

INQUIRY INTO CROSS CITY TUNNEL

Organisation:

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Theme:

Summary

Submission to Joint Select Committee on the Cross City Tunnel

Richard d'Apice AM

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This submission relates to:

- alterations to existing roads including William Street which, in their supposed support of the perceived benefits of the subterranean Cross City Tunnel, ignore and breach the clear duty of the Government and the RTA to provide an effective system of road access to, from and around the City and within the areas surrounding it, and
- the methods available to address the bad outcome which has resulted from alterations to the existing road network.

This submission addresses the first item (efficacy of the “community consultation processes”) and the last item (“any other related matters”) of the Terms of Reference of the Committee.

It is my submission that the methods by which the failures of the Cross City Tunnel process can be addressed are clearly and essentially related to an inquiry as to how those failures occurred. The Committee should not, in my submission, take a narrow view of its terms of reference as this would cause significant damage to the public reputation of the Parliament and to the public expectation that the Parliament be the guardian and protector of the public interest.

RTA Legal Opinion:

There has been tendered into evidence before the Committee an opinion (called a Memorandum of Advice) provided by Bret Walker SC to the RTA that it had the power to enter into the CCT contractual arrangements. This advice was provided by Mr Walker on the basis of instructions provided to him by the RTA. The Committee should not, in my view, rely exclusively upon advice obtained and tendered by the RTA as to the powers of the RTA and the effect of the contractual arrangements entered into by the RTA. The instructions provided to Mr Walker and the advice provided by him should be reviewed by the Crown Solicitor or other independent adviser on behalf of the Parliament and people of NSW whose interests appear to have been significantly damaged by the contractual arrangements entered into by the RTA.

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

On the basis of Mr Walker's advice, the substance and effect of the Cross City Tunnel contract is that, for the future, the proper road management by the City will come at a cost which will be incapable of prior calculation, will potentially be punitive and will dissuade Government from making proper traffic management decisions. This is a disastrous outcome produced by the fact that the legality of the contract and the resulting right of action by the developer is apparently based upon the Public Authorities (Financial Arrangements) Act 1987 (section 20) which applied despite anything in any prior legislation and any subsequent legislation (unless that subsequent legislation expressly overrides that Act.) Traffic management is now governed by legislation relating to financial arrangements under which public policy considerations of proper road management are irrelevant considerations.

The public had not the slightest idea that the entry into this contract would (or could) have this effect or of the potentially huge financial consequence of any later decision to reverse road closures in the (public) interest of proper road management. The developer and the Government clearly understood this consequence and concealed it from the public during the "community consultation process." The process was a deliberate sham. This is the substance of the Cross City Tunnel Contract and it is one about which the community was not informed or consulted, did not know and had no part in determining.

Identifying the failings of and the remedy for the Cross City Tunnel outcome:

Issues arise which should be addressed by and form the basis of recommendations by the Committee as to:

1. a process to determine whether the outcome of the contractual arrangements has undesirable consequences on traffic management which are contrary to the public interest and, if so,
2. a process to determine the actions which can be taken to avoid or ameliorate those undesirable consequences,
3. whether any compensation might be payable by the RTA or any other State agency to the other contracting parties as a result of any such actions taken to avoid or ameliorate those undesirable consequences,
4. a process for making a realistic assessment of the amount of any such compensation,
5. the steps, up to and including legislation, which are available to the RTA and/or the Government to avoid or minimise payment of compensation for such actions
6. the actions which should now be taken by the RTA and/or the Government:
 - o to avoid or ameliorate any identified present or future undesirable consequences of the contractual arrangements
 - o to avoid or minimise payment of compensation for actions taken to avoid or ameliorate those undesirable consequences

The objective of the 1916 widening of William Street was to improve access between the City and the Eastern Suburbs. The Tunnel is intended to allow traffic between places west of the City and the Eastern Suburbs to by-pass the City. It is my experience that the Tunnel and its associated road closures entirely defeat the traffic management purpose of the original widening of William Street without providing any useful alternative for traffic between the City and the Eastern Suburbs.

It is my submission that the Committee should find that the Cross City Tunnel Contract is contrary to public policy and that the Government and the Parliament are empowered to and would be justified in avoiding or ameliorating any identified present or future undesirable consequences of the contractual arrangements. The Government should be prepared to pay compensation to the operator up to (but not exceeding) the amount of the up-front payment made by the developer which I understand to have been in the order of \$100 million.

Yours faithfully,

Richard d'Apice AM