been paid to the health impact of exposure to toxic emissions in such circumstances. DIPNR has not required these impacts to be assessed as part of the EIS, and neither NSW Health nor the EPA have seen it as their responsibility, despite the clear and obvious risks.

A critical flaw in the assessment process is that NSW Health and the EPA/DEC's roles are only advisory, with no adequate resourcing or accountability or power to enforce their expert input. The advice can and in a number of instances has been conveniently ignored by both the RTA and DIPNR.

This issue needs immediate attention and should definitely be taken into consideration in future conditions of approval of road tunnels.

Conditions of approval are set and then contracts are negotiated in private based on these conditions. However, the contracts can then contain clauses that are contradictory to the conditions or to overarching issues of public safety, health and accountability. Other government departments and the community itself is powerless to influence this situation, once a contract is signed. Yet, with DIPNR's permission, the RTA seems to be able to approve variations as long as the RTA satisfies itself that changes are consistent with the approved project!

A clear and simple example is found in the Department of Health's recommendation that signs be erected warning the public to wind up their windows and put their air on recirculate when approaching the tunnel. DIPNR had not required this in the Conditions of Approval and the RTA refused to do this. They reluctantly agreed instead that pamphlets be distributed when people were registering their cars which would include this advice. Two members of the Air Quality Community Consultative Committee for the CCT (AQCCC) have recently renewed their registrations and no such pamphlets were available.

This "pecking order" of Government departments and agencies is totally unacceptable to the community. The RTA is not an appropriate guardian of the health of the community.

(b) the extent to which the substance of the Cross City Tunnel contract was determined through community consultation processes

The RTA negotiates with the public on a concept only and does not include the full detail of the proposal or its implications, presumably believing that the community lacks the knowledge to assess the detail. This is far from the truth and it has been demonstrated that many community members have a high level of expertise to assess the detail and would be in a position to alert the RTA to potential issues.

The RTA should be required to consult with the community in the final stages of the process and in terms of the full detail that is to be included in any proposed contract. Nothing should come as a shock to the community after it is too late to make comment on the proposal.

In fact, the use of PPP type contracts which involve differing proposals for operational and developmental details from the prospective operators makes it impossible for proper community consultation to occur.

When the successful bidder makes a proposal or bid or enters into 'contract' with the RTA, 'specific detail' is hidden under the cloak of 'commercial in confidence'. From then on, matters proceed by craft and stealth until the project is complete. Only from the day of the official opening does the community see the real monster awaken as road closures etc take effect while all the detail of the financial deals are kept hidden along with the 'Material Adverse Effects'.

Although the outline of some of the specific detail was known to some of the community, the full extent of the proposed traffic changes were carefully concealed and the people of the eastern suburbs were unaware of the extent of the road closures/ narrowing that were to occur in an attempt to "force" them to use the CCT, and the implications that this would have for their travel to and from the city. William Street is now a traffic nightmare!

(d) the public release of contractual and associated documents connected with public private partnerships for large road projects

Far too much of the detail of the CCT has been kept from the public under the cover of "commercial in confidence". It is totally unacceptable that documents have only come to light through the efforts of community members of Groups Against Stack Pollution (GASP) and members of the Legislative Council.

(e) the communication and accountability mechanisms between the RTA and Government , including the Premier, other Ministers or their staff and the former Premier or former Minister or their staff

Please refer to comments in (a) above.

It is unacceptable that members of the community could not achieve meetings with relevant Government Ministers during consideration of the CCT proposal and in the lead up to the signing of contracts for the CCT. We were substantially dependant on the RTA to represent our concerns. Members of CCTAG resorted to paying a private lobby company \$20,000 to try to organize for us to meet with Minister Refshauge, Scully or the Premier, Bob Carr. We were unsuccessful in achieving any such meeting. The best we achieved was one meeting with Minister Refshauge's Chief of Staff. In addition, we have had to suffer denigrating comments from Minister Scully referring to us and other members of GASP as "activists", when we are actually concerned members of the community who have had to suffer the consequences of secret deals and incompetence.

(f) the role of Government agencies in entering into major public private partnership agreements, including public consultation processes and terms and conditions included in such agreements

(f) i Public Consultation Processes

It is the view of the CCTAG that the processes used for community consultation need to be revised for any future projects of this nature.

It is inappropriate for the proponent, ie the RTA, to be the sole Government agency conducting negotiations with the community. The RTA puts to the Department of Planning (previously DIPNR) their version of events, their interpretation of community concerns and their proposals which may or may not address all of the community's concerns and which may not do so in an even-handed manner. It is vital that staff from the Department of Planning are present during community consultations as they draft the conditions of approval for the Minister. An example of the importance of this, and the lack of it, in relation to the CCT is as follows:

CCTAG on many occasions told the RTA that the portals at Rushcutters Bay were surrounded by the densest residential area in Australia. The issue of any portal emissions was therefore of the utmost importance to our community. Residents need to know if portal emissions are occurring so that they can choose to shut their windows to protect their health. The AQCC

also needs to be aware if portal emissions are occurring and the extent to which they are an issue in terms of air quality.

