

INQUIRY INTO CROSS CITY TUNNEL

Organisation: SAPS and Harris Community Centre
Name: Mr Lalita Lakshmi
Telephone:
Date Received: 18/01/2006

Theme:

Summary

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

16 January 2006

Dear Ms Simpson

RE: INQUIRY INTO THE CROSS CITY TUNNEL (CCT)

Sydneysiders Against Polluting Stacks (SAPS) and UnitingCare Harris Community Centre wish to make the following submission to the Inquiry into the Cross City Tunnel (CCT) in relation to the following terms of reference:

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

1) Through the community consultation process community members on the Western side of the tunnel made it very clear that their main concern was the health impacts from the proposed unfiltered emission stack. Through submissions, at public meetings and in petitions, thousands of community members made it clear that they wanted the single stack situated in Darling Harbour filtered, and by the supplementary EIS stage also requested that the tunnel be filtered. Whilst these strong community requests for filtration were acknowledged in the EIS and RTA representations report, the RTA put no stipulation for filtration in the tender or final contract.

DIPNR acknowledged community concerns by inserting a condition (COA 256), into the approval document for the establishment of the AQCCC. (Further discussion regarding the AQCCC at point f)

2) The CCT EIS and associated public consultation relates to a “concept” and not the final design so whilst the public has been led to believe that they have been consulted on what is to be actually built, the reality is that the detailed design work only begins after the consultation ceases and the contract signed. The design is then developed on new models, studies and data. For example, car numbers, vent velocity, redesign of the stack into two chambers with monitoring equipment only installed in one of the chambers were all different from the EIS proposal and preferred activity report, and Conditions of Approval. These changes are not publicly known or advertised by the RTA or the contractor and there is no opportunity for comment or input into this final and often very different design. In most cases, changes have only come to light through calls for parliamentary papers. When changes have been suspected and questions have been asked, the normal response for further information and clarification is that both the design and underlying modelling is “commercial in-confidence”. Is it appropriate for wind modelling, stack velocity and vehicle numbers information to be “owned” by a private entity and not disclosed when it affects or could be in conflict with the better good of a community, for example air quality?

Surely the public should be informed that when commenting on an EIS it is only a concept and will change, often significantly in the design phase?

3) The contract included additional lanes on the Western Distributor, which required the removal of the existing pedestrian walk that provided direct access from Ultimo to the city. This work was carried out by CCM, and included a reinstated but less direct walkway to the city via Darling Harbour. At the time of the EIS it was proposed to replace the pedestrian bridge and ramp system by a new footbridge allowing the same pedestrian movements (EIS p7-39). The addendum to the CCT Representation Report in August 2001 listed 5 options for the footbridge. Option 1 was a full replacement of the upper level footbridge, which was the original EIS option. Option 5 was for an arrangement of a ramp from Harris St to a point just East of the

Sydney Convention Centre, a lift to Darling Harbour via a pedestrian spine by stairs and a lift as well as a new pedestrian ramp and bridge starting north of the Darling Walk building following the Southern side of Bathurst St with a pedestrian bridge over Harbour Street. Local residents were never informed of the change from the EIS preferred option 1 to option 5, nor were they ever made aware of the documents which outlined these changes- “Addendum to the CCT Representations Report August 2001” SHFA were aware of the options and so lobbied heavily to have their preferred, option 5, to improve access to Darling Harbour. The Director Generals report DUAP September 2001 discusses SHFA’s submission.

In the Budget Estimates, 10 February 2005, Paul Forward, then CEO of RTA stated, “We have a lot of discussion with the Sydney Harbour Foreshore Authority. I believe that the new route from that area is far more pleasant, quieter, safer and enjoyable.” He further states, “It might add one or two minutes to the walking time, but I would have thought it would be a far more enjoyable route. That was the general position that the Sydney Harbour Foreshore Authority discussed with the RTA. We reached a very amicable arrangement for the walkway.”

Ms Sylvia Hale responded to Paul Forward “I am sure you can reach amicable arrangements with other authorities. However, it is a question of what the residents are saying, and they are finding it extraordinarily inconvenient that this direct walkway has been removed. Do you not think it is time to talk with them to ensure their needs are met?” This is exactly how residents feel.

Whilst the glossy brochures distributed in the area comment on improved pedestrian access, there was no mention of this detrimental change. This further illustrates the need for the consultation NOT to be run by the RTA as proponent but by an independent party appointed by Planning (DIPNR).

