

**Supplementary
Submission
No 388a**

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

Organisation: Leichhardt Against WestCONNEX LAW

Date Received: 5 September 2018

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

Dear Mr Nile

WestConnex Impacts - Consultation and Response to Feedback

1. Our submission falls into the following Terms of Reference:
 - 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; and
 - ‘any other related matter.’
2. It addresses the poor and in some cases, non-existent ‘consultation’ by the Government.
3. 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.
4. LAW requests that the names of the co-convenors who authored this submission are not published for privacy reasons as it may impact of their livelihoods. However, LAW is prepared to appear at the Inquiry hearings if that is of assistance to the Committee.

Consultation - issues

5. Sydney Motorway Corporation (**SMC**), the entity charged with delivery of the WestConnex project (**Project**) on behalf of the Project proponent, Roads and Maritime Service (**RMS**) has been primarily responsible for the ‘consultation’ process for the Project. It is important to note that SMC, as a private entity charged with delivering the project on on-time and at the cheapest cost, has limited interest in or incentive to consult with the community. And any statutory or contractual requirements to consult are minimal in nature.
6. This submission will discuss issues arising from the Government’s decision to structure the delivery of this Project, including consultation, via the SMC. It is important to note that the SMC’s structure is quite unique. Although charged with delivery of a ‘Government’ (Critical State Significant Infrastructure) project, SMC is beyond the reach of any usual Government freedom of information laws. This significantly reduces its accountability. SMC is a separate legal entity from the Government. This decreases the Government’s visibility over its own project. What is most troubling however is that SMC’s mandate is pure project delivery - on time and on budget.

While a 'Government' body is generally required, as part of its mandate, to take account of broader public policy matters in its delivery of services, SMC shares no such mandate.

7. This distinction is very clear from the consultation process; both senior managers and junior staff from SMC are generally not sourced from Government. They have no understanding or respect for broader issues such as impacts on environment or protecting heritage or biodiversity.
8. It will be submitted that the consultation undertaken by the SMC was therefore a mere tick a box exercise to satisfy SMC's contractual obligations and for RMS to satisfy its (minimal) statutory obligations. The approach of SMC has to then promulgate the untrue statement that the community had been 'consulted'. Consultation implies communication, information and exchange of views, none of which was experienced by LAW over the past two years it has been dealing with the proposal for Stage 3 of the Project.
9. It will be submitted that the Government's decision to abdicate responsibility for this Project to SMC was negligent - it has led to concerns being routinely ignored, rendering the entire process of consultation a farce and therefore a waste of time and money.
10. This submission specifically addresses the experiences of the Leichhardt community where a major construction site for the M4-M5 Link (Stage 3) of WestConnex was proposed. After two years of strong community and Council opposition, the site ultimately abandoned.
11. LAW has no doubt, however, that the experience of our community is representative of that of other communities, some of which have been impacted since the inception of this Project in 2012.
12. Committee members are encouraged to invite the Project director of Stage 3, Mr Peter Jones, to attend the hearings to respond to these claims. We also ask that Mary-Ann Graham, who was the head of engagement at SMC until recently, and thus charged with responsibility for consultation, to attend the hearings.

Why consultation is critical

13. Consultation is significant for this Project because of the Project's potentially devastating impacts over many years across a wide number of communities. Consultation with key stakeholders is critical to ensure that, wherever possible, the impacts of this \$16.8+ billion project are minimised to the extent reasonably possible. Consultation matters because it is an important part of managing the impacts of the Project as it is only by listening to community concerns and learning about the issues that impacts can be properly assessed and, where possible possible, minimised.

14. It is submitted that the decision by RMS to effectively abdicate responsibility for the delivery of this project (including management of its impacts) to a private sector body represents a key failing of this Project. It has led to a failed consultation process and in turn, contributed to the unacceptable impacts which are currently being experienced across the inner west and beyond.
15. The Government has repeatedly stated publicly that it has 'consulted' with the community about the Project, implying that it has taken on board feedback and that the public has a good understanding of the Project because they have been consulted about it. This is simply not the case and these statements by the Government are both misleading and deceptive. Contrarily, it is submitted that this Project, and its impacts on the community, have been shrouded in secrecy, with many communities left in the dark until well after key decisions about the location of construction sites and tunnel routes have already been made by the Government. Typically, by the time any 'consultation' occurs, there is generally limited opportunity for the community to seek changes that may go some way toward minimising impacts.

