

**Submission  
No 388**

## **INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT**

**Organisation:** Leichhardt Against WestCONNEX LAW

**Date Received:** 3 September 2018

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To Fred Nile, Chair  
Public Accountability Committee  
Inquiry into the Impact of WestConnex Project  
Legislative Council of NSW Parliament

Darley Road proposed 'dive site' for Westconnex - Financial Maladministration

Dear Mr Nile

1. This submission addresses the following Terms of Reference:
  - the cost of WestConnex project, including the size and reasons for overruns;
  - consideration of the governance and structure of the WestConnex project including the relationship between Sydney Motorway Corporation, Roads and Maritime Services, the Treasury and its shareholding Ministers;
  - the compulsory acquisition of property for the project; and
  - any other related matter.
2. This submission discusses the circumstances and impacts of the selection of 7 Darley Road, Leichhardt (**Darley Road Site**) as a construction mid-tunnel 'dive' site for the WestConnex M4-M5 Link (**Stage 3**) and then for permanent use as a Motorway Operations Centre.
3. It will be contended that the maladministration of the WestConnex Project (**Project**) is evidenced through the Government's handling of the Darley Road proposed acquisition and that senior officials from the Sydney Motorway Corporation (**SMC**) and the Roads and Maritime Service (**RMS**) should be invited to appear before the Committee to address the matters raised in this submission.
4. It is further submitted that establishing SMC as a separate entity to the Government failed the community and led to reduced accountability and lack of transparency.
5. This submission is submitted by Leichhardt Against WestConnex (LAW), a community group formed in August 2016, representing over 1,000 Leichhardt residents opposed to the WestConnex Project. LAW is not associated with any political party.
6. Due to the sensitive content of this submission LAW requests that the names of the co-convenors who authored this submission are not published. However, LAW is prepared to appear at the Inquiry hearings if that is of assistance to the Committee.

7. Please note that the facts described in this submission can be confirmed by way of documents obtained via *Government Information (Public Access) Act 2009 (GIPA Act)* requests submitted by LAW.

### **Background**

8. The Darley Road Site is located at 7 Darley Road Leichhardt, immediately adjacent to Leichhardt North light rail station. The land, owned by the State Government (Railcorp) is leased to Tdrahhciel Pty Ltd (Leichhardt spelled backward), a company owned by two people, who in turn sublease the Site to Woolworths Ltd, who operate a Dan Murphys liquor store on the Site. Darley Road is a State/arterial road with direct access to the City West Link and is surrounded by local roads with low-rise residences with a number of primary schools and child-care centres in the vicinity.
9. The large commercial building at 7 Darley Road was unoccupied and derelict for many years until minor renovations commenced in March 2016, with major work undertaken from August 2016. A new Dan Murphys liquor store opened in December 2016, well after plans to acquire the Site for WestConnex were known to the leaseholder and the public.
10. The use of the Darley Road site had been controversial for many years prior, with Woolworths unable to obtain Council approval to open a liquor store due to safety and traffic concerns associated with operating a major liquor outlet in a community setting, on a constrained site and on a road with known safety and traffic issues. Despite strong community and Council opposition, ultimately the liquor store was approved by the Land and Environment Court, although strict controls were included in the approval conditions to address the proposed bottleshop truck movements and parking concerns.
11. The lease held by Tdrahhciel Pty Ltd was extended by 20 years in 2012 without the community's knowledge. The circumstances of this lease extension, including the involvement of the Premier (the then Transport Minister) and the activities of paid lobbyist Kerry Chikarovski, as uncovered by LAW, have been the subject of considerable media attention. The matter was also referred to the ICAC, although no findings were issued. Detail is set out in the following media reports:

[Kerry Chikarovski helped Leichhardt lease owner in deal that has complicated WestConnex plans](#)

[Transport for NSW gets probity warning on Leichhardt lease - so gets new advice \(7 June 2017\)](#)

[How transport for NSW pushed past probity problems - and cost taxpayers millions](#)

[Email trail reveals costly U-turn on property lease by NSW transport chiefs](#)

[Premier referred to ICAC by Greens](#)

[NSW Premier denies involvement in Westconnex lease deal that has been referred to the ICAC](#)

