Submission No 41

INQUIRY INTO CROSS CITY TUNNEL

Organisation: Lane Cove Tunnel Action Group Inc
Name: Dr Ray Kearney
Position: Chairman
Telephone:

Date Received: 18/01/2006

Theme:

Summary

LANE COVE TUNNEL Action Group

164 LONGUEVILLE ROAD LANE COVE NSW 2066
PHONE: 9427 0130 FAX: 9427 6076

LANE COVE TUNNEL ACTION GROUP INC.
ABN 89 787 371 833

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

Dr Ray Kearney, Chairman,
Ms June Hefferan, Deputy Chair
Lane Cove Tunnel Action Group Inc

18 January, 2006

Dear Ms Simpson,

RE: Submission to the NSW Parliamentary CCT Inquiry

The Lane Cove Tunnel Action Group Inc (LCTAG), as a member of the coalition of Groups Against Stack Pollution (GASP), wishes to make a submission to the Inquiry into the Cross City Tunnel (CCT) in relation to the following prescribed Terms of Reference:

1. The role of Government agencies in relation to the negotiation of the contract with the Cross City Tunnel Consortium.

1.1 Harming People by Government and Corporate Connivance

That corporate wealth buys broad influence in law and public policy is well documented and widely acknowledged. Holders of high political office themselves frequently have significant influence, ownership or representation in large corporations. Often working behind a wall of secrecy to protect corporate interests, can these arrangements serve not the interests of humanity but to enrich the few at the expense of the many?

Occupational and environmental diseases are often viewed as isolated and unique failures of science, the government, or industry to protect the best interest of the public. However, they are in fact an outcome of a pervasive system of corporate priority setting, decision making, and influence with political and bureaucratic stakeholders. This 'structure of harm' is based on corporations compelled to maximize profitability while costs to society such as from pollution are largely ignored.

The system in NSW, revealed recently in 'privileged' documents released in NSW Parliament, produces disease because political, economic, regulatory and ideological norms prioritize values of wealth and profit over human health and environmental well-being. In other words, the current economic and political system in NSW privileges corporate actors and tends to provide incentives for the production of injury and disease rather than its prevention.

These documents revealed the NSW Government and certain of its bureaucracies appear to have forfeited a legislative and constitutional role as servants of the public and have aligned themselves with corporate stakeholders in the design, construction and operation of traffic tunnels in Sydney. What is now clear is the social and environmental costs have been ignored by externalizing them, or shifting costs to the government (taxpayers), residents, neighbours, motorists and workers.

Thus, these closely-knit alliances become even more profitable to the extent the financial deals make other people pay for the bills for the impacts on the health of society. For the M5 East, Cross City and the Lane Cove tunnels, it is the motorists, residents and neighbouring workers who become sick from unfiltered tunnel pollutants exhausted into the local precincts. Aided by RTA's close cooperation with these companies, in secret contract deeds, avoid paying the true costs. The RTA though has determined not to install protective technology such as particle filtration and gas detoxification systems thereby enhancing corporate profit.

Even more deplorable is that the documents disclose the RTA has agreed to indemnify their bedfellow companies for costs, charges and expenses or for claims or losses should a court find that environmental assessment or determination of the 'Tunnel' including the Ministers Condition of Approval fails to comply with the Law or is invalid in any respect. The RTA has indemnified the respective company in relation to any investigation or 'legal challenge'. It is noteworthy that in September 2004, the NSW Government closed their air-quality monitoring station near the Cross City Tunnel (CCT) thereby removing evidence of local high pollution levels and thwarting potential litigation by residents affected by pollution from the toxic CCT exhausts together with that generated by gridlocked surface traffic. The NSW Government's reason that it was unaffordable to maintain the monitor is hardly credible when in June, 2002 the RTA paid $9,110,375 to acquire land with a market value of $4,520,250 to build the eastern stack for the Lane Cove Tunnel.

The 'secret' Deeds of Contract appear to protect the companies from paying 'restitution' of the injured through the payment of unenforceable compensatory fines, capped by the RTA for the Cross City Motorway Company at $5million, rather than criminal penalties. The failure to impose fines is the experience with the M5 East tunnel debacle where numerous breaches of the Ministers Conditions of Approval are on record. Thus, the costs never approach the economic advantage that accrues to the respective companies that perpetuate these injuries and escape liability. In other words the RTA has made it cheaper for the companies not to install proper filtration and thereby inflict sickness and potential death on the community exposed to toxic stack pollution.

It seems reckless to wilfully discharge additional toxic hazards into Sydney's air-shed that is already exceeding National Standards for harmful fine particles. The interlinked RTA-Corporate goal of profit maximization exceeds any future compensation cost. Twice as many people die from exposure to vehicle exhaust in Sydney than from road accidents. Total health impacts cost $2-3billion annually for Sydney alone.

In shoring up the profits of its corporate co-partners, the RTA has over the past few years embarked on an utterly misleading campaign to discredit tunnel filtration. Some of its strategies have included:

- Former Roads Minister Carl Scully reinforced the RTA propaganda by his refrain that "Tunnel filtration is unproven technology and is only a high-tech placebo". Such false and delusional claims only helped his RTA bureaucrats to embark on a 'structure of harm' with corporate stakeholders to maximize wealth, corporate profit at cost to human health and environmental well-being.

- The RTA, with government and ministerial fanfare, in announced two 'filtration trials' to appease community anger. These appear to have been an unconscionable hoax.

- A comparative analysis of tabled documents shows hand-written notes taken at the time by one of the RTA delegates who visited Japan in September/October, 2003 to inspect tunnel filtration bear little relationship to the formal RTA Report on Japan's Tunnel Filtration. The final report downplayed significantly both the extent and the effectiveness of filtration in Japan.

- Three independent consultants commissioned by Lane Cove Council unanimously recommended that the negative findings from NSW Health's Study of Residents Affected by the M5 East Stack be rejected on several grounds including a flawed methodology that skewed the results to a 'no risk to health' conclusion. Perhaps not surprisingly, this did not occur, even after the Department of Health discovered that significant portal emissions were occurring during the time of the survey. These would have caused a skewing of the results as the people in the survey were in fact receiving a considerably lower pollution load at that time than in normal circumstances.

Lane Cove Tunnel Action Group (LCTAG) believes there is not only an obligation of 'due diligence' by the Regulatory Authorities (RTA, DEC, Health and DIPNR) but also on the respective tunnel consortia to implement proven measures to clean and detoxify the polluted tunnel air-stream where the poisonous components are derived almost entirely from the combustion of fossil fuels, mainly petrol and diesel. Such measures would be consistent with the Precautionary Principles.

LCTAG also believes that to date, the NSW RTA and the respective tunnel corporate stakeholders, have failed to exercise such care, skill and foresight that would be expected of a reasonable corporation and helps to remove a defence of 'due diligence' by ignoring such facts. Indeed, the failure of the RTA and the respective companies could be interpreted now as a wilful and pre-meditated decision not to adopt preventive or precautionary measures. Such a decision implies a deliberate intention to discharge untreated toxic waste, knowing it has the potential to harm or be likely to harm the environment, including those 'most at risk' in a community who are already described in documents, known to the RTA and to the Consortia as the ***"most affected receptors."***

The RTA, in particular, seem not to exercise 'due diligence' by knowingly and negligently intending to discharge higher levels of toxic waste from the M5 East, CCT and the re-designed Lane Cove Tunnel (LCT) in a manner likely to cause harm. To date, LCTAG alleges that neither the RTA nor the respective tunnel consortia (M5 East, CCT and LCT) has volunteered the truth about traffic volumes or the real pollution levels. LCTAG also understands that a defence of 'due diligence' is established if a company commissions the offence due to causes

over which they had no control; and that they took reasonable precautions and exercised due diligence to prevent the offence.

Regarding the CCT Project Deed and 'Traffic Arrangements' a public disclosure (for the first time) has established that the RTA has in this corporate partnership potentially compromised its own statutory authority at cost to the taxpayer if RTA were to change a significant number of traffic arrangements. This scandalous situation is disclosed in a public 'privileged' document from Clayton Utz, dated 13 October, 2005 (John Shirbin, Partner to Mr Les Wielinger, Director Motorways, RTA) where legal advice is being given as to Governments 'Material Adverse Effects' (MAE) liability if RTA were to change a significant number of traffic arrangements.

The legal advice states: *"The Project Deed provides in clause 18.1 that nothing in the Project Deed limits or restricts the ability of RTA or government to manage the transport network generally…."* The advice goes on to make clear *"There may however be financial consequences for RTA in doing so."* The reason given is: *"If RTA were to change a significant number of traffic arrangements, this is likely to fundamentally adversely impact the traffic assumptions underpinning the transaction."*

The legal advice then outlines financial liability to the RTA and makes the profound statement *"If all or a significant proportion of the current and proposed surface traffic restrictions are removed, it is RTA's view that the projected traffic patronage in the Tunnel will be significantly reduced such that the project would no longer be financially viable. In these circumstances, one could envisage a material proportion of CCM's income being made-up of compensation payments from Government."* Again, note the cost is externalized to the taxpayers who already have paid for surface roads to be used, not to be closed for 'funneling' to augment profit of a corporate CCT partnership.

Put squarely, LCTAG believes, the government agencies in forfeiting their public service duties to the electorate by aligning themselves with corporate stakeholders have corrupted not only themselves but have betrayed the communities whom they are meant to serve.

2. The extent to which the substance of the Cross City Tunnel contract was determined through community consultation processes.

2.1 As with the Lane Cove Tunnel (LCT) Project, community consultation was never fully inclusive for the Cross City Tunnel (CCT) Project. The consultative process during the LCT EIS was mostly undertaken through a role of consultants (commissioned by the RTA) who appointed various community representatives to one or more 'liaison committees' that met monthly during the EIS process. These meetings were strictly controlled, media were excluded and Minutes were sanitized. Letter-drops and media releases by members were not permitted without authorization.

The process was not about decision-making with input from the community reps on the committee, but rather about reporting back by the RTA of what was being planned, as concepts, in very broad terms, but without specifics. Indeed, in LCTAG's experience, the RTA blatantly tried on a number of occasions to thwart any attempt by the community to put alternative proposals. Only by Parliamentary Petitions were such attempts countered, as was the experience of the LCTAG regarding the 'missing link' provided by the LCT. This same RTA strategy was already adopted in the CCT EIS. In hind-sight, such controlled 'community consultation' was

simply a mechanism to justify the RTA saying broadly "extensive community consultation took place" but in fact the process was highly exclusive while the issues of the select consultative meetings were sanitized and orchestrated by the RTA where truth was always elusive and information equivocal.

The very few RTA brochures that were distributed to the public were tutored works in the art of 'spin' and equivocation. Not only what was said was misleading but what was not said gave the RTA immense control and flexibility without a clear commitment, leaving the community baffled. Our observation was that in this process, consultants had to be beholden to the RTA and to do the RTA's bidding. Failure to do so by the consultant meant exclusion from future contract work with the RTA, for up to 18 months as was the experience in the LCT process for one major consultant. Our observation is that those consultants who secure repeated commissions from the RTA will regularly compromise truth and independence.

During such LCT meetings the true intent of the RTA was never fully disclosed. Indeed, a documented request from a community representative to view the RTA's Representations Report before submission to the Department of Planning (now DIPNR) was flatly refused. Thus the submission of the Representations Report by the RTA to Dept of Planning was undertaken without the community knowing its contents and whether the community views were truthfully represented.

What is even worse was that key questions raised in relation to the LCT EIS by the NSW EPA (DEC), were IGNORED by the RTA who were rebuked by the Director General of EPA for failing to be open and accountable (documents obtained by Parliamentary Order).