In spite of this, the conditions of approval for the CCT were drafted without the requirement for the tunnel operator to tell the community or the AQCCC if portal emissions were occurring! Monitoring results of portal emissions are only required to be advised to DIPNR and the EPA. This was totally unacceptable to the local community who stand to be adversely affected in terms of their health by any portal emissions, and especially in the light of the proven poor track record of the M5 East, and now CCT, tunnel operators. These concerns are informed and justified by the fact that the RTA management of the M5 tunnel accepted the use of unapproved operational plans allowing for extensive portal emissions over periods of many months. This was clearly contrary to the condition which stated that such emissions were to be avoided 'as far as is practical'. The fact that these emissions were unnecessary and resulted from incorrect carbon monoxide readings from an improperly maintained and supervised monitor add to the community concern. Information about these emissions was released only when it became obvious that their full extent would become known through a call for papers by the Legislative Council.

As members of the CCT Inquiry would now be aware, between 1 Oct 2004 and 31 Mar 2005, the stack fans in the M5 East were turned off for "essential maintenance" on almost 100 nights for periods of 5-7 hours. During the majority of these times the tunnel was not closed and emissions occurred through the portals. It goes without saying that, if such a situation occurred in the CCT, it would be a disaster for the thousands of people living around the portals. It is absolutely outrageous that M5 East residents were not notified of this situation, and it is equally outrageous that residents around the CCT portals would not be notified in any similar situation.

Community representatives on the AQCCC approached the Deputy Director General of DIPNR, Sam Haddad, (now Director General, Planning) about this issue in 2005. Following a meeting with him and written correspondence between him and the community members, he wrote on 28-6-05:

"...the Department has advised the RTA that information on portal emissions must be made public on a real-time basis (ie Internet). I am also advised that the RTA will be providing monthly reports on portal emissions to the AQCCC ..."

In other words, DIPNR had realized that this was a valid issue for the community and wanted to do something about it. They would have realized it sooner if they had been present at community consultations!

Unfortunately for the community, the RTA simply refused to comply with the Director General's request for the community to be advised via the internet of any portal emissions and there is now apparently nothing that Planning can do about it. The horse has bolted. They missed the opportunity to put it in the Conditions of Approval and now cannot legally require it, even if the issue relates to an underpinning principle of public safety.

There are also other issues that DIPNR failed to include in the Conditions of Approval and which since they have tried to remedy unsuccessfully because of lack of agreement from the RTA, including community access to monthly in-stack data, and auditing of portal emissions and in-stack limits.

This is a fundamental flaw in the way such projects are approved. Even when the conditions of approval are appropriate for the design assumptions, they are unable to control for unintended consequences. They seem to be cast in stone, unable to reflect changes in health, environmental, or engineering standards or technological improvements. This is an absurd situation for infrastructure projects that by definition have a life cycle of several decades.

This situation needs to be remedied and it has been caused because the RTA alone conducted consultation with the community. The RTA may be good at building roads, but they are not renowned for heeding concerns about the health impacts of their projects! Community consultation cannot be left to the RTA alone.

The role and functioning of the Community Liaison Groups (CLGs) also needs significant improvement in any future projects. From the outset it became clear to CCTAG members of the CLGs that little consideration would be given to community views by the RTA and the RTA would not provide information willingly. The CLGs were being used as a sign off for the various management construction plans (ECMS's). The RTA was required to set up the CLGs under the conditions of approval and they were largely "going through the motions" without the intention of really listening to the concerns of the community members. The RTA would give little consideration to the safety and traffic issues raised by the CLGs. They refused to carry out further local traffic studies apart from those specified in the conditions of approval. No changes to the approved scheme would be supported by the RTA in the face of community suggestions or expressions of concern.

Many CCTAG representatives reported that the process was frustrating and wearing. There was constant friction and the meetings were often heated. Several members resigned during the process out of frustration and a determination not to be "used" by the RTA to fulfill their responsibilities under the conditions of approval.

(f) ii Terms and Conditions included in such agreements

When the successful bidder enters into 'contract' with the RTA, 'specific detail' is hidden under the cloak of 'commercial in confidence'. Only from the day of the official opening does the community see the full extent of what they are now stuck with as road closures etc take effect.

The people of the eastern suburbs were unaware of the extent of the road closures/ narrowing that were to occur in an attempt to "force" them to use the CCT, and the implications that this would have for their travel to and from the city. William Street is now a traffic nightmare!

It is inappropriate for the proponent, ie the RTA, to be the sole Government agency conducting negotiations with the community, when they are driving for a particular outcome. The RTA puts to the Department of Planning (previously DIPNR) their version of events, their interpretation of community concerns and their proposals which may or may not address all of the community's concerns and which may not do so in an even-handed manner. It is vital that staff from the Department of Planning are present during community consultations as they draft the conditions of approval for the Minister. An example of the importance of this, and the lack of it, in relation to the CCT is as follows:

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