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

1) Prior to the 2004 Council elections the then Minister for Roads and Transport, Carl Scully announced via a press release that there would be a call for tenders for a trial of filtration equipment in one of Sydney’s tunnels. The AQCCC were informed that this would be a “three pronged process” however, 22 months after the announcement, only stage 1 of the process was ever completed and community has no understanding of the where the process is up to. Yet we understand from questions raised by LC members that the cost to date has been in excess of \$500,000.

2) There appears to be a remarkably similar team of consultants, who have worked on the M5 East, CCT and Lane Cove Tunnel projects, (eg. preparing the air quality assessments, operating monitoring equipment, calculating ventilation, and preparing the public relations campaigns (which the RTA calls community consultation). Using these same consultants does not provide opportunity for fresh assessment of methodologies or independence. Mistakes that have been made on one project are then repeated in others, for example despite a poor record of air monitoring equipment failure in the M5 East, the same company was used for the CCT. An example of failure to transfer lessons includes- RTA sponsored work in the M5 tunnel demonstrated that the PIARC turbidity conversion factor underestimated particle concentrations for a set visibility by a factor of over two times in that tunnel. This has led to an under-prediction of the particle emissions from the vent. This process and results has been repeated in the Cross City Tunnel according to a CSIRO issues paper.

What is the process for selecting project consultants? How is the process made open and transparent? Is it open for consultants who have not previously worked for the RTA to apply?

3) We are perplexed to find in the Cross City Tunnel: Summary of Contracts, June 2003, page 30 item 3.3.1, “Requirements for the Trustee and the Company to operate the tunnels’ ventilation system so as to achieve a specified minimum discharge velocity at the top of the Darling Harbour ventilation stack during the first five years of operations, and then to continue to do so if requested by the RTA, **subject to the RTA’s paying the Trustee \$100 000 per year, indexed to the CPI from 18 December 2002, after the first five years. What does this mean particularly as the AQCCC ends after three years, and the vehicle numbers are to build**

up over 5 years? How does this arrangement work and why should the RTA pay to ensure air quality is kept at the agreed level?

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

1) There is no process for the public release of contractual and associated documents. The only information obtained has come through several parliamentary calls for papers however the actual contract was not released via this process.

These documents are often uncollated, described inadequately in the index, frequently undated, unsigned, missing attachments or discs. Much of the material delivered was classified as “privileged” however often this was later overturned by Justice Street and so we are left to wonder if this is a “delaying tactic”.

Through this process, parliament can only ask for documents if they are aware of their existence. **Shouldn't there be a listing of all contractual and associated documents made public?**

It has been our experience that some important documents are only made public the day before they will be delivered to parliament through the call for papers process. If not called for they may never be made public, and the issue never subjected to public scrutiny. In some cases there was no intention to make public at all. For example details of the assessment required under CCT Condition 271 (see below); the draft protocol required under condition 274 relating to New Buildings surrounding the stack in Darling Harbour; and other documents relating to proposals to relocate the CCT Darling Harbour exhaust stack.

2) Condition of Approval 271- despite requests from the AQCCC community representatives, as well as the Independent Technical Advisor for access to information relating to the final internal design capacity of the stack and the modelling underlying this, (eg. projected vehicle numbers, diesel percentage, congested conditions predictions, stack velocity under different conditions etc.) none were made available. We were informed that such information was deemed to be “commercial in confidence”. We then sought access to the submission required under condition 271 (a) and (b) which may have provided some insights but it was only when this submission was obtained in a parliamentary Call for Papers that it became available. We sought to request the AQCCC Independent Technical Advisor to review and comment upon the document but such request was refused by the RTA. (Having obtained the material Parliament, community representatives provided this to the Technical Advisor who gave us the courtesy of raising several issues both clarification and discussion.)

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

1) The CCT assessment process only requires approval by the Minister of Planning. In forming the conditions of approval, the Planning department is only required to “consult” with other agencies, eg. EPA and Health. The relevant Ministers for other departments do not have to “sign off” on the conditions. This means that whilst Planning Dept must consult, they are not required to act upon the advice given by other departments. The other departments are not involved at all when it comes to the contractual arrangements; this is left solely to the RTA.