A problem for community representatives is that some issues e.g., air-quality modeling are highly technical but again, in our experience, certain consultants behaved as 'technical advocates' on behalf of the RTA in subjectively addressing alleged flaws in the data and its analysis, raised by informed community members.

2.2 What was equally appalling in relation to the LCT project and in common with the CCT process was when the project details were released under 'the Ministers Conditions of Approval' (MCoA), there were MAJOR changes and additions that were NOT discussed with the community at all. The RTA representative (Garry Humphrey –RTA Projects Manager) advised that the community had no right of a response to the Project once approved by the Minister. Time and again, the RTA has been found to proceed insidiously but at the same time claim that the community had been consulted.

2.3 The LCT and CCT Projects, as approved by the Minister, then became the basis for the tendering process. From here onwards, community consultation ceased until the announcement of the successful bidder. It was in this exclusively secretive process where deals were struck between the RTA and the successful bidder. Under the convenient cover of 'Commercial in Confidence', MAJOR changes and deals were made at the EXCLUSION of the community and indeed at the exclusion of the other bureaucratic departments including NSW DEC, Health and DIPNR (Tabled documents by Parliamentary Order).

It is highly significant that the RTA EXCLUDED any LCT project tender that was 'non-conforming' including any that had incorporated filtration systems to clean the polluted air-stream. Such conduct we believe was unlawful and in breach of due process. RTA had deliberately thwarted the incorporation of in-tunnel filtration systems despite having confirmed the technology was efficient and cost-effective from their visit to Japan in 2003.

In the case of the LCT, a third ventilation tunnel 1600metres long and costing $60 million was DELETED from the LCT Project. In an internal report, this change was declared "consistent" with the Minister's Conditions of Approval and therefore could be made without any further approvals or public consultation. Neither DIPNR nor NSW DEC was advised and no Ministerial approval was sought.. Only under intense community coercion did the RTA disclose such a major change had taken place, SIX MONTHS after the project commenced. Such is the contempt of the RTA to abide by rules of lawful process.

2.4 Regarding the CCT project, LCTAG highlights a few of the flaws and misleading information in the voluminous CCT EIS to illustrate the FAILURE by the RTA to properly advise the community and/or to respond to concerns expressed by citizens. Examples of these common critical views are as follows:

1 While a concept proposal was made in the EIS to reduce William Street to two lanes in each direction with one a T2 lane from the current three lanes, this was not accompanied by a traffic management plan. It is noteworthy that in December, 2002 the Director General of Planning made NO MENTION of narrowing William Street on p 23/120 in Table 1 of the Report on 'Proposed CCT Modifications'. See link: http://www.duap.nsw.gov.au/assessingdev/pdf/consents02/rep_ctt_section1-8.pdf#search='RTA%20tendering%20in%20Cross%20City%20Tunnel'

Contrary to RTA claims, the proposal to re-configure William Street was later developed in secret in 2002 (See 2.5 below) involving the Sydney City Council. The community expressed concerns about the consequence of narrowing down this arterial road, especially when the CCT reaches capacity around 2020. LCTAG is cognizant of the concerns expressed in November, 2000 by the Member for Bligh as stated: *"The most repeated criticism during the consultation process was that options for William Street were the result of RTA engineers putting traffic first and determining the extent of surface roads. For example despite four lanes of traffic proposed for the Cross City Tunnel, it is not intended to release a comparable amount of road space above the tunnel. It is broadly recognised that traffic volumes will increase to fill road capacity, making it likely that high traffic volumes would again degrade William Street"*. See link: http://www.clovermoore.com/idx.htm?http://www.clovermoore.com/issues/development/major/william_st/001107_sscc.htm

More recently, the denial of the claim of 'privilege' by the Independent Legal Arbiter has disclosed the extent to which the Government is liable under the terms of 'Material Adverse Effects' (MAE) that were not disclosed to the community. Indeed during the CCT fiasco after it was opened in 2005, even the present Minister for Roads was kept uninformed by the RTA about liability issues should William Street not be narrowed. It is relevant therefore that in a 'privileged' document from Clayton Utz, dated 13 October, 2005 (John Shirbin, Partner to Mr Les Wielinger, Director Motorways, RTA) legal advice was sought as to Governments MAE liability if RTA were to change a significant number of traffic

arrangements. Noteworthy is the terminology used in the heading of the 3rd item on p2 that reads ***'Review all current funneling measures/road closure (including the William Street disaster) and freeze any future road changes.'*** Of relevance are the terms, ***'current funneling measures/road closure'*** and '***William Street disaster'*** as well as '***freeze any future road changes.'***

2 Throughout the CCT EIS as was LCTAG's experience for the LCT EIS, the absence of detail and specific data regarding "associated road works" prevented a full assessment of impacts. This was compounded by the failure of the RTA and the Tunnel Builder to provide answers as they referred to this stage as a 'Concept Plan' only. It is noteworthy that in December, 2002 the Director General of Planning stated on p8 of the Report on 'Proposed CCT Modifications' that: *"Arguably the local precinct most affected by the proposed modifications is Rushcutters Bay"*. The DG went on to remark: *"The Department also notes the adverse impacts identified above have not been assessed in detail and have not been exposed to any degree of public scrutiny"*. See p8 of the following link: http://www.duap.nsw.gov.au/assessingdev/pdf/consents02/rep_ctt_section1-8.pdf#search='RTA%20tendering%20in%20Cross%20City%20Tunnel'

3 The CCT EIS provided no guarantees of what measures would be taken to manage traffic, especially in residential areas. It is particularly noteworthy the EIS states for Paddington: *"Because of the complexities of the Paddington road system, it is difficult to be definite about the potential through traffic pressures as a result of the Cross City Tunnel. However it is certain that the Cross City Tunnel would lead to a redistribution of locally generated traffic. In view of this, the need for possible traffic management measures should be monitored on an on-going basis, as changes in traffic patterns after the Cross City Tunnel is opened might warrant works at some time in the future."* (Technical Study 8 p.71). At the same time the study report asserted that traffic management plans were not warranted elsewhere. Therefore, how can a community be properly informed when the proponent (RTA) does not have in place relevant 'traffic management plans'?

It is again noteworthy that in a 'privileged' document from Clayton Utz, dated 13 October, 2005 (John Shirbin, Partner to Mr Les Wielinger, Director Motorways, RTA) legal advice is being sought as to Governments MAE liability if RTA were to change a significant number of traffic arrangements. Legal advice reminded RTA that numerous conditions of the Planning Approval require the preparation of various plans and strategies in connection with the CCT project. One example being *"a requirement for local area traffic management plans(conditions 59-63)"*. It would seem that RTA was inconsistent with Planning Approval. However, the RTA would maintain that community consultation occurred, but fails to state that only selected information was provided.

It is noteworthy that the Director General of Planning stated in regard to Paddington: *"Risk of infiltration of traffic is expected in some streets of Paddington. The existing Conditions of Approval will ensure impacts are appropriately managed"* See p7 of the following link: http://www.duap.nsw.gov.au/assessingdev/pdf/consents02/rep_ctt_section1-8.pdf#search='RTA%20tendering%20in%20Cross%20City%20Tunnel'

Such assurances by the Director General have no substance in light of the consistent breaches of the Conditions of Approval of the M5 East Tunnel by the Operators as well as the contempt the RTA has demonstrated toward the Conditions as tabulated in DIPNR's 2004 Audit of the M5 East as well as in the Report by the NSW Auditor into the M5 East Tunnel Ventilation Issues.

The reason traffic management plans were rarely forthcoming is that they involve traffic numbers which are also integral to the financial modeling that is deemed 'commercial in confidence'. The RTA stratagem therefore, at this stage at least, as a corporate co-partner was not to have a traffic management plan and instead continue to hoodwink the community.

4 Just as proposals to adopt certain traffic amelioration measures in Lane Cove were blocked by the RTA, similar local improvement plans have also been blocked in Paddington. The general reason being is that RTA resists attempts to divert traffic from residential streets to the main road system because of the grid-locked nature of the latter. However, what is not disclosed is the secret traffic planning to ensure the financial viability of the respective tunnel projects. Therefore, the relevance of 'Material Adverse Effects' that is integral to such plans deemed "Commercial in Confidence' is not normally disclosed to the public, even by a Parliamentary Order in which in the past 'privilege' has been claimed.

5 The CCT EIS failed to provide a clear commitment to develop and implement an effective local traffic management plan along with the Tunnel. This would seem to breach the Planning Approval. It is now obvious that the failure of the RTA to do so was integral to the secret business dealings with the Cross City Motorway company to augment profitability in the co-partnership that had a priority of corporate greed over unacceptable traffic impacts on local streets in the area. Being under the cover of 'Commercial in Confidence', residents were never going to be fully informed of the summative impacts from the CCT and the Eastern Distributor coupled with problems of urban consolidation. Remember, part of the deal to bolster profit in the RTA-CCT Motorway corporate partnership is to EXTERNALIZE costs to the community. Therefore, despite the misleading, overblown claims of the RTA, the fact remains traffic information was either not provided, was inadequate or inaccurate for public assessment. The routine measure in dealing with sensitive issues is that some missing pieces in the incomplete picture would be handled by the executive of the RTA media/propaganda division.

6 As with the LCT EIS, the CCT EIS and the Technical Study had an alarming absence of data and evidence-based information in several critically significant areas including:

- No accurate traffic volumes, both present and forecasted. Some were recently disclosed in 'privileged 'documents.
- No information regarding traffic volumes entering the Eastern Distributor and to and from the local residential precincts.
- Absence of measures to reduce the unacceptable impacts of higher traffic loads in the residential areas that will be affected by the CCT in operation.
- Failure to undertake a proper environmental impact assessment in the short, medium and long terms, taking into account changes in traffic predictions in cross Sydney Harbour traffic.
- Failure to acknowledge anticipated long-term environmental impacts.
- Limited information about the William Street "enhancement" and of the CBD that already predicted residential areas in the tunnel precinct will be impacted severely by traffic. This is inconsistent with the aims of the CCT Project, yet the community was not adequately informed to allow a full assessment. This also included areas in the Eastern Suburbs where impacts on amenity by traffic flows were not addressed adequately in the EIS.
- Evidence in the EIS gives no indication the traffic on the surface roads will be reduced as there is no public traffic management plan. Traffic modeling is integral to a confidential financial agreement between the RTA and the CCT Motorway company. The LCT project suffers from the same non-disclosures.

  It is again noteworthy that even at the stage of the DG of Planning reporting on the 'Proposed CCT Modifications' (Dec. 2002), a number of respondents, including South Sydney Council, were so affronted they called for a Commission of Inquiry *"on the basis of claimed deficiencies with the modified proposal and the 'brief' public exhibition period"*. See on p 28/120 of the following link:
  http://www.duap.nsw.gov.au/assessingdev/pdf/consents02/rep_ctt_section1-8.pdf#search='RTA%20tendering%20in%20Cross%20City%20Tunnel'

7 The experience of the LCTAG with the RTA procedures of community consultation is a repeat of the inadequate procedures adopted in the CCT. Construction Community Liaison Groups (CCLGs) and the AQCCC are used by the contractor and the RTA to validate their pre-determined plans. These are presented to the groups as 'concepts' or drafts. Community members often spend many hours reading, discussing and writing comments and recommendations on these plans, but their views are largely ignored. The CCLGs and AQCCC are not 'decision-making' bodies so members have no power to achieve changes that will benefit the community – not even the power to insist that the contractor abide by

noise and vibration levels set as ‘limits’ in the Minister’s Conditions of Approval. In the case of the cycle path being constructed as part of the Lane Cove Tunnel project, community members have been unable to resolve basic safety issues where the cycle path directly abuts property boundaries and driveways in contravention of all relevant safety guidelines.