Limited legal requirement to 'consult'

16. There are limited requirements for consultation with respect to critical 'State Significant Infrastructure' (SSI) under applicable legislation such as the *Environmental Planning and Assessment Act 1979 (EPA Act)*. However, it is submitted that even these basic requirements have not been met by RMS. In this regard the assessment process for SSI is noted as follows:
 - An SSI application is received by the Department of Planning & Environment (Department).
 - The Department prepares Secretary's Environmental Assessment Requirements (SEARs) which outline what must be addressed in an Environmental Impact Statement (EIS).
 - The proponent prepares an EIS to address the SEARs.
 - The Department publicly exhibits the EIS and ***consults with local councils, government agencies, other key stakeholders and the community.***
 - The Department publishes submissions on its website and asks the proponent to ***address any concerns or issues raised by the community, councils and government agencies.***
 - A preferred infrastructure report is prepared that outlines any proposed changes to the SSI to minimise its environmental impact or to deal with any other issue raised during the assessment of the application concerned. If the Planning Secretary considers that significant changes are proposed to the nature of the State significant infrastructure, the Planning Secretary may make the preferred infrastructure report available to the public.
 - The proponent prepares a formal Response to Submissions Report (RtS), which the Department publishes on its website.
 - The Department assesses the merits of the project, including the EIS, all submissions and community feedback, and the RtS.
 - The Department prepares a Secretary's Environmental Assessment Report which describes the Department's assessment of the application and includes a

recommendation to the Minister for Planning about whether the Project be approved or rejected.

SEARS requirement - Consultation

17. The SEARS (March 2016, item 2) states that 'the project is developed with meaningful and effective engagement during project design and delivery'. The Executive Summary heading asks: 'How did the community participate in selecting the preferred project?'
18. Our response to this question (and to its answer on pages xiii-ix), is that the community has not been provided with an opportunity to meaningfully comment on the Project. This is because of the paucity of Project information, the lack of adequate response to direct questions and indeed, actual misinformation that has been provided by representatives of both SMC and RMS. Nor has the public been provided Project information in a user-friendly and appropriate manner.
19. Further information addressing this is set out below.

Public comment period

20. The decision to allow only 60 days for submissions to this EIS for Stage 3 was unrealistic and unfair given the length and complexity of the document and the inclusion of school holidays during this period, when many families are away. The Inner West Council elections were held during this period (as a result of this Government's forced mergers), which severely disrupted the ability of the Council to prepare a submission, with Councillors sworn in less than three weeks ago. Despite writing to the Planning Department on several occasions, the Council's requests for an extension of time have been refused. A key stakeholder has been denied the opportunity to effectively represent the community's views with respect to local impacts.
21. The EIS was released less than just two weeks after the 'closing date', suggesting that the 2000+ formal submissions were not even considered in the EIS, strong evidence refuting any claim that thousands of submissions were even read, yet alone considered, in the EIS.
22. We therefore reject any assertion in the EIS that there has been robust community engagement and proper community consultation as part of the Project and as required by the SEARS.

Failure to provide content in user-friendly, accessible manner

23. In addition, the 7,000+ plus pages of highly-technical information comprising the EIS for Stage 3 was not presented in a manner that is user-friendly (noting also that few hard-copies were provided). The difficulty in digesting and understanding this mammoth and complex document compelled local community groups to create a website where the information could be easily accessed (<https://thepeopleseis.wordpress.com/>). Community groups such as LAW also held their own 'information sessions' where relevant content could be communicated via Powerpoint

slides and summary handouts. This should not have been the community's responsibility - the EIS could have been provided in a manner that made it easier for members of the public to understand the impacts, with appropriate summary documents and a user-friendly dedicated webpage. The SMC or RMS should have organised information sessions that actually ran through the technical aspects of the proposal, rather than simply place over 7,000 pages online.

Poor community 'consultation'

24. In LAW's experience the quality of community consultation on the Project has been very poor. It has not been in accordance with the requirements of the SEARS which provides that the Project is to be:

'informed by consultation, including with relevant local, State and Commonwealth government agencies, infrastructure and service providers, special interest groups (including Local Aboriginal Land Councils, Aboriginal stakeholders, and pedestrian and bicycle user groups), affected landowners, businesses and the community'. (SEARS, March 2016, item 4).

25. The Executive Summary of the EIS sets out what is touted as 'community consultation' (pages xiii-ix), stating:

'project-specific consultation with stakeholders began following the lodgement of the SSI application report in January 2016. Stakeholders (including the community) have been provided with project specific information and opportunities to raise questions and provide suggestions and feedback.'

26. It is false to state that 'consultation' commenced in any meaningful way from January 2016. The first 'information session' for members of the public relating to the Project (being the M4-M5 Link) was not held until August 2016. LAW attended the session held at leichhardt Town Hall, which was identical at all locations (no location-specific information was provided, all sessions were identical in content regardless of the location of the session).