The Premier has also faced scrutiny as to her involvement with the lease extension, over several days in Parliament during Question Time, from both the Greens and Labor Party Members of Parliament:

[NSW Labor: Premier continues to hide from the truth on Darley Road site in Leichhardt](#)

***TIMELINE OF EVENTS - WESTCONNEX INVOLVEMENT WITH DARLEY ROAD SITE***

12. A timeline of events relevant to this submission is set out below:

May 2016	Presence of workers at the Darley Road Site is an early sign to residents that renovation by Woolworths is underway. Clean-up of the derelict site commences. Woolworths confirm that they intend to open the new Dan Murphys store prior to Christmas.
Late July 2016	Rumours circulate in the Leichhardt community that the Darley Road Site will be used for WestConnex.
August	Community consultation for Stage 3 commences.
13 August 2016	At the SMC community consultation session at Leichhardt Town Hall, after repeated questioning, Peter Jones (Project Director of Stage 3) advises local residents that the Darley Road Site 'may' be used as a 'dive site' for Stage 3 of WestConnex. No other information is provided at this session on possible construction sites for Stage 3.
16 August 2018	The Government commences commercial negotiations for the acquisition of the Darley Road Site (confirmed by documents obtained via FOI laws).
22 August 2016	At the SMC community information session at Balmain Town Hall the RMS property acquisition representative refuses to answer specific questions about whether or not the Darley Road Site or Blackmore Oval in Leichhardt are on a list of properties to be acquired for construction of the M4-M5 Link.
24 August 2016	Woolworth's, the sub-lessee, are advised that the Darley Road Site will be acquired and an offer for compensation will be made (as disclosed in documents obtained via FOI laws).
Sept - Oct 2016	The renovation and fit out of the site accelerates (reported to be in the vicinity of \$5-7 million).
November 2016	RMS issue proposed acquisition notices ( <b>PANS</b> ) to Tdrahhciel (leaseholder) and Woolworths (sublessee) for acquisition of the lease and sublease of the Darley Road Site.
17 Nov 2016	LAW and the Inner West Council ( <b>Council</b> ) meet with RMS and SMC to voice serious concerns with the proposed dive site. No mention is made that the PANS to acquire the Darley Road Site had been issued.

December 16, 2016	New business Dan Murphys opens at the Darley Road Site in time for the bumper Christmas trade (reportedly the largest Dan Murphys in Australia)
March 2017	The Government announces that it is considering a second possible mid-point dive site location, immediately adjacent to Sydney Secondary College, Leichhardt Campus. There is widespread opposition, a rally and the Minister for WestConnex eventually rules out the site. Peter Jones later advises residents that the site was never intended to be used as a mid-tunnel site but as a lay-down site for equipment.
Nov-March 2017	After lobbying by LAW, the Council engages an independent engineer (Jim Holt) to assess the suitability of the Darley Road Site as a mid-tunnel construction site and to look at alternative, less-impactful sites including the western end of the Rozelle railyards. The second site at Sydney Secondary College is also considered in his report. The Report finds that Darley Road is the worst option in terms of impacts to the community and that the western end of the railyards is the 'least worst option'.
April 2018	The Environmental Impact Assessment (EIS) for Stage 3 is approved, which confirms the use of the Darley Road Site.
May 2018	The contractors for the M4-M5 Link are selected.
28 June 18	SMC issues a community update advising that the Darley Road Site is not required for construction or operation of WestConnex.

13. It is submitted that the behaviour of both the RMS and SMC towards the community and the Council with respect to the Darley Road Site was negligent, at times deceptive, and that their handling of this proposed acquisition has all the hallmarks of financial maladministration. The result of this mishandling by the Government is wasted taxpayer funds, lost time and resources, stress on local businesses and residents (a number of whom who sold their homes during this period) and represents the very worst example of community consultation.
14. It is LAW's view that those responsible for the proposed acquisition of the Darley Road Site ought to be held accountable for their behaviour and should be invited to explain their actions to the Committee.
15. These issues are set out in further detail below:

***(i) For nearly two years the SMC and RMS repeated the untrue statement that the M4-M5 Link could not be built without the Darley Road Site***

16. We respectfully ask the Committee to inquire why SMC and the RMS persisted in stating to the community and the Council that the M4-M5 Link 'could not be built' without the Darley Road mid-tunnel dive site - and that there was no alternative site available - when this was proven not to be the case. Project Director of Stage 3, Mr Peter Jones stated words to the effect of; 'I

can't build this project without a mid-point dive site' at its meeting with the Council, SMC, RMS and LAW in August 2016 (transcript available). Both the project proponent, RMS, and the private delivery authority, SMC, repeated this misstatement in correspondence, in meetings and in conversations with the community for nearly two years.