7.1 The RTA and the contractor ignore or brush aside all concerns and state that the plan is ‘acceptable’ in the circumstances. Representatives of key bureaucracies (Planning and DEC) rarely attend meetings and when they did their performance was disappointing to say the least. At one group a DIPNR representative agreed with the contractor that the word ‘limit’ in the MCoA could be interpreted as ‘goal’ in relation to noise and therefore the limits could be exceeded.

7.2 Although the Contractor is diligent about responding to community comments on plans and documents, their responses are generally little more than a means of justifying their own stance. The EIS or Framework Plan are cited to avoid change (although these do not stand in the way of the Contractor achieving changes), questions and issues are ignored or addressed inadequately, often by making irrelevant comments. In one famous case the same (usually irrelevant) paragraph appeared **eleven** times – as if the response had been compiled by a computer searching key words in inserting stock paragraphs.

7.3 Experience has shown that community consultation is a sham. Community members are constantly frustrated by their inability to achieve any real community benefit in a system that uses consultation merely to report through pretty presentations merely to meet the letter of the MCoA and to be able to say in answer to public criticism,

that consultation has occurred.

8 It is especially noteworthy that NSW EPA remains generally impotent in enforcing its own Environmental Act that it is supposed to administer. Part of the problem is that these tunnel projects are ‘not licensed’ to operate. The NSW EPA (DEC) knows full well that the levels of pollution in the CBD exceed national standards and guidelines. The EIS takes the position of projects of this kind being allowed to pollute up to a standard rather than adopt precautionary measures to reduce toxicity to a minimum.

It seems extraordinary that the EIS discloses that for the CBD and for William Street, the monitoring data shows exceedances of the EPA guidelines for particulates and nitrogen dioxide, yet there is no traffic plan or an intention to install tunnel filtration. As with the LCT experience the RTA seeks to augment profit in its corporate co-partnership by saving the cost of filtration and passing the cost of ill-health onto the resident and motorist.

9 The technical studies and the EIS assume no emissions from the tunnel portals. However, it states that there is potential for minor emissions from portals. A tabled privileged document

disclosed that the monitoring stations in the precinct at each end of the portals are unlikely to detect portal emissions (See 2.8.1. below). LCTAG believes this is purposely calculated so that breaches of air-pollution in the tunnel, for which there are penalties, will be controlled undetected by exhausting out of the portals as is currently the case for the M5 East. We believe such operational collusion is reprehensible where again the cost is passed to "the most affected receptors". In this regard it is noteworthy that the Technical Study hints at justifying portal emissions when it states it *"would result in energy savings in operating the tunnel, and as the fleet improves in terms of air emissions, this should become a viable option. Any proposal to exhaust via the portals would require a full community consultation process and further air quality studies."* No such community consultation has taken place with the M5 East residents who continue to be exposed to illegal portal emissions in full knowledge of the RTA.

10 As with the LCT project, a number of issues raised in 'community consultation' remain unaddressed. These relate to the actual levels of emissions that would be exhausted from the stack(s). The problem is that the Consortia appear to work from two different data sets. One involves the underestimation of traffic volumes so that the modeling falsely determines "no health impact". The other data set is used for financial modeling. Here the traffic volumes are about 50% higher than those given to the public.

11 The RTA has consistently FAILED to abide with the MCoA of the respective M5East, CCT and LCT projects. For example, the condition that requires the RTA to report annually regarding tunnel filtration technology has been both ignored and appallingly abused regarding the M5 East. In the CCT, whilst provision for filtration of pollution in the stack has been provided, overseas experience coupled with local expert advice is that this is not as effective and efficient as 'in-tunnel' filtration. LCTAG regards the conduct of the RTA is thwarting the installation of tunnel filtration has elements of criminal negligence in this matter and warrants a full Royal Commission of Inquiry. To date, three Parliamentary Inquiries into the M5 East debacle have failed to bring the perpetrators to account because such inquiries have been so politicized by the current NSW Government.

These views regarding the CCT and observations are consistent with those expressed also by the Member for Bligh as recorded in the following link.
http://www.clovermoore.com/idx.htm?http://www.clovermoore.com/issues/transport/roads/cct/eis.htm

2.5 **William Street re-configuration**

'Gateways Works' and 'Gateway Agreement'

2.5.1 Background:

A tabled 'privileged' email with attachments, dated 11 October, 2005 from Les R. Wielinga (Director, Motorways NSW RTA) to Aaron Gadiel concerned the subject 'Cross City Tunnel Restrictions' The email contained three attachments from Clayton Utz to the RTA. The Reference number of the attachment is: Legal\101109661.4.
On p7 of the Attachment the following is stated:

> *Gateway agreement*
>
> RTA entered into an agreement with the Council (of the City of Sydney) in December 2002 (**"Gateways Agreement"**) in relation to works to be carried out on a number of roads affected by the Cross City Tunnel Project. In particular the RTA agreed with Council that:
> (a) RTA would be responsible for carrying out certain works on William Street; and
> (b) The Council would be responsible for carrying out certain works on Oxford Street, at Taylor Square, on Broadway and at Queens Cross,
>
> ("**Gateways Works**")
>
> The Gateways Agreement requires the Gateways Works to be carried out as outlined in Schedules to the Gateways Agreement and either in accordance with designs set out in the Annexures to the Gateways Agreement or in accordance with designs to be further developed and agreed between RTA and the Council. The Gateways Agreement does not make specific provision for either RTA or the Council to vary the Gateways Works.
>
> RTA should consider whether any changes to the traffic management measures contemplated in the Project Deed and the Planning Minister's Approval will also be a variation to the Gateways Works. Such a variation cannot be made without the agreement of Council
>
> John Shirbin, Partner
> 9353 4117

2.5.2 As commented in 2.4.1 above, it is clear that specific details of the changes planned for William Street were kept out of public view. This is confirmed in the following article published in the *Sydney Morning Herald*, at the following link:

http://www.smh.com.au/cgi-bin/common/popupPrintArticle.pl?path=/articles/2003/02/14/1044927802247.html

The reporter refers to a 'Gateways Project' which was undertaken by a group including former Lord Mayor Frank Sartor. William Street re-configuration was integral to the Gateways Works but as the *SMH* article states the details were "kept secret" in 2002. RTA claims otherwise, but fails to make clear their discussions were of a 'concept plan' only, without specific details.

It is noteworthy that William St was outside the boundary of the City of Sydney Council and seemed presumptuous that the City Council was already engaging in such planning before the High Court made a determination in February 2003, leading to the boundary change (See above article in SMH).

However, regarding the Gateways Works, as stated above, RTA signed off on an Agreement with Sydney City Council in December, 2002 i.e., before the High Court made its determination.

When Frank Sartor won the seat of Rockdale as a member of the Labor Party, Lucy Turnbull was appointed Lord Mayor and in Autumn, 2003 Sydney Council's brochure disclosed a concept plan for William Street. See the following link:

http://www.cityofsydney.nsw.gov.au/Council/documents/CityNews/catz_city_news_autumn03.pdf#search=

2.5.3 Matters arising:

As already stated, it is noteworthy that the Lord Mayor of Sydney City Council at the time of signing in December 2002 of the 'Gateways Agreement' with RTA was Frank Sartor who in early November, 2002 formally became a member of the Labor Party for the purpose of pre-selection in the seat of Rockdale in the forthcoming March, 2003 NSW State Election. See following link:

www.smh.com.au/articles/2002/11/05/1036308311184.html

Questions arising:

2.5.4. What was the purpose and role of the former Labor Prime Minister Paul Keating on the 'Gateways Works' Committee?

2.5.5. Did the 'Gateway Agreement' signed by Frank Sartor, as former Lord Mayor of the City of Sydney Council with the RTA contain all the road traffic changes, as well as for William Street, that have been implemented since the opening of the Cross City Tunnel?

2.5.6. Was the extent, purpose and implication of the 'Gateway Agreement' made clear to the Community before the 'Agreement' was signed by the then Lord Mayor Frank Sartor?

2.5.7. Were specific details of the 'Gateway Works' ever disclosed fully to the Community in its final form to outline and make clear the effects on motorists, residents and businesses, of re-configuring the roads?

2.5.8. Was the meaning and implication of 'Material Adverse Effects' (MAE) ever explained to the Community in terms of 'Gateway Works" and road changes before implementation or was this incorporated under the cover of 'Commercial in Confidence'?

2.5.9. Where is the public 'traffic management plan' that justified the proposed changes in William Street or were the William Street changes integral to the confidential financial viability of the CCT project? Privileged documents released in November, 2005 confirm such was the case as documents disclose that any changes to William Street from the agreement in the Project Deed would invoke Material Adverse Effects and compensation penalties incurred by the Government.

2. 6.1. **Cross City – Traffic Arrangements**

2.6.2 Background

In a 'privileged' email dated 8 October, 2005 from Clayton Utz (Legal Advisors to RTA) to Les Wielinga (Director, Motorways NSW RTA) advice is given of changing any traffic arrangements that have been made, or are proposed to be made in connection with the CCT. It is noteworthy that the advice in part states:

> *The Project Deed provides in clause 18.1 that nothing in the Project Deed limits or restricts the ability of RTA or government to manage the transport network generally…There may however, be financial consequences for RTA in doing so.*

On p9 of response from Clayton Utz, under heading: **Annexure A –MAE Changes** the following points are made in respect of William Street:

- *The restriction of William Street westbound, between Forbes and Crown Streets, such that this part of William Street will have effective mid-block capacities of 1 general traffic lane, 1 Day-time Transit Lane, 1 turning lane and 1 bicycle lane;*
- *The restriction of William Street eastbound, between Crown and Palmer Streets, such that this part of will have an effective mid-block capacity of 1 general traffic lane, 1 Day-time Transit Lane and 1 bicycle lane;*

The advice is further given on p9 presented here in part as follows:

> *Clause 18.3: RTA and CCM acknowledge that CCM has prepared the Base Case Financial Model on the assumption that, subject to any traffic diversions, restrictions or road or lane closures which are necessary as a result of:*
>
> - *The existence of a material threat to the health or safety of the public.*

2.6.3 .Matters Arising

2.6.4 It is clear that the restrictions and lane reconfigurations placed on William Street, as an example, are intended to create a 'Gateway' to the CCT. Failure to impose such restrictions which were known to the RTA in the Tender (before the Project Deed was signed) submitted by CCM as part of their 'Base Case Financial Model', today *"may trigger MAE provisions"* (Clayton Utz).

2.6.5. What is clear from Clause 18.3 (reproduced in part above) is this was conditional on: *The existence of a material threat to the health or safety of the public.*

2.6.6. Current observations record that these road/traffic restrictions have impeded traffic flow in William Street and indeed the precinct is described as "gridlock" in a.m. and p.m. peak hour periods.

2.6.7 Amid tall buildings, William Street is effectively a 'canyon' at the base of which high levels of toxic pollution are generated at ground level by slow-moving traffic. The irony is that the Planning Department was fully aware that the air-quality in William Street would be worse. See p6 /120 in the following link where Planning concedes the pollution in William Street will adversely impact on residents at ground level:
http://www.duap.nsw.gov.au/assessingdev/pdf/consents02/rep_ctt_section1-8.pdf#search='RTA%20tendering%20in%20Cross%20City%20Tunnel'

2.6.8 Questions arising

2.6.9 Was NSW Health consulted to establish whether there would be "*The existence of a material threat to the health or safety of the public"*? If not, why not?

2.6.10. Was an assessment made by an independent health consultant e.g., Professor Michael Moore (CCT AQCCC), not beholden to the NSW Health, to determine whether health impacts could arise from these changes?

2.6.11. If a health-risk analysis established that there is an increased risk consistent with published Data, including two publications by NSW Health in 2005, then can the triggers for MAE be extinguished on grounds that there is the *existence of a material threat to the health or safety of the public*? Clearly the Planning Department acknowledges there is a health impact.