27. This 'information' session was notable for its lack of information, with members of the public encouraged to write comments on yellow sticky notes. A true information session would involve a presentation with summaries of key impacts; an open forum for Q&A and information presented in an accessible and user-friendly manner. The staff on duty were not from the relevant project team and clearly knew nothing about the technical details of the Project, seemingly being temporary staff engaged for the day via seek.com. Many of them were very young and were not able to answer basic questions such as timelines or location of proposed construction sites.

28. The actual information, such that it was, comprised glossy artist's renditions on the walls, with little information on negative impacts. The posters themselves were inaccurate, lacked detail and were sloppy. For example, St Columba's Primary School (which is 400 metres from the then

proposed Darley Road site) was not included on the poster said to depict impacted schools in the area (despite the School having been established in 1870). When we raised this at the time with the SMC representatives we were told the maps were 'indicative only.' Eventually I was issued with an apology by Kylie Cochrane of SMC, but the failure to include impacted schools is indicative of the lack of information and misinformation which has been the hallmark of the entire consultation process. Interestingly, despite repeated statements that SMC had consulted with key stakeholders, the St Columba's School was never contacted by SMC or RMS, and eventually took it upon itself to do so in September 2017 after being provided with contact details by LAW.

29. At this information session in August 2016 there was no *information* whatsoever as to the number or location of proposed construction sites. The two options under consideration in Leichhardt (Derbyshire Road next to Sydney Secondary College - Leichhardt campus and Darley Road) were only publicly confirmed in February 2017 when SMC door-knocked and dropped a letter to residents in the area. The reason the community was informed (not consulted, just informed) was because of a breaking story in the Daily Telegraph, published the next day, stating that the School site was under consideration.
30. For RMS to suggest that consultation took place from January 2016 is therefore inaccurate. In fact, the letter in January 2017 referred to above was the only official notification received by residents from the Government even mentioning the proposed construction site locations. The official Westconnex website contained one page addressing the m4-M5 Link which was unchanged for over a year, with no information about the project other than a high-level map of the proposed route.
31. The community was not 'consulted' about **any** of the construction sites prior to the Concept Design released in mid 2017, despite the fact that the EIS now revealed there are in fact seven major construction sites planned for the M4-M5 link. While LAW had several meetings with RMS and SMC during this period, no information was forthcoming and we were instead repeatedly advised that the details 'would be in the Concept Design', which they were not. The Concept Design lacked detail, was riddled with inconsistencies and gave the community no insight into the possible impacts for their community of the proposal. While MSC repeatedly informed the community 'we don't have to provide a concept design but are doing this anyway', it would have been better for them not to have done so. It merely served to put more misinformation out in the public domain and provided none of the detail the community had been asking for over the prior 18 months.
32. Those responsible for the concept Design, as shambolic and inaccurate document, should be invited to address questions on this by the Committee, as it represented a massive waste of taxpayer funds and they ought to be held to account for this.

Poor information provided throughout 'consultation' period

33. Information made available online on the Project on the WestConnex webpage has been generally out-of-date, in some cases inaccurate and sparse on detail. With respect to the M4-M5 Link, WestConnex provided a one page high-level summary of the proposed link on its official website, with no details other than a line on a map with the proposed route and an indicative timeline for approval of the Project. This page remained unchanged for over 12 months, with no updated information provided to the public either by mail or online, let alone on their '1800' hotline.
34. The second 'round' of community consultation that occurred between May and June 2017, was characterised again by lack of information and misinformation. While representatives of the Project were in fact in attendance at this session, their answers were inconsistent, light on detail or simply not forthcoming. Most questions were met with the response: 'All of the details will be in the EIS.'
35. Letters from the responsible Minister during the 'consultation' period repeated this mantra. In respect of the Darley Road site, at the second 'round' information session, there was simply a poster of the proposed 'dive' site but seemingly no ability on the part of the representatives to provide any detailed answers. Such as - where will the 100+ workers park (there was limited parking on site); where will the trucks travel; what will be the hours of operation of the site: what mitigation will be offered to residents. There were no answers to these questions.
36. The SMC seem to equate 'information' (glossy flyers and facebook posts) with 'consultation'. SMC have an endless budget and money for highly-paid consultants to spruik the benefit of the Project. But genuine consultation involves an exchange of information and consideration of community and stakeholder views.
37. The failure of SMC's community engagement, however, is most evident when the content of the EIS is critically examined. The key issues raised by LAW repeatedly to both RMS and SMC are not resolved or even addressed in the EIS. For example, LAW repeatedly asked where the estimated 100 plus workers will park at the Darley Road site. The EIS provides for 12 car spaces and no other allocated parking. LAW was told over and over again that this issue would be addressed in the Concept Design. It was not even mentioned in the Concept Design. We were then told that it would be addressed in the EIS. Again, it is not satisfactorily resolved with no provision for worker car parking. In fact the EIS acknowledges that workers will park on 'local adjacent streets' and would instead be 'encouraged to use public transport.' Clearly our views expressed as part of this 'consultation' were ignored.
38. The experience of LAW appears to be similar to that of others right across the inner west. When the overall Project proposal is considered, it is clear that it has not been informed by genuine

community consultation.