2) The EPA has a role in the construction phase, however has no role once the project is complete and the tunnel is operational. This is despite a number of important approval and contractual conditions relating to air both inside and outside the tunnel. Considering that a factory or industry must adhere to EPA standards, shouldn't this also be the case for a privately owned road tunnel, rather than the current ineffectual regulator. **Under this process how do other government departments who should have an obligation to look after these issues examine them and take any responsibility? In the current process isn't the RTA asked to rule in areas it has no expertise in, and which could be to the detriment of the public good, for example in areas of planning, health, public transport and environmental protection?**

3) In 2003 the Department of Health alerted other government agencies to the fact that motorists should be warned when entering the tunnel to wind up windows, turn air vent to recirculation and to warn asthmatics on motorbikes and open vehicles not to use the tunnel at all, especially in congested conditions. In August 2004 the Department of Health sort advice from Legal and Legislative Services (file number 99/168) to advise powers within the Health portfolio to direct the RTA to provide public health information to the public re: M5 East Tunnel Particulates. A summary of the advice states that the Minister has certain powers under sections 5,9 and 10 of the Public Health Act that would technically permit him to direct the RTA to perform actions to avert a danger to public health, such as erecting signage in and near the M5 East tunnel with public health warnings. An interagency working party was then established and a brochure produced "Safety in Sydney's Major Road Tunnels- a guide for motorists" which includes a small paragraph addressing a much watered down version of this health advice. It was decided by this working committee that the brochure would cover all road tunnels and would cover CCT Condition 244 which requires that an education program for tunnel users be put in place and it was decided that this brochure would address this condition. To address condition 244, the RTA submitted to DIPNR on 27 April 2005, a community education document which indicates that the brochure would be made available through motor registries in Sydney and that a postcard would be distributed with registration renewals, time dependent on the opening of the tunnel. Four months later, anecdotal evidence would suggest that postcards have not been received with registration renewals, and attempts to obtain the brochure from Centennial Motor Registry Office have been unsuccessful.

If DIPNR considered the RTA's undertakings to cover Condition 244 were acceptable, what checks are in place to ensure that its proposed methods were undertaken?

4) Stalled Filtration Trial- The RTA approached DEC to participate in an evaluation panel of the filtration trial. Correspondence between DEC and Planning, and in DEC board meeting an agenda item, (document available upon request) reveals that DEC's view was that "the trial would be unlikely to achieve a large reduction in peak-hour emissions of air filtered". This was because trialing the small volume proposed represented only a 10% or less of the peak flow rate any of Sydney's tunnels. (ie. the trial was not a realistic trial). **If this was DEC's view, did they ever express this to the RTA and why wasn't it made public?**

5) Condition of Approval 274 requires that a protocol be developed with City of Sydney and Sydney Harbour Foreshore Authority to assist when considering planning and building approvals for new developments which are likely to be either affected by the plume or themselves affect the dispersion of the plume. When framing the condition DIPNR overlooked reference to the likely impacts upon the four Air Quality Monitoring Stations (themselves mandated at Condition of Approval 263 and 264). Community members highlighted this oversight and the need to protect both the quality and continuity of collecting reliable data. Initially we were told this was not a matter for the AQCCC because the Condition of Approval did not specifically require consultation with the AQCCC and RTA sought to contain the protocol strictly to adhere to the wording in the conditions. Community representatives met with Sam Haddad and Mark Hathor (DIPNR) on 27/4/05 and following Minutes of that meeting and several subsequent follow up letters, finally received Mr Haddad's written confirmation on 28 June 2005 that DIPNR's interpretation does relate also to the Monitoring Stations. An RTA Draft Protocol dated August 2005 located amongst the parliamentary call for papers, still fails to address this.

f) The role of Government agencies in entering into major public private partnership agreements, including public consultation processes and terms and condition included in such agreements.

1) Whilst air quality workshops for the CCT proposal commenced on the Eastern side of the tunnel in 1999, there were no workshops in place on the Western side and inquiries revealed that none were planned. The Harris Community Centre argued for the need for members of the Western side to attend these workshops also. Two positions were given to them in the series of workshops already commenced on the Eastern side and held at the Westfield building, adjacent to the site of the proposed Eastern stack. When residents entered these workshops, there were three options being considered. After several of these meetings, the RTA announced a preferred option had been decided- one stack on the Western side, at which time, the last two

meetings were then moved to the Crown Plaza Hotel in Darling Harbour. Still only two community representatives from the Western side were invited to these meetings.