2.6.12. Were the State Emergency Services, including Police, Fire and Ambulance Brigades consulted on the basis of full disclosure of road/traffic changes intended after the CCT opened?

2.6.12. Is it now true that there have been instances of emergency vehicles having to mount the footpaths to travel to their call destinations because of gridlocked conditions arising from these changes?

2.7 CCT Completed Traffic Changes/Restrictions

2.7.1. Background

In a 'privileged' email dated 10 and11 October, 2005 from Paul Miller (Clayton Utz, Legal Advisors to RTA) to Les Wielinga (Director, Motorways NSW RTA) advice is given of changing any traffic arrangements that have been made, or are proposed to be made in connection with the CCT. It is noteworthy that Clayton Utz provides tables of all traffic restrictions already implemented and all traffic restrictions to be completed in relation to the Cross City Tunnel.

2.7.2 Matters Arising

Some 70 or so items are tabulated under Categories:

A: Permanent works to be constructed by CCM which may expose the RTA to Material Adverse Effect (MAE) liability if removed.
B: Permanent works that CCM must design and construct which would not expose the RTA to MAE liability if removed.
C: Temporary Traffic arrangements during construction and
D: Traffic arrangements that the RTA proposes to implement that are neither covered by the Project Deed nor the Planning Approval

2.7.3. It is noted that for several of the Category B items there is no formal approval by the Department of Planning nor is any reference given to either the original EIS or the Supplementary EIS that such changes were intended.

2.7.4. Questions Arising

2.7.5. Of the 70 or so changes made or to be completed regarding traffic restrictions has the Community ever been presented with the complete 70 changes together with the ensuing traffic

flow analysis as a consequence of these changes? What evidence can be provided to verify any claims?

2.7.6. Has the Community been consulted about the 24/70 changes for which there is no clear evidence that Planning Approval has been given? What evidence is available to confirm any claims?

2.8 No Monitoring of CCT Portal Emissions

2.8.1 Background

A tabled privileged document concerns a response by Dr Kerry Holmes of Holmes Air Sciences to Clayton Utz about a Report by the Independent Consultant Dr Peter Manins of CSIRO and who attended the CCT AQCCC in that capacity.

2.8.2 Matters Arising

2.8.3. It is especially noteworthy that Dr Holmes confirms the observations of Dr Manins about which Dr Holmes agrees that the monitoring stations at the eastern end of the CCT will not detect portal emissions. At the Darling Harbour western end only the Tumbalong monitoring station may detect emissions if levels are sufficiently large from the portals. The western monitoring station located at Mary Anne Park will not detect portal emissions regardless.

2.8.4. Privileged documents also record that should the pollution levels in the CCT exceed limits prescribed in the Ministers Conditions of Approval then CCM is liable to daily fines of $50,000 to a maximum capped at $5 million. Despite documented regular breaches of the M5 East Condition under 71 DIPNR have failed to impose fines for such inconsistencies with the CoA. The community has lost faith in the ability of DIPNR to enforce its own Conditions for tunnel operations including the CCT.

2.8.5. Documents record that the NSW Government in September, 2004 closed down the NSW EPA-managed CBD Monitoring Station, allegedly for reasons of cost.

2.8.6. Questions Arising

2.8.7. Is it true that to date, the RTA has refused the installation of pollution monitors to detect unlawful portal emissions?

2.8.8. What systems are in place to detect portal emissions that may constitute breaches of the Ministers Conditions of Approval for tunnel air quality?

2.8.9. Could it be said that the failure of the current monitors to detect portal emissions is an example by which the RTA has forfeited its role as a Public Servant and aligned itself with the corporate CCM stakeholder to enhance profitability by externalizing the cost to human health, and avoiding the risk of being penalized for in-tunnel breaches of set standards?

2.8.10. Will the closure of the CBD Monitoring Station along with other closed stations have the effect of the Government's Clean Air Policies 'working' by removing the high CBD measurements from the averages of the data sets?

2.8.11. Will the closure of the CBD Monitoring Station prevent the measurements of the increased pollution in the CBD by the traffic gridlock created by the roads/traffic changes after the CCT was opened?

2.8.12. Will the closure of the CBD Monitoring Station limit/diminish evidence of increased pollution arising from these collective CCT changes in the CBD and thereby depriving affected 'at-risk' persons of grounds for litigation?

2.8.13. Is it true that closure of the CBD Monitoring Station is unlikely to be due to the cost of maintaining it when former Roads Minister Carl Scully disclosed in a question taken on notice from the Budget Estimates Committee that in June, 2002 the RTA paid $9,110,375 to acquire the land with a market value of $4,520,250 to build the eastern stack for the Lane Cove Tunnel?

2. 9 Further Questions Regarding the Cross City Tunnel (CCT) Project

2.9.1 Background

2.9.2 All CCT air-quality modeling and assessments are conducted in isolation without acknowledging the already degraded background air-quality. Statements are regularly made that local air quality will improve due to the CCT. However:

2.9.3 Questions Arising

2.9.4 Is it true that most vehicles entering or leaving the tunnel to the West will still use the Western Distributor?

2.9.5. Is it also true that Dept Environment and Conservation (DEC) does not require the response to MCoA 271 to address "air quality impacts at all sensitive receptors?" If so, then is DEC in breach of its Charter?

2.9.6 There is no requirement to undertake a robust model of air-quality outcomes of what have been constructed using local site data and realistic conditions/vehicle numbers.

2.9.7 Questions Arising

2.9.8 Is it true that the MCoA 271 has been interpreted by both DIPNR and DEC to require only a like-by-like assessment e.g., vent height, velocity, vehicle numbers against EIS conditions i.e., meteorology from Goat Island and AUSPLUME methodology, no third shaft, building wakes etc? If so, then how does DEC justify this interpretation?

2.9.9 Is it true that DEC makes no attempt to address "air quality impacts at all sensitive receptors?" If so, then is DEC in breach of its Charter?

2.9.10. MCoA 263 and 264 mandate one ground-level community-based monitoring station and two elevated air quality monitoring stations as well as meteorological data.

2.9.11. Questions Arising

2.9.12 (a) Is it true there is no condition to protect the collection and importantly the continuity of this data?

2.9.13 (b) If so, what role does DEC have within the meaning of its Charter to do so?

2.9.14 MCoA 274 requires a protocol for a DA assessment of new buildings which may be affected by or themselves impact on the operation of the plume only.

2.9.15 (a) Is it true that it is not required to consider impacts upon Air Quality Monitoring Stations (AQMS)?

2.9.16 (b) If so, what role does DEC have, under its Charter, to monitor such impacts?

2.10 **Other Questions**

2.10.1 The Draft Protocol 274 imposes unexplained arbitrary distances/heights etc. and is still based upon Goat Island air-quality modeling.

a) Is it true that modeling is based on Darling Harbour data, where the 18+ month's record demonstrates quite different conditions at height to that at ground level?

b) If so, how does DEC respond, under its Charter, to the irrelevance of collecting data from Goat Island for modeling purposes?

2.10.2 Is it true that MCoA 278 does not require an external audit of in-stack or portal pressure monitoring? If so, why?

2.10.3 MCoA do not require air-quality monitoring at the portals or publish any air pressure results. However, DIPNR are negotiating to have AQCCC advised monthly if portal emissions have occurred. It does not make sense to report on portal emissions if there are no monitors in range to demonstrate it.

Does DEC consider this to be satisfactory given the huge high-rise population at Darling Harbour and the Eastern end and in view of the M5 East performance regarding monitoring equipment failure, its maintenance, etc?

2.10.4 Is it true that there are no MCoA related to maintenance standards, shut-down conditions, penalties etc? If so, what role has DEC in this determination and is compliance with its Charter demonstrated?

2.10.5 The MCoA 261 imposes a dollar fine for breaches of in-tunnel CO stating the Director General "May" direct such a penalty. So far penalities have not been imposed on the Operators of the M5 East for such breaches, acknowledged by DIPNR.

a) Is it true that nothing similar applies for ambient or stack limits where reports are only triggered? If so, is DEC fulfilling its Charter?

b) Is it also true that portal emissions are not contemplated by MCoA and therefore penalties have not been provided? If so, what enforcement powers does DEC have in the event that tunnel emissions from the portals are in breach of this Condition? Again, is this another example of corporate partnerships externalizing the cost to the community impacted by toxic emissions?

2.10.6 a) At the CCT AQCCC meeting in May, '05, is it true that DIPNR and the DEC were present for the first time in ages and made sure that nothing got in the road of clearing away any issues that conceivably could hold up approval of the tunnel for its opening?

b) Is it also true that DEC did nothing when DIPNR interpreted its own requirements in a minimalist way, ensuring that admitted underestimates of particle emissions, acknowledged failure to use relevant meteorological data collected for the purpose, and incorrect use of a Gaussian plume

assessment model where there is strong vertical wind shear, did not trouble them? If so, how are the actions of DEC and DIPNR explained?

c) Is it again true that DEC did nothing when DIPNR was not troubled even though these consequences are that DIPNR and DEC as well as the community have no knowledge of the areas of impact, that the impacts may be TWICE as high predicted and so may be more likely to contribute to breaches of air pollution standards, and that the total emissions are likely to exceed the Minister's conditions imposed on the tunnel design and operation? Is this conduct by DEC consistent with its Charter?

d) Is it true that the DEC policy people who were present were more than happy with this situation robustly maintaining that none of this was of concern to DEC? Is this conduct also consistent with the Charter of the DEC?

2.11 Toll prices – another secret deal with the corporate stakeholder

2.11.1 Privileged documents (Clayton Utz, 8 October) disclose the secret transition that took place from a fixed toll of $2.50 (1999 dollars) released publicly in the EIS to the 'differential tolling' (different tolls for different classes of vehicles) negotiated with the successful bidder - CCM. It is clear that the details of differential tolling was linked to tunnel traffic flows that had to be managed by the surface road changes that in turn were integral to the financial operation involving the RTA and CCM corporate partnership. The community was not aware of the significance of 'Material Adverse Effects' in this agreement. A condition for a number of road and traffic changes was they would come into effect AFTER the CCT opened. Testimony to the community being found unaware of these impacts was the community uproar when such measures came into effect after the opening.

2.11.2 It is noteworthy that in the EIS at Section 6.2.2 Assessment Criteria (of design alternatives), the toll regime is mentioned as being a factor in meeting capital costs:
"It is preferable that costs associated with financing, design, construction, operation and maintenance be met from toll revenue"
It should be noted that the EIS does not publish any financial analysis other than *"The RTA has undertaken a preliminary financial analysis of the proposal which indicates financial viability at this level of tolls (e.g., $2.50 per car in each direction for the main tunnel) with the forecast levels of traffic"*. (Section 14.7 Financial Considerations p14-16, EIS). It would not seem the toll money cash inflows have been presented in any public financial analysis except as a means to measure likely traffic flows

2.11.3 Whilst a request was made for 'differential tolling', neither the Supplementary EIS nor the second Director General Report specified the toll amounts for differential tolling prices. Whilst the following link gives access to the proposed toll changes in the Executive Summary, the issue was not documented fully in the text of the Report:
http://www.duap.nsw.gov.au/assessingdev/pdf/consents02/rep_ctt_section1-8.pdf#search='RTA%20tendering%20in%20Cross%20City%20Tunnel'
This was strictly a financial deal negotiated between the RTA and tunnel operator (CCM) at the exclusion of the public. Only when the CCT was operational that the public found the exorbitant toll fee was another feature of the insidiousness of the co-partnership process. Again, the RTA failed to be open and accountable to the community until forced.

3. The methodology used by the Roads and Traffic Authority for tendering and contract negotiation in connection with the Cross City Tunnel.