Misleading, inaccurate information provided as part of 'consultation'

39. Information that has been provided during the 'consultation' process has been either not provided, misleading or inaccurate on many occasions. For example SMC continually state that they abandoned Blackmore Park (oval) Leichhardt and Easton Park Rozelle because they 'listened to the community.' However LAW was told by SMC that Blackmore oval could not be used as a tunneling site because it suffered from inundation and that Easton Park had a geotech fault, also rendering it unsuitable. This misrepresentation has been repeated in countless public statements and glossy flyers spruiking the Project, and again is again repeated in the EIS.
40. LAW was continually misled about the status the the dive site selection. Plans for the Darley Road 'dive site', were only revealed verbally by SMC Stage 3 project director Peter Jones after repeated questioning at the August 2016 information session at Leichhardt Town Hall. Mr Jones stated that there was a 'possibility' that the site would be taken, but that 'nothing had been confirmed'. However, information obtained by LAW under FOI laws revealed that two days after this conversation RMS and SMC met with the leaseholders of the Darley Road site to commence commercial negotiations for its acquisition. The Government had in fact decided upon this site without consulting with the community and directly misled the community when asked about this matter.
41. Another example of misinformation also relates to the Darley Road site. After LAW attended a two-hour meeting with SMC, RMS and the Inner West Council in November 2016, Mr Jones agreed to look at alternative sites which were not as impactful to the community. He undertook to rule out the acquisition of any mid-point dive site in the area if a suitable site could not be located. Trusting that this was a genuine undertaking, LAW lobbied the Council to engage an independent engineer to assess the suitability of the Darley Road site and to consider alternative sites which would not be as impactful.
42. This process of 'consultation' entailing the consideration of alternative sites continued from September 2016 until June 2017 when the engineer's report (which soundly rejected Darley Road as suitable) was provided. During this period, LAW and the Council had numerous meetings with SMC, RMS and the Council about alternative sites and was repeatedly informed by the Minister for Westconnex, the engagement lead (Kylie Cochrane) and RMS, that no decision had been made as to the selection of the dive site.
43. However, information obtained by LAW under FOI laws revealed that this entire process of consultation and 'listening' to the community and considering alternative sites, was a sham. This is because RMS issued a notice to acquire the Darley Road site to the leaseholders on 4 November 2016 and then to the lessee (Dan Murphys) on 22 November 2017 (mere days after LAW met with SMC and RMS). This misleading and duplicitous behaviour has been reported in

the SMH and other media outlets:[The mystery of the Bottleshop, the WestConnex tunnel and \\$50 million](#)

Community Reference Group (CRG)

44. Formal consultation has also been poor, being neither ‘effective’, nor ‘meaningful’, as required by the SEARS. Two of LAW’s convenors are members of the first Westconnex Community Reference Group (CRG), convened as part of ‘consultation’ by Westconnex, with meetings held in 2017. Several SMC project directors refused to attend meetings to answer questions or, when they attend, treated the community concerns with disdain. Despite the Terms of Reference stating that RMS (the project proponent) would attend the meetings, this did not occur for several meetings and until the community representatives insisted they do so.

Refusal of Minister for WestConnex to meet with community groups

45. The Project’s responsible Minister (Stuart Ayres, Minister for Westconnex and Sport), despite numerous requests by letter and repeated phone calls to his Ministerial and electorate office, refused to ever meet with LAW. The CRG also wrote to the Minister asking him to attend the meeting and he refused.
46. In addition, local Government Members of Parliament have refused to provide project information and instead referred written requests from members of the public to SMC. When LAW wrote to John Sidoti (the then Parliamentary Secretary for Transport, Roads, Industry, Resources and Energy) he did not respond to LAW. Instead, he provided LAW’s letter to Kylie Cochrane (a private consultant engaged by SMC) who wrote back on behalf of the Government! It is completely unacceptable that elected public officials who are responsible for this Project should refer community correspondence to a private consultant in this manner. We are aware this was not an isolated incident as other community groups who wrote to other members of the State Government received the same response.

Conclusion

47. LAW calls on the Committee to ask SMC and RMS to attend the hearings to explain:
- *What was the cost of ‘consultation’ for Stage 3 of WestConnex - and for earlier stages?*
 - *How did the cost of consultation represent value for money?*
 - *Examples of how community feedback on impacts received during consultation was incorporated into the project design or ultimate approval conditions*