17. However, in June 2018, after the contractor was selected, RMS quietly advised by way of a 'Community Update' that the Darley Road Site was 'not required' for the M4-M5 Link:

[WestConnex M4-M5 Link Community Update, June-July 2018](#)

[SMH: State ditches plans for westConnex tunnel sites in Sydney's inner west \(28 June 2018\)](#)

18. The RMS and the SMC need to explain this misstatement to the committee.
19. It is further submitted that the Government's dogged pursuit of the acquisition of the Darley Road Site, their insistence that it was required, and their failure to listen to the community and the independent experts led to two years of wasted taxpayer funds, along with unnecessary stress to the Leichhardt community, in particular those residents and businesses in the vicinity of Darley Road.

***(ii) The Government repeatedly ignored legitimate community and Council objections***

20. The Government was aware of the unsuitability of the Darley Road Site from August 2016 following the submission of detailed objections on traffic and safety grounds provided by the Inner West Council strategic traffic planners and by LAW. Despite this, SMC continued to push for the site to be used and ignored these legitimate concerns. Had the Government listened to the community and the Council from the onset, none of this wastage of resources (time and money) would have occurred. It is noted that:
  - a. From August 2016 until the abandonment of the Darley Road Site by the Government in June 2018, numerous and ongoing representations were made by the community as to the unsuitability of the Darley Road Site on the grounds of both safety and traffic impacts.
  - b. The Inner West Council's traffic planners raised these issues directly with the SMC and RMS on many occasions<sup>1</sup>.

21. A summary of the issues forwarded to the Government is set out below:

- a. The site had long been acknowledged by the Council and the then RTA as a traffic black

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<sup>1</sup> Petitions were provided to the Government, rallies were held, with over 30 protests held at Leichhardt drill sites. Letters were also sent to the Minister for WestConnex and Minister for Roads with the responses stating that the Darley Road Site was needed for construction of the M4-M5 Link and not addressing the community's concerns as to impacts. LAW and the Council attended many meetings with Planning, RMS and SMC over this 18 month period and brought these issues to their attention.

spot as disclosed in several Council Reports. There had been two fatalities and several serious accidents in a five-year period on the road adjacent to the Darley Road Site. A large number of accidents had occurred near the site since 2006, including on the

streets adjacent to Darley Road and also at the James Street intersection. In 2017 it was reported in the Inner West Courier that the adjacent intersection with the City West Link was the '3rd most dangerous' for road traffic accidents in the Inner West.

- b. The addition of hundreds of heavy spoil truck vehicle movements a day to this site would have created a real risk of further fatalities and serious accidents<sup>2</sup>.
- c. The then Leichhardt Council repeatedly rejected the original DA for a bottleshop on the site because of its unsuitability for heavy vehicle access. The eventual approval by the Land and Environment Court imposed strict conditions on heavy vehicle access with no right turns allowed into or out of the site. The SMC chose to ignore these restrictions in advocating for hundreds of truck movements a day in and out of the site, including using right-hand turns.
- d. Darley Road is already highly congested with vehicular traffic and is at capacity, regularly banking up 30-40 cars deep, with delays experienced even outside of peak commuter travel times. To suggest that this road (and neighbouring streets) would have the capacity to cope with the projected extra volume of heavy vehicle traffic defied common sense. The addition of heavy infrastructure and hundreds of trucks and worker vehicles to this location would compromise the integrity of the entire inner-west road network.
- e. The Inner West Council's then Administrator and strategic traffic planners agreed that the site was unsuitable for mid-tunneling construction because of the traffic impacts and safety issues (for both drivers and pedestrians)<sup>3</sup>.
- f. The independent engineer engaged by the Council, Jim Holt, rejected the site as unsuitable and noted that the proposed acoustic shed would probably not contain the noise due to the elevated position of the site. Despite this considered and expert independent evidence, no one from RMS or SMC ever explained how the site could work without causing the impacts identified.