3.1 As outlined in Section 1 above, the tunnel projects have major conflicts of interest where the proponent (RTA) has aligned itself with the respective corporate stakeholder to enhance wealth and profitability for mutual benefit at cost to the community and environmental well-being. LCTAG believes this co-partnership has proven to be a 'structure of harm' where tabled internal papers including audit reports document a litany of alleged anomalous or corrupt conduct on a major scale that is systemic throughout the bureaucracies that are dominated by the rogue RTA.

3.2 LCTAG believes that for the RTA to have excluded tenders incorporating in-tunnel filtration for the LCT project was unlawful conduct. RTA had already confirmed the advantages of such proven technology RTA witnessed on their visit to Japan. This is another issue that warrants a full Royal Commission of Inquiry being more independent and rigorous than a Parliamentary Inquiry.

3.3 LCTAG believes, as a matter of public policy, it is not appropriate that Government compensation should form the material part of the income e.g., of the CC Motorway. The tendering and contract negotiations should not have imposed on Government constraints which were entailed at cost of private concessions. It may now be more appropriate because of another RTA debacle through incompetence for Government to pay out the equity investors and debt financiers and bring the project back into public ownership.

4. The public release of contractual and associated documents connected with public private partnerships for large road projects.

4.1 In the past, documents obtained by Parliamentary Order have been very useful in confirming the anomalous conduct within each of the bureaucracies that have been allowed to continue unabated. The denial of the claim of 'privilege' by the Independent Legal Arbiter has been greatly valued. LCTAG can confirm that arguments for privilege do not outweigh the clear public interest in the material being disclosed. Every aspect of the financial arrangements relating to these projects is relevant to a properly informed public evaluation of the many issues relating to these tunnel projects. To date, it would seem that privilege has been claimed to hide disclosure and transparency.

4.2 LCTAG is grateful that the Independent Legal Arbiter has determined that the documents for which 'privilege' was sought should ALL be opened up for public scrutiny.

5. The communication and accountability mechanisms between the RTA and Government, including the Premier, other Ministers or their staff and the former Premier or former Ministers or their staff.

5.1 More of Govt's Filtered Facts and Fiddled Figures

In 2004, a call for papers through NSW Parliament delivered some 14 boxes of papers from four government departments (RTA, Health, EPA and DIPNR- formerly Planning NSW) mainly relating to the M5 East, Cross City (CCT) and Lane Cove Tunnels (LCT).

The documents show systematic shifting of responsibility and blame between the different departments, avoidance to own up, let alone address, fundamental errors and deficiencies, manipulation of data, ignoring of inconvenient scientific advice and deliberate misrepresentation to Parliament, the public and the EPA Board. LCTAG Inc believes the internal papers reveal widespread negligence in dealing with high levels of toxic exhaust pollution.

The following excerpts highlight the concerns of LCTAG Inc.

- EPA alleges the RTA submitted the LCT Representations Report (RR) for approval by DIPNR without addressing and resolving major outstanding issues raised by the EPA.
- The EPA declares they could not make a formal determination e.g., on air quality impact assessment and stack emission concentration, because of the absence of proper and complete data.
- RTA fails to provide a copy of their RR to the EPA, before it is sent to the DIPNR for approval.
- Director General of EPA admonishes RTA and asserts *"It is important these air quality issues be assessed rigorously and transparently prior to submission of the final RR".*
- DIPNR criticises RTA for not answering questions, but approves the project anyway.
- EPA warns of alarming health impacts from the stacks and expects action to be implemented to reduce predicted illnesses. RTA's consultant discloses *"There will be a number of potentially harmful emissions from the tunnel ventilation stacks…"* and introduces 'adjustment factors' whereby the risk to health, claimed by EPA, is reduced to 'insignificance'.
- EPA to DIPNR questions the conduct of RTA's analysis of health risk and requests the EPA's correspondence about this matter not be made public. EPA seeks a discussion of ways to bring the predicted increased impact to below the risk.
- Expert internal analysis confirms the RTA's consultant underestimates health risks and identifies flaws in the calculations. DIPNR accepts flawed data.
- EPA discloses its measurements of ambient air quality monitoring are deliberately underestimated and refuses to incorporate a correction factor for accurate levels of toxic, respirable, particle pollution, lest it set a precedent. They acknowledge fine particles are more hazardous. Already levels of particulates in the Sydney Regional air-shed exceed national standards and guidelines
- EPA declares that it underestimates pollution levels in the M5 East but is very concerned about setting a precedent for other tunnels and pollution levels generally if this underestimation is corrected. EPA appears to cover-up the issue by claiming the different methodologies are equivalent (despite published evidence to the contrary) and do not need adjustments for accuracy.
- EPA defies the recommendations of the national committee and consultants on air-quality standards as well as world's best practice and advise DIPNR that EPA will continue to report and accept flawed monitoring. Documents confirm the Regulatory

Authorities know that underestimated pollution effectively invalidates health-risk analysis and are aware that when unadjusted, avoids the detection of exceedances from stack emissions.

- Advice from EPA to DIPNR is not to recommend the use of correction factors to accurately measure the toxic particle pollution associated with the Cross City and Lane Cove Tunnels.

Documents show that the departments know the standards and conditions being used to regulate tunnels are inadequate, and the information used to approve projects has been manipulated. While the different departments argue within and among themselves about what to do, they are very concerned about admitting having made a mistake, and above all about having a "consistent" and "strategic" approach. Admitting, as well, that once a tunnel has been approved, there is no scope to change the standards, the recurring refrain is that they are awaiting new national or international standards (that can't be applied to existing projects). The EPA seems to concede in the papers that it is better to let the community take on the rogue RTA than for the EPA!

If air quality goals are exceeded, filtration is an option for each tunnel. However, the RTA maintains that filtration systems in tunnels do not work, but internal papers reveal a RTA report detailing all tunnels in Japan with filters, why and how they are installed. RTA knows full well that filtration is operational in more than 44 tunnels in Japan, but continues to mislead the community.

Because of the problems with the M5 East tunnel, instead of filtering the fumes, the RTA has decided to put in a 3rd exhaust tunnel, parallel to the two road tubes in both the CCT and in the LCT, at a cost exceeding $40 million and $60 million respectively. Filtration systems would have cost less than half of this, and resulted in better protection for drivers and residents. This 3rd tunnel option was never independently assessed, or ever considered as part of the LCT EIS process. The RTA in a secret deal with the LCT Company -the successful bidder, deleted the 3rd tunnel at a great saving to the company but passing the extra cost of health impacts to the "most affected receptors" exposed to greater levels of pollution.

In early October 2003, a RTA delegation visited Japan to confirm what they already knew privately about tunnel filtration. The same team went to Norway three years ago and came back with a very carefully crafted, sanitized report embarrassing the Norwegian Authorities. Lane Cove Council asked to accompany the delegation to Japan, paying their way, but the RTA refused them.

Internal papers disclose that the RTA refused, on legal grounds, to heed NSW Health's advice to install warning signs for drivers to put their windows up to protect themselves against ill-effects of pollution in the tunnel. The papers also reveal extensive editing of the draft M5 East Health Report to delete information (e.g., of sickness among the investigation team whilst in the tunnel) and to replace alarming data with equivocal statements.

RTA assures us, for example, that an 80% reduction of particle load, if the windows are closed, should put us at ease. However, a fall in levels of soluble, toxic, respirable particles from >500µg to 100µg/M^3 $PM_{2.5}$ is still 4-times the national guideline (25µg/M^3 $PM_{2.5}$) for background air quality. The RTA also failed to disclose that a study in Stockholm, in April 2000, showed that short-term exposure to in-tunnel air pollution significantly enhances asthma. These effects were found at levels of $PM_{2.5}$, that were equivalent to those recorded (i.e., 100µg/M^3) in the M5 East Health study, when the vehicle windows were **closed**.

The NSW Health study establishes that current air-quality standards and monitoring systems are inappropriate and inadequate while potential legal implications, under the NSW Occupational Health and Safety Act, 2001 are implied.

The NSW Government should take note of a historic ruling in the US Supreme Court, February 2001. In a unanimous decision, nine judges ruled that health benefits should be the sole criterion in setting air pollution standards. The most important lesson for the NSW Regulatory Authorities to learn from this bleak period is their extraordinary capacity for self-delusion.

5.2 Ethics and Skeptics: The Lingering Threat of Fossil Fuel

Community residents have a number of expectations of NSW Health, RTA, DEC, DIPNR and the respective Tunnel Consortia. We expect these agents will:

- Understand the public's point of view and that our concerns will be the agency's top priority.
- Ensure these concerns will be scientifically investigated, researched, studied, documented and addressed.
- Explain or find the reason for the illnesses of M5 East community residents and prevent further exposures as well as to learn from the agency's own mistakes and cover-ups.
- Adopt proper and effective enforcement of the Minister's Conditions of Approval and not to corrupt enforcement by delegating that responsibility to the RTA.
- Maintain a permanent documentation database of records and information.
- Validate the concerns of the residents.
- Implement all these duties in a timely manner.

LCTAG's expectations, however, have been dashed by bureaucratic dishonesty, incompetence, indifference and tardiness in each of the respective departmental portfolios. Concealment of data, overlooking published evidence, or the deliberate termination of studies at a stage where findings were suggestive have caused LCTAG to be mistrustful of government officials and suspicious of the activities they conduct with corporate clients.

Why then is the 'Precautionary Approach' not taken? Because the risk-based approach to public health is adopted instead i.e., wait until the dead bodies can be counted. Whilst diesel fumes are a known cause of lung cancer, health bureaucrats state they are "not yet sure" how big the problem is and "we have not identified the extent of the problem".

This is the classic risk-based approach. Ignore the evidence so long as it is not 100% watertight. Use uncertainty as an excuse to delay. Wait for the dead bodies to pile and then slowly acknowledge the need for action. Remember asbestosis? Precaution is not (yet) fashionable while risk-assessment is!

The risk-based approach to unfiltered tunnels, as it also is for diesel and petrol, is to adopt the principle 'business as usual'. This has the backing of powerful special-interest corporate groups harnessing governments to deflect and stymie the search for least harmful alternatives. So long as the exact size of the problem is uncertain, risk-assessors call for delay and more study. It is now clearly evident that RTA's insidious delaying tactic of implementing a 'filtration trial', as endorsed by former Roads Minister Scully, is to buy time politically as the tunnel projects continue. As predicted the 'Filtration Trial' was nothing but an insidious con and is now terminated. One overseas filtration manufacturer who was a successful bidder blames the senior executive of the RTA media/propaganda department for the rise and fall of the 'Filtration Trial'.

Tabled internal documents show because consultants can be 'bought' or 'hired' to reinterpret old data to cast doubt on the nature of a problem, action can be stalled for decades. NSW EPA (DEC) displayed immense weakness by not going public with its concerns about the filtration trial estimated to cost tens of millions of dollars and their reluctance to be part of the review panel. They knew the trial was a waste of time but did nothing to raise their concerns.

Doubt is a powerful helpmate when your goal is to maintain 'business as usual' and typifies the current mindset especially associated with the current NSW Government, the NSW RTA and NSW Health regarding air toxics and tunnel filtration. The risk-based approach waits for the holy grail of scientific certainty to emerge from the data. Then, alas, the NSW Government is likely to enact legislation to take away yet another of the community's 'rights' i.e., to litigate against sheer bureaucratic negligence.

6. 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.

6.1 RTA Persistently Trashes Community Rights!

A NSW Parliamentary Notice of Motion, on 21 June 2005, records that the Hon. Sylvia Hale MLC (Greens) will move (in relation to former Roads Minister Costa):
That this House condemns the Minister for Roads for allowing the Roads and Traffic Authority (RTA) to persistently trash community rights and entitlements, for its callous disregard for community amenity and public health, and its general mismanagement of the road system as evidenced by the RTA.