The two community representatives felt it imperative that community members on the Western side were consulted so in 2000, RTA consultants PPK agreed to hold a meeting at the Harris Community Centre to inform local residents of the CCT proposal. However stipulations were made that-

- It was not to be a public meeting but by invitation only
- No media were to be present
- No local community groups with opposing views or information were allowed to be present at the meeting.

When the editor of the small local newspaper “Ultimo Pyrmont News”, arrived, PPK instructed that the meeting was not to commence until the editor left. The consultant employed to run the “consultation” is now a senior member of the RTA Public Relations team. At the insistence of the Harris Community Centre staff and those residents attending the meeting, two subsequent public meetings were held, in which those with opposing views were allowed to attend and speak.

RTA consultants and staff at these meetings only spoke of the benefits of the tunnel, the meetings were told that the unfiltered emission stack in Darling Harbour would only have minimal impact on air quality (less than 1%). Local residents made it very clear that they were unhappy that all wind modelling was based on Goat Island data, and they argued that the wind conditions there would be very different at Cockle Bay, which is low lying ground, away from Harbour winds and surrounded by highrise buildings. RTA experts would not take on board their requests to gather data in Darling Harbour itself. (This expert has since said that “in hindsight”, if beginning this project again, alternate modelling methodologies may be more “useful” given the typography of the Darling Harbour site, and given monitoring results which demonstrates the variants between the wind at high levels and low levels*). At these meetings the RTA did agree to carry out air monitoring in Harris St Ultimo and Day St Haymarket. The results showed the area had high readings for particulates exceeding NEPM goals for on 29 occasions over three months, and residents felt this added to their belief that the tunnel should be filtered. The RTA air quality consultant argued however that the monitoring station had been placed in “hot spots” so the results of monitoring could not be considered accurate.

(*However data continues to be used from Goat Island, and not at Darling Harbour apparently so that the data remains consistent. AQCCC Community representatives have continued to ask for wind modelling data from Darling Harbour to be used instead, however have been told that in order to measure “apples with apples” Goat Island data still needs to be used. RTA experts argue that this is because they want data to be consistent with the basis the EIS was prepared upon. For example Condition 271 required an assessment be prepared to indicate how the stack as designed and built “since the EIS concept”, and how it has optimised stack discharge velocities, energy requirements and air quality impacts at all sensitive receivers. In December 2004, when a submission to address Condition 271 was undertaken, 18 months of wind data from Darling Harbour had been recorded but was not used for this process. Despite more appropriate methodologies being available and recommended by the AQCCC community representatives and their CSIRO independent technical advisor, EIS methodologies continued to be used).

2) In brochures and meetings, the RTA always claims that local residents can “have their say”, through the public meeting process, EIS submissions etc. However it would seem that once the RTA has developed its project concept it does not want real community input and is hesitant to implement any real changes. Community concerns over the bias of the various consultants it uses are ignored by the RTA and as a result the community has little trust or faith in the process. It would appear that the RTA has a very inaccurate distorted understanding of the term “community consultation” and does not know how to engage in meaningful consultation with communities. We would define Community Consultation as an open and accountable process through which individuals and groups can exchange views and information that influences and affects the final decision making process. We perceive RTA consultation to be rather “spun” information, an attempt to convince rather than make any genuine attempt to consult.

The RTA would benefit greatly if it learns to engage in dialogue with communities, from the beginning of a process, rather than when it has already decided what it intends to do and then tries to “sell it” to a particular community.

Who trains the RTA in community consultation? Does the RTA have clear guidelines on what it means by the term community consultation? If so are these guidelines reviewed and by whom? Do the private partners of the RTA undertake training in community consultation?

3i) Although there was a condition 256, stating that the CCT Air Quality Community Consultative Committee (AQCCC) be established, there has been poor understanding within the private company and the RTA, as to what the role of the AQCCC should be. There also appears to be a lack of commitment and the committee is used by the RTA and CCM as an information session rather than a way to allow for input or comments and act on them, as presented by community representatives. A letter from Planning NSW 4 Feb 2002 to Howard Penn at the RTA argues that the RTA’s suggestion to hold AQCCC meetings once a year would be inadequate. For the RTA to suggest an annual meeting demonstrates a lack of understanding as to how to hold community consultation genuinely. Furthermore, both the government representatives and private company representatives either attend spasmodically or change representatives so frequently that there is never any real understanding of long term issues discussed.