## 22. The RMS and SMC should be called to the Committee to explain:

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<sup>2</sup> Darley Road is a pedestrian hub, as it is located directly out front the very busy Leichhardt North tram stop. The adjacent Canal Road is the pedestrian access route to the very popular Bay Run, 'Bones' café off-leash park and Leichhardt pool. The route is also used by cyclists to access the bicycle network. Darley Road and the surrounding streets are also in the school zone for Orange Grove Primary School and Sydney Secondary College Leichhardt Campus, so the location experiences a large number of school children travelling by foot near the site. From the outset these concerns were communicated to the Government, RMS and SMC but none of these parties have ever explained how the risks to pedestrians and school children in particular would be managed.

<sup>3</sup> The Administrator expressed his opposition directly to SMC at meetings on several occasions, and also issued Media Releases demanding answers to the Council's traffic and safety concerns with the site.

- *What due diligence was undertaken by Mr Jones prior to commencing commercial negotiations to acquire the site in August 2016?*
- *Why did RMS ignore expert advice, community opposition and the Inner West Council for nearly two years and continue to push to acquire a site that was clearly unsuitable as a major construction site and ultimately was 'not required'?*
- *What was the cost of two years of site investigations, including drilling, drafting of detailed plans, community consultation, publications etc for a site that was 'not needed'?*

***(iii) The Government exposed the NSW public to an unnecessary and significant financial risk***

23. It is submitted that the failure of RMS to act prudently and responsibly in their dealings with the leaseholder drastically increased the taxpayer's exposure for compensation payable, as set out below.
24. The Darley Road Site was derelict for many years until a contractor commenced a renovation of the property in approximately May 2016. Documents obtained under FOI laws disclose that by August 2016 the tenant and subtenant were informed of RMS's intention to acquire the site. The Lease documents provide that the sub-tenant was required to renovate the site by the landlord. SMC had selected a site and RMS had agreed that negotiations to acquire it should commence, both parties being fully aware that a new business was planned to open in December.
25. The leaseholder has on the record stated that the compensation payable to it could have been up to \$50 million. The absurdity of compensation been payable in circumstances where a new business opened knowing full well it was to be shortly acquired, has also been reported in the media. [The mystery of the bottle-shop, the WestConnex tunnel, and the \\$50 million bill](#)
26. The Inquiry should look at why RMS was contemplating acquiring a currently derelict site that was to become a bottle shop with over 20 years lease when this would necessitate a substantial payment and potentially deliver a windfall to the leasing parties. The question that needs to be asked is - *was this proposed compulsory acquisition in the interests of the taxpayer?*
27. It is also objectionable that a building that was renovated (reportedly at a cost of \$5-7 million) should be demolished less than 18 months after construction. While Mr Jones, on a number of occasions, suggested to LAW that the building could be saved, the EIS revealed that the entire structure would be demolished. This wastage has been described in the media as a '*bizarre and expensive lapse of planning*': [Newly built Dan Murphy's store faces demolition](#)

LAW agrees with the sentiment of the journalist who states:

*'Any reasonable person might ask who gave permission for the bottle shop to be built there in the first place? Those persons should be held accountable. Sydneysiders are*



*becoming used to this sort of 'planning' from our leaders. And it's our money that will be used to pay for the stuff-up.'* ([Dan Murphy's store to be demolished](#))

28. The Federal Member for Grayndler has also placed Questions on Notice to the Minister for Urban Infrastructure (Paul Fletcher) as to what steps the Federal and NSW State Government had taken to mitigate taxpayers having to foot the bill for the acquisition of the Dan Murphy's. These questions have never been answered: [Grayndler Media Release: Anthony Albanese - Minister won't answer questions on Westconnex](#)
29. It is only because the contractor of the M4-M5 Link ultimately decided that the Darley Road Site was not needed that the taxpayer was spared the \$50 million compensation bill. It is not acceptable that the Government, exposed the taxpayer to this liability, noting that the land is Government-owned! It is LAW's contention that the leaseholder should have been informed that any development it undertook from the date it became aware of the acquisition (and indeed after the PAN was issued) was at its *own risk* and that the Government would not be compensating it for relocation or extinguishment of a business that opened upon with full knowledge that the site was to be acquired.
30. The behaviour of the Government in its handling of this proposed acquisition was negligent and it ought to be held accountable.
31. We therefore respectfully ask the Committee to inquire as follows:
  - *What did RMS or SMC do to mitigate the risk that public funds would be required to be expended to pay compensation to a business that commenced trading **after** the business had been notified that the site would be acquired?*
  - *How does compensation for demolition of a building 18 months after construction represent 'value for money'?*