The Notice of Motion then continues and tabulates a 12-point litany of serious allegations about the RTA's arrogance and includes:

- *repeatedly misleading people regarding the full market value of compulsorily acquired land (as demonstrated by Land and Environment Court decisions over the last 12 months),*
- *grossly miscalculating the traffic volumes and induced traffic growth associated with the M5East, and Lane Cove tunnel, and basing air quality measures inappropriately on grossly underestimated figures,*
- *neglecting to initiate modifications to Approval Conditions and introduce better pollution control measures for the M5 East Tunnel, the Cross City Tunnel and the Lane Cove Tunnel including in-tunnel filtration and more comprehensive air quality monitoring,*
- *neglecting to initiate modifications to Approval Conditions for the M5 East Tunnel and the Lane Cove Tunnel to take account of the gross underestimates of traffic volumes on which these tunnels were originally approved.*

Former Roads' Ministers Scully and Costa respectively have utterly failed to quell the downright lying and deceit that have become the characteristic canker of the RTA bureaucracy. It is hoped that new Roads Minister Tripodi will assert himself with exemplary leadership. Those parts of the community who are aware of the facts are now in revolt against the betrayal by the current NSW Government and certain of its bureaucracies of basic human and democratic rights.

The following is a letter from a Canberra gentleman who has requested his name not be published at the moment and relates to the M5 East tunnel. It is not the only example! Remember the bus load of kids, the police refusing to go into the tunnel and the NSW Health

workers reporting that they got sick while doing the in-tunnel health study.

”*About 12 months ago my boss and I drove from Canberra to Sydney for business. I drove the car and we travelled through the M5. It was the first time I had travelled through the tunnel. As we drove through I felt a panic attack coming on. I could not breathe properly and felt claustrophobic.*

On our return journey the following afternoon I asked my boss to drive back to Canberra and through the tunnel. It was about 4pm and the traffic was heavy, travelling at about 60km per hour. As we were driving through the tunnel my boss collapsed at the wheel. I was sitting in the front passenger seat and grabbed the wheel. He was unconscious for about 15sec. I shook him to wake him up. He regained control of the car but was very groggy and driving erratically. When we reached the toll gates we swapped seats and I took over driving the car. My boss slept all the way to the Sutton Forest Services Centre of the Hume Highway. I reported this incident to the RTA. They took my name and details and promised they would investigate it but have never returned my call or answered any of my concerns. Today, I refuse to drive through that tunnel when ever I travel to Sydney.”

Not surprising, the RTA continues to deny the M5 East tunnel has repeatedly breached approval conditions despite non-compliance being revealed in a state government audit report produced in May 2005. The draft report, undertaken by the Department of Infrastructure, Planning and Natural Resources (DIPNR) has been withheld from the public until it was tabled by a Parliamentary Order. Despite DIPNR’s audit of the RTA’s compliance with air-quality conditions being highly damning, the RTA continues to re-play its standard mantra of “the air-quality standards for the M5 East are among the most stringent in the world and the tunnel continues to be operated in accordance with those standards”. Such is another RTA lie because the Tunnel Operator has already admitted that they were deliberately exhausting pollution out of the portals (entry and exits) in breach of the Ministers Conditions of Approval and in full knowledge of the RTA.

The RTA’s arrogance in challenging DIPNR’s authority and continual denial of problems implies it may take another Mont Blanc tunnel disaster that took 39 lives and the conviction recently of 13 individuals including senior public servants and companies with manslaughter to purge the RTA of its alleged corrupt conduct.

Thiess John Holland (TJH), builder of the LCT now has an appalling record of failed community consultation and of not telling the whole truth in its spin-ridden brochures. Seems like TJH has also caught RTA’s debilitating malady. It is also noteworthy that until very recently, despite consistent requests from Lane Cove Council and others, TJH on instruction from the RTA has failed to place details of the LCT stacks on the website managed by TJH. Clearly RTA does not want to publicise details concerning the stacks although the they are available at the not well known display centre at 401 Pacific Highway Artarmon.

Lane Cove Council recently called on the new Roads Minister Tripodi to meet with the Mayor and honour his commitment to install filtration on a 50/50 basis with the Federal Government. We call on him to now instruct the RTA to install $20million of Electrostatic Precipitators within the tunnel using the $10million made available for filtration by the Federal Government over 10 months ago.

7. Any other related matters.

7.1 The Current NSW Government's Answer to Cancer - Blow it in the Wind!

The autocratic NSW Government has given planning approval to discharge from the 2 km CCT and the 3.7 km Lane Cove twin tunnel, highly toxic emissions, **untreated**, in residential/ commercial areas. Crucial lessons have not been learnt from the M5 East tunnel debacle, or from three separate Parliamentary Inquiries into the M5East Tunnel Ventilation Stack.

Noxious pollutants from the proposed stacks will impact adversely not only upon local amenity and health but also upon property values (up to 20-25%) of the **"worst affected receptors"** as disclosed in documents tabled by Parliamentary Order. The severity of impact on health will depend also on conditions such as wind direction, stagnation and temperature inversions as well as on susceptibility of the exposed population. People suffering from respiratory conditions such as asthma, both young and old, are particularly at risk.

A major flaw in the RTA's supervised monitoring of pollution from tunnel stacks is that the fine particulate matter of less than one micrometre ($<PM_1$), representing 90% of particulate pollution from vehicle exhaust is mostly excluded by the measuring devices used, to date, in the monitoring and modeling. The flawed air quality assessment as well as the health-risk analysis of the tunnel emissions have consistently ignored independent professional advice, (e.g., Dr Lidia Morawska (Q'land), air quality expert and adviser to WHO), that PM_{10} measurements, unlike PM_1, provide no information regarding vehicle emissions that constitute the tunnel haze. Thus, standards set for the emissions e.g., of the LCT western stack ($1600\mu g/M^3$/ 30min.) relate **only** to PM_{10} and **grossly under-estimate** the actual particulate pollution. Planning NSW has also ignored the fact that the national standards of regional air quality **do not** apply to point source emissions (stacks) or to tunnels as the standards do not measure the most harmful fine particles in vehicle exhaust.

In the Upper House, a 'Filtration Bill' was passed in 2002 on the basis of compelling evidence of proven technology and documented health impacts of particulates. Independent medically qualified politicians contributed to the debate. However, in the Lower House, the then Carr Government has consistently used its voting power and untested information to thwart not only such a Bill but to reject the key recommendations of three separate M5 East Parliamentary Inquiries calling for the installation of realistic, proven, cost-effective filtration systems.

Of equal concern is when Regulatory Authorities that now serve Government, rather than the community, increasingly show absolute contempt for due process, accountability, enforcement of conditions as well as for open and meaningful community consultation. Such anomalous conduct appears to persist under the jurisdiction of Ministers of the respective portfolios. Surely, it is time for change to correct an out-of-control crisis among the Regulatory Authorities. It is ironic that as a former Leader of the Opposition, Bob Carr allegedly called for a Royal Commission of Inquiry into the conduct of the RTA.

Unfortunately, the unsuspecting public is largely unaware of the misleading information in the RTA glossy brochures prepared by the 'spin doctors' whose job it seems is not only to 'protect' the Minister but to obscure the truth and influence the thinking of the community by with-holding essential information. Not only what is said seems misleading but also, of more importance, is the failure to disclose all the facts. Such conduct appears a dangerously cunning element of RTA's media and community propaganda department.

7.2 RTA's Faulty Tunnel Supervision!

On 15 June 2004 some 14 boxes of prescribed internal documents, related to the Lane Cove, Cross City and the M5 East tunnel projects, from the RTA, EPA, Health and Planning (DIPNR) Departments as well as Contractors, were tabled by a Parliamentary Order. Two boxes of privileged documents are now being determined for declassification to non-confidential by an independent arbiter. Community's inspection of the available documents provides good reasons why the NSW Carr Government resisted the Motion carried in the Upper House, 31 May 2004.

Many of the documents disclose that, at all levels, the RTA, in particular, has not responded squarely about the ventilation conditions in the M5 East tunnel. The facts that now emerge also reveal systematic abuse of legislative authority and what seems inappropriate collusion with the tunnel designers, builders and operators. Political expediency has led to total disregard for the health and well-being of motorists and residents exposed directly and indirectly to the highly toxic emissions from tunnel vehicle exhausts.

Documents show that these pollutants accumulate to toxic levels in the tunnel and cannot be controlled by the utterly flawed M5 East ventilation design, without in-tunnel filtration systems. Internal papers also reveal cover-ups and highly anomalous conduct regarding the CCT and LCT Projects that warrant a full investigation by a Royal Commission.

In April, 2004, former Road's Minister Carl Scully announced a 'filtration trial', coinciding with the release of a misleading RTA Report about Japan's numerous filtered traffic tunnels. What seems a case of RTA's worsening paranoia is that the Minister's announcement purposefully pre-empted a concurrent independent Report on filtration of tunnels by a consultant. Among its conclusions, the consultant's Report states that *'significant progress has been made in the field of emission treatment technology, and that mature or established technologies are now available to remove suspended particles, nitrogen dioxide, some portion of other oxides of nitrogen, and hydrocarbon vapours from road tunnel exhaust air.'* Such information was suppressed from the public whilst the RTA proceeded to con the public with a 'trial' that was never intended to test proven filtration in a whole tunnel.

For each of the tunnel projects, Community Liaison Groups and Community Consultative Committees have been established in which all members, including the RTA and its contractors, have the following responsibilities:

- *"To act with honesty, integrity, fairness, reasonableness and in good faith".*
- *"To act in a way which enhances the broader community's confidence in the community consultation process for this project."*

However, the tabled documents demonstrate that the Planning Minister's approved conditions of the M5 East Tunnel Project, had been regularly breached by the Operators, *for at least a year*, by exhausting large scale emissions from the tunnel entrances (portals) of up to 400 (average about 200) cubic metres per second, or almost half of the ventilation volume of the stack, for up to 8 hours a day. The Parliamentary Order for such documentation alerted the M5 East Operators to 'come clean'. They reported to the media, *one day* before the documents were tabled, that the polluted tunnel air-stream had been deliberately vented from the portals allegedly "because of a faulty monitor". The real truth has now emerged. Portal emissions were deliberate and in breach of the Conditions of Approval.

But what was the RTA doing all this time? Documents reveal that they knew, full well, that portal emissions were occurring and the RTA continued to show complete disregard for any of the Planning Minister's 'strict conditions'. While such breaches were suppressed, former Road's Minister Carl Scully MP, Paul Forward (then CEO RTA), Garry Humphrey (RTA Tunnel Projects' Manager) and Paul Willoughby (Director of RTA Communications) consistently reported that the tunnel ventilation system was operating 'properly' in the M5 East.
Documents also disclose that the RTA did not want these systematic breaches of the conditions to be known to the public, presumably being an accessory to the fact. It is noteworthy that during these periods, the NSW Health was conducting a flawed 'study' to determine whether health impacts alleged by residents (excluding those near the portals) were caused by stack emissions. Not surprising, these systematic breaches were wilfully with-held from the M5 East Community Liaison Committee, despite persistent requests from its informed members. RTA also failed to respond to requests from the EPA acting on behalf of the community concerns.

Why the alleged cover-up? Would a disclosure reflect badly on the RTA as supervisors of the tunnel ventilation operation? Or is there collusion with the M5 East Operators to illegally divert emissions *away* from the tunnel stack to avoid the monitors that would demonstrate exceedances of the air-quality standards? The Planning Minister's M5 East Conditions of Approval Nos 72-75 is a directive that should there be <u>one</u> proven exceedance, attributed to pollution from the tunnel exhaust stack, the RTA is required to install filtration within six months of the directive from the Director General. It seems that the RTA has failed to ensure that the reported conditions in the tunnel were factually correct.