3ii) The private company will not act upon community input, as is normal for a genuine community consultation process, and continually goes back to what is written in the terms of the contract. Similarly the RTA will only do what is in the Approval Conditions. For example, approval conditions omitted to require auditing and publishing of stack emission and portal pressure data. In the Budget Estimates Committee, 10 February, Paul Forward says, “ We are not the regulator, we are a road provider. DIPNR is the regulator.....If the regulator asks us to do something, we will do it”. However despite requests from the regulator (DIPNR), (ref: 6 May and 30 May 2005) the RTA refused to instigate auditing of instack and portal emission data or to publish these stating that it was not in the Conditions of Approval. The operator refuses to address the issues, as they are not contracted to do so. They also argue about the cost of any addition duties asked to undertake. For every change made, or any issue that was not addressed by the conditions or the contract, there has to be a series of negotiations of who is to pay, the RTA or the contractor; the cost involved; and, the appropriate oncost, for example, Change Order 2 February 2005 relating to the consistency of auditing and reporting across all air quality monitoring stations involves a discussion of 12% oncost sort by CCM from the RTA.

What is the point of a regulator when they are unable to enforce issues that arise and that may not have been foreseen at the time of devising the Conditions of Approval? Does the RTA have an obligation to consider issues pertaining to “greater good” over Contractual conditions? For example, when considering a reduction in speed limit on the Anzac Bridge, the RTA needed to carefully consider if there would be any implications for their contract with CCM. (documents available on request). This demonstrates that the RTA is a position of having to consider contract obligations against even public safety.

3iii) CCT Website- Condition of Approval 269 requires a website be established to report air quality readings, however since the opening, the website content has been totally inadequate. It was agreed at the AQCCC that this website would be based upon the format of the existing M5 East website (with necessary changes) and this is confirmed in an email from Steve Faulkner, RTA, dated 1 March 2005. However, this did not occur. Instead CCM chose to reinvent the wheel, without further reference to the AQCCC, with very poor results- for example, errors in computer programming, calculation errors, etc. despite the fact the need for the website has been known since the original approval date. Other email exchanges indicate CC< and the RTA were in discussion as to who would host the website with a major consideration being given to the cost impact of each approach.

3iv) In 2003, the AQCCC community representatives were under much pressure to decide the location of the community based monitoring station, as required by condition 263. The condition states that the monitoring station must bear a relation to the location of the stack. Documents tabled in parliament reveal that, at the time of this negotiation, CCM, RTA, DIPNR, Dept Health and SHFA all were aware that plans were well

underway to relocate the stack into a new building in Darling Harbour. This would not only mean a new site for the stack, but a plume would operate differently when the stack was combined with the bulk of a building. In a memo to Sam Haddad from Mark Hather, 11 December 2003, he suggests, “legislating a stack relocation” immediately to avoid a formal community consultation process via an EIS. If the regulator is advising how to avoid an EIS, then it appears that decision-making in secrecy and community silencing is an accepted government practice.

Key finding 1.24, in the Management of SHFA inquiry June 2005 states “In the debate concerning where to locate the M4 (sic- CCT) emission stack, SHFA seems to have placed the interests of its commercial tenants in Darling Harbour above those of Ultimo residents.”

3v) Whilst the AQCCC was established as part of the approval conditions there was no consideration regarding community representatives needing resources such as independent technical and medical advice. The community consultation process had led to lack of faith or trust in the “experts” used by the RTA and CCM. As much of the information in meetings was extremely technical, it was felt by community representatives that there was a push for them to accept what was presented untested. Community representatives take the role seriously and see it as a big responsibility they felt that in order to do the role adequately they needed resources to inform and educate their communities and access to independent advice to test the information provided by the RTA and CCM. To date acquiring and then retaining this independent advice has been an extremely arduous process for community representatives. Perhaps because they see the AQCCC as an information session only RTA and CCM are resistant to providing the funds for this valuable resource.

Lalita Lakshmi
Harris Community Centre

and
Narelle Thirkettle
Sydneyiders Against Polluting Stacks
and community representative on the Cross City Tunnel Air Quality Community Consultative Committee