***(iv) Misinformation and no information***

32. From August 2016 until the Concept Design for Stage 3 was issued in May 2017, virtually no information was made available by the Government to the community about plans for Stage 3, including Darley Road. Nothing was provided about key issues such as truck movements, period of operation, worker parking or mitigation proposed. People in the vicinity of proposed construction sites, including Darley Road, sold their homes.
33. The Minister for WestConnex, Stuart Ayres, despite dozens of requests by letter and phone call, repeatedly refused to meet with the LAW or other members of the community. Concerns were dismissed, residents were mocked as 'anti-road zealots' or simply ignored. See comments made at the time by the then Minister for Roads:  
[Roads Minister Duncan Gay: chattering classes are more of a pollution risk than trucks](#)

34. It was not until March 2017 that correspondence was sent to Leichhardt residents about the proposed dive site (nearly eight months after commercial negotiations commenced). The Government's hand was forced in this case as the media had uncovered that the Government was considering an alternative dive site location directly next to Leichhardt High. LAW was informed by Kylie Cochrane (SMC community engagement officer) by telephone that SMC was door-knocking and delivering a letter informing residents of plans for the site, given the imminent publication of this story. Only when forced by the media was the Government prepared to provide any information to residents as the plans for acquisition.
35. It is LAW's contention that the lack of information was indicative of the attitude of the Government towards the community who are viewed as mere collateral damage in the execution of this Project. This was most evident in the attitude of the SMC and Peter Jones, who, as a private sector contractor appears motivated solely by delivering the project on time, without regard to public policy concerns or community impacts. It is LAW's view that the RMS had abrogated its obligations as project proponent to this unaccountable, private sector body with its limited remit, and which was beyond the reach of FOI laws.

***(v) Deception about status of acquisition of the Darley Road Site***

36. It is submitted that the RMS and SMC misled the community and the Council as to the status of the Darley Road acquisition over many months. They sat across the table at meetings with LAW and said 'nothing was decided.' They allowed the Council to pay \$12,000 for an independent engineer's report to look at less-impactful sites, all the while knowing that the Proposed Acquisition Notices (**PANs**) for Darley Road had been secretly issued. It is clear from documents obtained via FOI laws that the Government's plans for the Darley Road Dive Site were well-advanced and settled by as early as August 2016.
37. Despite this, both RMS and SMC refused to provide any details as to how the impacts of this major construction site in a village setting would be managed. Nor did they disclose the fact that commercial negotiations had commenced.
38. The lack of good faith on the part of the Government is evidenced by the fact that it commenced 'community consultation' at the same time as it commenced commercial negotiations to acquire the Darley Road Site. The decision to take the site had already been made before or during the process of community 'consultation.' Despite this, the community were repeatedly assured that they were being listened to, that 'nothing' was decided. Community consultation sessions on the M4-M5 Link were held in August 2016, including at Leichhardt Town Hall on 13 August 2016<sup>4</sup>

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<sup>4</sup> At these sessions there was no information provided at all about likely construction sites. The 'consultation' session instead was comprised of glossy depictions of the proposed route and stylised artists renditions on the wall. Attendees were invite to write comments on sticky notes. Upon repeated questioning Peter Jones conceded that the Darley Road Site was under consideration as a possible dive site; however he assured the listeners that 'nothing was decided' and they they were looking at a number of sites. It was also very clear from the comments Mr Jones made that he had not undertaken any detailed examination of the site and