Other sets of documents reveal that the RTA and EPA (now part of the Dept. of the Environment & Conservation) still refuse to allow the application of a site-specific temperature-dependent correction factor to be incorporated in the continuous monitoring of toxic fine particulate matter. As was disclosed in a Report, commissioned by Lane Cove Council, failure to incorporate such a factor applied routinely in Victoria and overseas, can *underestimate* the background particle pollution by between 11-40%, depending on weather conditions. The terrorising dilemma for the RTA is that an incorporation of such correction factors in the continuous measurements of the M5 East ex-tunnel particulates will demonstrate exceedances of the air-quality standards and compel the RTA to install filtration.

LCTAG Inc believes this conduct is a failure of 'due diligence' on the part of the regulators and also a clear breach of the EPA Charter "to reduce the risks to human health by adopting the principle of reducing to harmless levels the discharge into the air…. and advising the Government to prescribe more stringent standards…"

The crucial point is that the RTA and former Roads Ministers Scully and Costa and now Roads Minister Joe Tripodi have FAILED, to date, to admit to the appalling extent of the portal emissions which tabled documents reveal have been going on, large scale, for over a year. Meanwhile, reports of the alleged health impacts on local residents living near the portals have been recklessly dismissed. The RTA continues to refuse to install signs warning motorists to wind up their windows on entering the tunnel's toxic air-stream.

So much for a 'faulty monitor'! The fault lies squarely with an apparent failure of the RTA to do its job honestly i.e., to supervise the operation of the ventilation system to ensure full compliance with the conditions of approval. RTA's defence of its incompetent supervision being "procedural' is utterly unacceptable when the solution is the installation of particle filtration and gas detoxification systems.

7.3 Poisonous Plumes, Politics and Patronage

Unlimited and free access to clean air of acceptable quality is a fundamental human necessity and right.

The lung is a critical interface between the environment and the human body. An average person takes about 10 million breaths a year and about 16 cubic metres of air every 24 hours. The internal surface area of the airways in the five lobes of the human lung is about equivalent to that of a tennis court. Hence toxic substances in air can easily reach the lung and produce harmful effects locally and in other organs.

Adverse effects of exhaust pollutants now include increased infant mortality (*New Scientist* 3 July, 2004); chronic deficits in lung development of children aged 10-18years (*New England Journal of Medicine*, 9 September, 2004); acute heart attacks (*New England Journal of Medicine*, 20 October, 2004); and an association between ovarian cancer and exposure to diesel exhaust fumes (*International Journal of Cancer*, 20 August, 2004).

The World Health Organisation recently reported serious concern about the health effects of vehicle pollutants and of the polycyclic aromatic hydrocarbons (PAH's) which are cancer-causing and can coat fine exhaust particles or exist as vapours. (http://www.euro.who.int/document/E83080.pdf). Diesel exhaust is around 40 times more carcinogenic than cigarette smoke on a weight/volume basis (Gong and Waring, 1998). Up to a fifth of lung cancer deaths have been attributed to exposure to fine particles of vehicle exhausts. (http://www.newscientist.com/hottopics/pollution/pollution.jsp?id=23331100).

Researchers reported a compound, 3-nitrobenzathrone, found in diesel exhaust fumes may be the strongest carcinogen ever analysed and warn that it could be partly responsible for the large number of lung cancers in cities. It produced the highest score ever reported in an Ames test, a standard measure of the cancer-causing potential of toxic chemicals. (*New Scientist*, 25 October 1997). (NewScientist971025-p4.pdf)

A UK study (*J Epidemiol Community Health* 1997; 51:151-159) looked at 24,458 children dying of leukaemia and cancer in the UK over a 25 year period. It found that these children were **35% more likely than chance** to have lived **within 4 km of a major motorway**.

Twice as many people died in Sydney in 2000 from air pollution than from road accidents (*Australian Bureau of Regional Economics Report*, September, 2003). Yet, despite the irrefutable evidence of a worsening situation, the former Minister for 'Cancer and Medical Science,' the Hon Frank Sartor MP has, to date, not ensured vehicle-exhaust pollution is incorporated in the cancer-prevention program of his much vaunted multi-million dollar tax-payer-funded 'NSW Cancer Institute'. As a former Lord Mayor and involved with the Cross City Tunnel project, he also seemed disempowered to take a positive stand against the discredited "filtration is a placebo" ranting of former Roads Minister Scully.

Where is the evidence of NSW Government's 'inner purity' when exhaust emissions of 100,000 vehicles per day are discharged from a stack(s) into precincts where residents, young and old, are wilfully exposed to pre-determined cancer-risks several-fold higher in poisonous plumes from an un-filtered tunnel?

Fine particles, unlike coarse ones, are **mainly soluble** in the lung and represent more than 85% of the particle content of exhaust emissions. In NSW, continuous monitoring of atmospheric particles is underestimated by up to 40% (Katestone Environmental Report, Lane Cove Council, April, 2003) because the NSW Department of Environment and Conservation neglects to incorporate correction factors for accuracy. In conventional research, data manipulation is deemed 'scientific misconduct'. Without accurate measurements of the pollution levels it is not possible to determine the real health risks or to detect exceedances of the air-quality standards. Such tolerated abuses are well documented and seem exploited by the NSW RTA in managing the M5 East, CCT and LCT air-quality studies. It appears so much easier to establish 'compliance' when monitoring data are underestimated and skewed. This outrage is compounded when NSW Health incorporates such data into its 'internally managed' determinations of "no health-impact" studies based mainly on a pre-fabricated patchwork of guesses.

The *unfiltered* M5 East tunnel is a proven ventilation debacle. Evidence has emerged of a litany of breaches of the Ministers Conditions of Approval (MCoA), blatant cover-ups of illegal venting of emissions from the tunnel entrances (portals), allegedly known to the RTA and the tunnel operators. Such was disclosed in internal papers recently tabled by Parliamentary Order. Analysis of the tabled data revealed illegal venting occurred daily, mostly during peak hours stealthily, for almost a year in breach of the MCoA. The ventilation system is so defective and inefficient <u>without in-tunnel filtration</u> that the operators now close the tunnel for health and safety as exhausting from the tunnel portals is not an option, except in emergencies.

The Report, by Child and Associates, into international developments in tunnel emission treatment systems was finally released by the RTA, late in 2004. Claims by the RTA that the Child Report supports RTA's 'Filtration Trial' are spurious because the first version of the 'independent' Report was completed before former Minister Scully announced a 'Filtration Trial' in March, 2004. LCTAG is concerned that the subsequent April and September, 2004 versions of the Child Report appear to have been subjected to interference by the RTA with major amendments imprinted. Why was the author prevented by the RTA from addressing issues such as the applicability of filtration systems to the M5 East, cost effectiveness and making recommendations, despite the MCoA of the M5 East requiring him to do so? Papers tabled by Parliamentary Order show the scope of the Child Report was narrowed by the RTA to ensure the author did not look at such issues with potential to embarrass the RTA. Detailed information in the April-version that contradicted RTA's misleading report about their visit to Japan was expunged in the final September version. The NSW Government appears to continue to ignore such 'anomalous conduct'.

RTA's General Manager of Motorways, Gary Humphrey recently had the temerity to assert: *"Filtration will not be installed in the Lane Cove tunnel because air quality standards will be met"*. Mr Humphrey's typically overblown comment engenders absolutely no confidence against a background of RTA's appalling track record of misleading information and tardy reporting, subject to critical attack in 2004 by the Parliamentary Staysafe Committee. Yet, former Roads Minister Scully could announce publicly in March, 2004, to his colleague - the Hon Angela D'Amori MP, Member for Drummoyne - *"If the M4 tunnel is built,* ***it will have filtration****."*

LCTAG believes that an obligation of due diligence applies both to the Regulatory Authorities and also to the Lane Cove Tunnel Company (LCTC). This obligation is to implement proven measures to clean and detoxify the highly polluted tunnel airstream. Such measures would be consistent with the Precautionary Principles and include the in-tunnel installation of electrostatic precipitators and denitrification systems. Failure to remedy the known toxic emissions, LCTAG believes, may contravene the Protection of the Environment Operations Act.

LCTAG will persist and agitate to bring our concerns to the attention of the LCTC Board, its constituent companies and shareholders as well as to the NSW Government and its bureaucracies. We contend there is potential for all parties to breach the Act and that they have foreseen the potential for serious health impacts and threat of litigation.

7.4 RTA Trustworthiness – Where?

It appears the suppression of the truth about tunnel filtration began when the RTA thwarted the leading Japanese manufacturer with over 25 years of experience with in-tunnel filtration systems - Matsushita Co. Ltd - from attending the RTA-managed 'International Workshop on Tunnel Ventilation' held in Sydney, 9-11June, 2000. Matsushita courteously responded:

"…we cannot attend this time because of that too short a notice and we cannot prepare for the presentation. If possible, please give us another chance to make presentation for Tunnel Ventilation System in Japan" (letter dated 6 June, 2000).

Matsushita's chance to present the truth came 30 September-10 October, 2003 when an RTA delegation, including Director of RTA Communications - Paul Willoughby - was sent to Japan, by former Road's Minister Carl Scully MP, to inspect already proven tunnel filtration systems, by request of Lane Cove Council.

Soon after the visit, another delegate - Garry Humphrey, RTA General Manager of Motorway Services - presented a conference paper in Durban, South Africa, 19-25 October, 2003. The following is a startling disclosure in his paper about Road Tunnel Operations (PIARC website).

"I was in Japan the week before last looking at tunnels on a tour organised by Mr Mizutani. Japan has some excellent cost effective longitudinal ventilation systems in long mountain tunnels employing electrostatic precipitators."

On return to Sydney, did the RTA Communication's Department report the truth about the visit to Japan accurately and what confidence did former Roads Minister Scully have in the RTA?

On 16 December, 2003 former Roads Minister Scully announced, on radio, that he commissioned an 'independent' report on filtration "*…having become apprehensive about accepting advice from the RTA"*. In that same interview he also stated "*I've always said if I could be satisfied that they* (filtration systems) *work, are value for money and cost effective, I'd put them in.*" What Minister Scully failed to disclose was his own tardiness because the 'independent' report he was now calling,12 months late, was already an annual requirement of the Planning Ministers Conditions of Approval (MCoA) of the M5 East tunnel project and states:

Condition 79. *The Proponent* (RTA) *must examine international developments in tunnel emission treatment systems, in consultation with the EPA and the Director-General. The Proponent must report on the outcome of these examinations (including the cost effectiveness of systems) for five years on an annual basis from the date of approval and thereafter as required by the Director-General. The results must be made available to the Director-General, the EPA, relevant Council(s) and the Committee referred to in condition 78, and must be made publicly available, upon request.* (DUAP Conditions of approval, 9.12.97) and condition 80: *As part of the Air Quality Management Plan, the RTA shall also undertake a detailed cost effectiveness comparison to assess the options for control of PM10 and NOx. The options shall include but not be limited to the solid fuel heater buy-back/replacement program, treatment options, the current ventilation stack, modifications to the current stack that would allow heightening of the plume during worst case conditions*. (updated DIPNR conditions, August 2003).

The 'independent' Report, undertaken by Noel Child of Child Associates, was to be completed by the end of 2003. What Minister Scully neglected to explain was why the 'independence' of the Child Report was being severely compromised by alleged wilful interference by senior RTA officers. Nevertheless, the Child Report did describe filtration as 'mature' technology that worked effectively.

Through a Motion put by the Hon Sylvia Hale MLC, internal papers were tabled in June 2004 that revealed the scope of the Child Report was purposely narrowed by the RTA to exclude the applicability of filtration to the M5 East, or to take account of performance, need for filtration or make recommendations - clearly in breach of the above Planning MCoA. In fact the Report should have been completed in December, 2002. The internal papers disclose that the Child Report has been finished, since April 2004, after further amendments imposed by the RTA, but, to date, it has not been publicly released, despite requests, again in clear breach of the MCoA.

The Child Report (now unprivileged by the Independent Legal Arbiter 14.9.04) shows commendable analytical insight coupled with ethically objective and accurate reporting of the facts regarding overseas tunnel filtration. However, the Child Report seems highly embarrassing to the RTA and to former Road's Minister Scully as well as to the Director of RTA Communications who allegedly wrote the RTA Japan Report. In a legal context, the Child Report has created such a dilemma for the NSW Government that the author of the 'independent' report withdrew his proposed paper, under legal duress, from a 2004 Conference on Tunneling (See Report by John Lee, Project Manager, to Lane Cove Council 20.9.04). That the Child Report significantly conflicts with the RTA Report, released 15 March 2004, about the visit to Japan seems a basis for this alleged unconscionable conduct of the RTA who might claim that the Child Report may prejudice the selection process in the 'filtration trial' that is now terminated and found to be largely an RTA hoax.

The anomalous texts of the RTA Report on which former Minister Scully based his 'filtration trial' became even more apparent after the community's scrutiny of RTA's jumbled, non-indexed tabled documents - another RTA breach of the Parliamentary Order (See Report of Independent Arbiter - Sir Laurence Street 14.9.04). Complaints to the Clerk of the Parliament led to the tabling of missing key documents from which emerged the hand-written notes of RTA Garry Humphrey of his visit to Japan. A comparison of the hand-written notes and the text of the final RTA Report demonstrated many crucial points in the RTA Japan Report are actually highly misleading misrepresentations of the situation in Japan. Is this why the RTA refused Lane Cove Council's representative to accompany them?

For example, the notes record the RTA was told again and again that the Japanese use filtration in urban tunnels to protect the outside environment, in response to legitimate public health concern and to significantly reduce the cost of running tunnels. The RTA Report misreports the written findings and critical issues such as the reasons and benefits for installing filtration in Japan. These discordances and more are also confirmed in the Child Report.

It is now clear that the discredited "filtration is a placebo" mantra was clearly delusional. But now with demonstrable untrustworthiness in the RTA, as predicted the 'filtration trial' carried even more than a hint of another red herring! It has the same political whiff as the 'filtration-invention trial' announced by former Premier Carr that was aborted after winning the last State Election. The wastage of taxpayer's money and costs incurred by overseas successful bidders, including two from Japan, who were hoodwinked by the RTA to conduct a phony trial of proven filtration, is utterly unconscionable.

7.5 The Art of Perpetuating a Public Health Hazard

In April 2004, NSW Health released its findings from Phase 2 of its 'Investigation into the possible health impacts of the M5 East Tunnel Stack.' The conclusion reached was there was *"no evidence of an association between the prevalence of reported symptoms and the modeled emissions* (annual averages of pollution levels in previous year) *from the M5 East stack."* The results of the study were subsequently used by the RTA and the former Roads Minister Carl Scully to claim that the impacts of tunnel emissions are free of risks. The results have also been used by NSW Health in providing advice that a major development incorporating a primary school did not have health impacts from the M5 East stack, despite knowing that their assessment excluded children and long-term health impacts.

In the knowledge of glaring inadequacies in the NSW Health Report, Lane Cove Council (LCC) commissioned an independent review by three experts, outside of NSW, and coordinated by Dr Peter Best of Katestone Environmental in Queensland.

After very detailed examination of the NSW Health Report, the Katestone Review recommended that *"Council not accept the findings of the Phase 2 report"* noting that *"The Phase 2 findings of no association between the prevalence of reported symptoms and modeled emissions from the M5 East stack are readily criticized for potential flaws in study objectives and design."*

On Tuesday 8 February, 2005, representatives of the NSW Health met at LCC to discuss and respond to the litany of serious criticisms. To the dismay of those present, there was no intent by NSW Health to withdraw their Report. Compounding this intransigence was the revelation by NSW Health that they had submitted their Report as a 'paper' to an undisclosed journal for 'peer-review' and publication. They now know that pollution was discharged from the ends (portals) of the tunnel during the study period making their own data-sets invalid. NSW Health is on notice in the face of documented scientific and methodological defects, that to proceed with their attempt to publish without correction would be tantamount to 'scientific misconduct.'

The Lane Cove Tunnel Action Group Inc (LCTAG) and Residents Against Polluting Stacks Inc (RAPS) now want NSW Health to publicly acknowledge that they were unaware of the frequent discharge of pollution from the tunnel portals during the study period and withdraw their Report forthwith. Also of concern is Parliament was misled by NSW Health who claimed that the study design and methodology had been reviewed by experts. The truth is that

Professor Brunekreef, the only expert they asked, rejected their methodology before they started and no external review by experts was carried out.

Furthermore, why did NSW Health not bother to validate the basis of their data of stack emission and ask the RTA or tunnel operators if portal emissions had occurred? Why did the RTA not stop the regular, mostly unapproved discharge of pollution from the portals of the tunnel, and why did the RTA not advise NSW Health accordingly?

LCTAG also wants to know why Dr Michael Staff and his team at NSW Health did not correct the record when their Report had been deliberately misused publicly and politically, knowing full-well that 'at-risk receptors' such as children were excluded, producing bias for a negative finding. Only acute effects, not long-term ones, were assessed using methodology that did not and could not determine the pollution exposure of the respondents to the NSW Health 'phone questionnaire conducted over four weeks.

Whilst it was common for complainants to report on odour issues, NSW Health was quite dismissive without explanation of the odour source. Recent scientific reports confirm that odours can be indicators of potential risks to health due to one or more co-pollutants. A more serious field study of odour plume-characteristics as well as a positive response by NSW Health to manage the problem is warranted.

To date, LCTAG believes that the NSW Health, RTA, EPA (now DEC) and Planning (now DIPNR) appear to adopt the **same strategies** used successfully to support the use of white asbestos (chrysotile) as a safe material (*J. Occup. Environ. Med.*, 2005; 47: 137-144). The same techniques, LCTAG believes, are being used to subvert the community into thinking exposure to vehicle pollutants is without risk to health and well-being. It can be readily inferred from the highly critical Katestone Review of the NSW Health Report that, as with the asbestos scandal, a "denial" of the hazard of an agent by its protagonists, no matter how distinguished, may not correspond with "the truth, the whole truth and nothing but the truth."

The conclusion of NSW Health's findings seems consistent with a popular form of "denial" used by the advocates of asbestos and runs like*: "We did not find the evidence for a causal association between an agent and its alleged effects"* when the evidence is based on such factors as:

- Unsound "negative" results derived from flawed data, methodology and study-design.
- Concealment of data that effectively removes scientific rigour and renders a reviewer powerless.
- Sampling (or questionnaire) is not properly conducted in the true exposure and breathing zones.
- Subverting the thinking of people by the release of false information, rather than a disclosure of the true facts publicly.
- Deliberately avoiding definitive answers to a number of important questions by failing to establish and operate a long-term sampling strategy for determining the qualitative and quantitative measures of hazard exposure of subjects in the study.
- Keeping opinions to themselves, when confronted with the facts, allowing government or industry agents to effectively operate a policy of concealment by silence in the face of error while evidence of proven causal effects is kept confidential by agreement with management.
- Early denial is given authority when made by government or industry medical officers or by some medical consultants and others, often with 'conflicts of interest'. The significance of the hazard is down-played with a "so what?" attitude.
- Claiming to adopt "world's best practice" to imply, falsely, there are no risks to health.

- Omitting significant numbers of workers (receptors) and thereby introducing a 'negative' bias.
- Applying inappropriate standards or methods to effectively minimize the concentration of the hazardous agent in the exposure.
- By initiating an 'epidemiological survey', as a ploy, when faced with a health problem, or to simply ignore the problem. It buys time, similar to RTA's 'filtration trial.'
- Deliberately terminating studies at a stage when findings are suggestive.
- Failing to adopt Precautionary Principles to contain the toxic agent by not installing adequate environmental control technology.
- Suppressing highly critical 'audits of performance' for political expediency.

There have been too many studies world-wide which directly link vehicle emissions with mortality and morbidity for NSW Health to engage in a study where they would not be able to find the associations between stack emission and community health LCTAG believes that these strategies used to hide the public health hazards of asbestos for over a century also feature in the techniques adopted by NSW Health to perpetuate the **myth** to the NSW Government and its bureaucrats that the exhausting of vehicle pollutants from tunnel stacks, in residential areas, poses no health risk, either short or long term, for anyone.

It is high time lessons from asbestos, tobacco, exposure to radiation and the like are learnt and as the Hon Ms Sandra Nori, a Government Minister in the NSW Government and Member for Port Jackson said that action *"must be taken to protect our communities from the impact of car emissions by using the latest and best tunnel filtration technology available"*. Ms Nori should know the health impacts of vehicle emissions as she is Secretary of the ALP's Air Pollution Task Force.

Conclusion

It is time we the people came together and took back our State and our country. The community at large, of all political alliances, have ALL been alienated, manipulated, ridiculed and ignored by a ruling elite at both political and bureaucratic levels whose only ideology it seems, is to serve money and power.

The real question is "Whom does this government serve?" We need a government committed to serving the people and big enough and strong enough to do the job.

The Government has also handed over its regulatory powers to the lobbyists and ex-politicians representing the corporations supposedly being regulated. We now have the biggest government that we have ever had, but one that is totally ineffectual in protecting us from the big money interests exploiting us.

What has emerged in the M5 East, CCT and the LCT projects is a scandalous dereliction of duty. Privileged and public documents disclose a litany of 'corrupt conduct'. The Government, through the RTA, has formed alliances with the corporate stakeholder to augment profit by externalizing costs to the community and environmental well-being.

The focus of community anger, however, at what the CCT really means to the community, is the coercion written into the tunnel deal. The contract is clear: the Government must keep a long list of alternative routes closed or narrowed and provide dedicated lanes feeding the tunnel. The roads cannot be re-opened without penalty to the motorist and taxpayer who in turn also meets the cost of the CCMotorway Company in any legal dispute. That means the outcome of the tunnel boycott is continuing congestion. And the frustration is not just local;

traffic piling up around Macquarrie Street and the Eastern Distributor is slowing the travel times from Sydney's north. For all this anger, motorists are left with two unpalatable choices: a $3.56 one-way toll for 2kms or a very slow trip.

Despite all the current Government posturing about reducing the toll, it was the RTA that amended the tunnel contract only late in 2004 to load another 15 cents into the toll to cover $35 million in extra construction costs. The toll is not a political football; it is a business decision. It was the NSW Government which signed a flawed deal. And it is government which is responsible for the ensuing mess - be it exorbitant tolls, gross impacts on local traffic amenity, no in-tunnel filtration, disgraced, wishy-washy go-along-to-get-along 'Community Consultative Meetings' coupled with a litany of bureaucratic incompetencies at immense cost to the taxpayer.

The secret 'Contract Deeds' have eroded the protection of Human Rights and moved us toward an autocratic state. Indeed, it seems, in these contract deeds the corporate co-partners are given veto power over many of our laws and regulations – even those of states and municipalities. Where is the Crown Solicitor in all this? Licenses are not issued for these tunnels, putting them outside existing NSW EPA (DEC) Legislation.

Government should concern itself with morality in the board room. Morality has a great deal to do with money and power. It is to do with how we treat one another. It is immoral for the big money interests to force government to serve their greed instead of serving the people's need.

In the end it comes down to just three principles

1. support for the Constitution and Human Rights
2. commitment to honesty and openness in government, and
3. independence to serve the needs of people according to their individual judgment and conscience

Dr Ray Kearney, Chairman
Ms June Hefferan, Deputy Chair