- . No detail was provided of the location of construction sites at these sessions. Despite assurances from Mr Jones at the session that ‘nothing was decided’, documents obtained under the *GIPA Act* confirm that several days later the Government commenced commercial negotiations with the leaseholder to acquire the Darley Road Site. The documents also disclose that the leaseholder was informed in writing on 22 August 2016 that the Darley Road Site would be required for WestConnex.
39. Clearly the information that Mr Jones provided to attendees in August 2016 was not accurate, with the consultation process being clearly a sham and at best an exercise in marketing for those spruiking the merits of the Project.
40. Of most concern however, is the fact that RMS kept secret from the community and the Council the fact that it had issued PANs for acquisition of Darley Road. Documents obtained by way of GIPAs disclose that the Government issued the PANs to acquire both the leasehold interest (4 November 2016) and the business (14 November 2016) on Darley Road.
41. The Government needs to explain its secret acquisition of the Darley Road Site and its failure to inform the community and key stakeholders, noting that:
- a. Without knowing the PANs had already been issued, the Council agreed to engage an independent engineer (Jim Holt) to assess the Darley Road Site, as well as a possible alternative (less-impactful site) in the western end of the railyards, and ultimately, the proposed school site<sup>5</sup>. There were many meeting with the engineer, Council, community and Government representatives over several months, with the engineer’s report was ultimately provided in March 2017.<sup>6</sup>
  - b. At no time was the Council or community made aware of the status of the acquisition by the RMS, despite numerous meetings and discussions and direct questions as to the status of the acquisition.
42. The acquisitions were in fact never disclosed to the Council or the community and only uncovered through investigations undertaken by LAW via FOI laws. When challenged at the Community Reference Group meeting as to the date he knew about the acquisitions, Mr Jones refused to answer and said he would take the ‘question on notice’.
43. We ask that the Committee call the RMS and SMC to the Inquiry to explain:
- *Why was the community and the Council, who were regularly meeting with the RMS and SMC, not informed about the acquisition of the Darley Road Site?*

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was not aware of the access and traffic/safety issues with the site, including the fact that a roundabout was currently being constructed as part of the site’s renovation.

<sup>5</sup> LAW lobbied the Council for the engagement of an independent engineer’s report.

<sup>6</sup> The report found that the Darley Road was the worst dive site option due to the community impacts and constraints with the site and that the western area of the railyard was the least impactful site.

- *Why was the Council encouraged to waste time and money by engaging an independent engineer when the RMS had already decided that it would take Darley Road?*
- *Why did the Government repeatedly state that it would consider less-impactful sites while secretly commencing acquisition of the Darley Road Site (considered the least appropriate by the independent engineer)?*

***(vi) Undisclosed conflict of interest***

44. At the meeting held at the Inner West Council offices in November 2016 and prior to that time, LAW had one contact from RMS with which it was dealing, being Lisa Chikarovski who was the engagement officer handling acquisitions on behalf of RMS.
45. Documents obtained by way of GIPA disclose that Lisa Chikarovski mother, Kerry Chikarovski, who had acted as a paid lobbyist for Tdrahciel Pty Ltd at the time of the Darley Road lease extension, was continuing to act for the leaseholders with respect to the acquisition.
46. This conflict of interest was not disclosed to the community or the Inner West Council at any time.
47. Kerry and Lisa Chikarovski, along with the RMS, should be called to explain to the Committee:
- *Was this conflict of interest was disclosed at the relevant time to the RMS by Lisa Chikarovski?*
  - *If yes, why was the community not notified of this conflict?*
  - *What management action was taken by the RMS to address this conflict of interest?*

***(vi) Misleading statements about plans for Leichhardt High***

48. In March 2017 the Government announced that it was considering an alternative mid-tunnel dive site at Leichhardt High. This garnered a lot of media attention, as did the school's opposition to the proposal:  
[A proposed WestConnex tunnel site has been targeted by Leichhardt students who fear lessons and health will be affected](#)
49. The Government abandoned this site a few short weeks later stating that it had 'listened to the community.' : [Minister confirms proposed WestConnex construction tunnel just 36m from classrooms at Leichhardt has been dumped](#)
50. Documents obtained via GIPA reveal that there were no firm plans to take this site and no testing or investigation into its suitability had been undertaken at the time it was ultimately rejected. Mr Jones also reportedly informed residents in leichhardt that the site was never intended to be a mid-tunnel dive site, but a lay-down area for equipment.

51. Mr Jones should be invited to the Inquiry clarify the situation.

**Conclusion**

The RMS and SMC should be invited to attend the Inquiry and address the issues raised in this submission.

Leichhardt Against WestConnex (LAW)  
3 September 2018