

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

Organisation: WestCONNex Action Group

Date Received: 10 September 2018

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**Submission to the Legislative Council Public Accountability Committee
Inquiry into the Impact of the WestConnex Project**

This document contains the formal submission made by WestCONnex Action Group Incorporated (WAG) to the aforementioned Inquiry.

WAG is a community group made up of residents from across western, inner and south-west Sydney. We are not affiliated with any political party.

WAG would be happy to give evidence to the Committee on any of the matters raised in this submission.

For enquiries relating to this submission, please contact WAG (Janet Ward or Rhea Liebmann) at: info@westconnexactiongroup.org.au

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INTRODUCTION

WAG has closely followed the development of this project for a number of years. Some of our members have seen their homes demolished and others are living with the horrendous impacts of the construction phase. Others live in the surrounds of Sydney Park, affected by the loss of trees and the increase in traffic that will occur in the neighbourhood once the St Peters Interchange is completed. Members of WAG have been campaigning against WestConnex since 2014 and welcome this opportunity to inform the Committee of the disastrous impacts of this politically driven, poorly planned, badly managed and rushed project.

Since 2012, when the estimated cost was \$10b, the goals for the WestConnex project have changed significantly and inconsistently as has the estimated cost. Currently stated to be \$16.8 billion, it is widely accepted that this is a significant understatement of the full cost of the project, just taking into account construction of ancillary roads alongside direct WestConnex construction (see for example the Sydney City Council estimate of \$45billion). From its inception the WestConnex project has been misguided and lacking in a clear plan. This reflects its political nature and undermines its value as a contribution to sustainable transport in the Sydney region. The questionable relationships between government and the private sector in relation to the WestConnex project, alongside the considerable secrecy that surrounds it, are in themselves grounds for questioning the costs and purpose of this project. Major changes to the project are made on a regular basis with more or less transparency: extensions are added (for example, tunnels); and other aspects of the plan disappear (for example, the Camperdown exit in the Stage 3 Tunnel; and the Sydney Gateway); with no apparent change in the business case or the EIS.

As is detailed in the WAG submission below there are many areas of concern in relation to the project that impact on its cost. In particular, as the submission demonstrates, WAG is of the view that there is a serious understatement of costs to the public of the construction of the project; the likely taxpayer contribution to private profit in the completion and maintenance of the project over many decades; the understatement of the un-sustainability of the project as a future transport mode in the 21st century; its contribution to long-term air and noise pollution in the city; and the direct and horrendous health impacts on communities and individuals not just during the construction phase but in the lifetime of the project.

WestConnex is a financial project, a political project reflecting a particular relationship between the NSW government and private enterprise. It is not about (and possibly was never intended to) providing Sydney with sustainable transport options for the 21st century. As such, we strongly argue that this Inquiry needs to follow up with the NSW government Ministers to seek accurate explanations of cost assessments; and to bring forward experts who are able to argue, based on research and expert knowledge, the ins and outs of the full costs of this project.

TERMS OF REFERENCE

(a) the adequacy of the business case for the WestConnex project, including the cost-benefits ratio

(a) (i) Secrecy and Failure to Provide Information to Parliament and the Public

The Strategic Business Case for WestConnex was not released until November 2015 - three years after the project was first proposed - and only then after intense public pressure, including a parliamentary petition that gathered more than 10,000 signatures from constituents across NSW opposed to WestConnex. The Business Case that was released at that time contained many redactions, including the key cost and revenue figures that form the cornerstone of any business case. It was lacking in any serious detail that would allow independent experts to undertake a serious review of the projected costs and benefits of the WestConnex project. A compelling and objective business case that demonstrated the benefits being touted by the NSW and Federal governments for the project would not need to redact so much critical information. Significantly, it was only with the release of the Business Case in November 2015 that it became clear that the estimated costs of WestConnex had blown out from the original \$10billion stated in 2012 to \$16.8billion.

<https://www.smh.com.au/national/nsw/westconnex-motorway-cost-blows-out-by-14-billion-20151120-gl3isl.html>

Since November 2015 the cost of the project set at \$16.8 billion has never been publicly revised. It is however untenable to think that major elements of a project can be or altered, such as the removal of the Camperdown exit from the Stage 3 Tunnel, without and update the budget. It is possible some more recent modelling has been undertaken for the sale of WestConnex but if it does exist, it is not publicly available. Throughout the process there has been no transparency in relation to the business case. The ACCC decision to require undertakings from Transurban to publish WestConnex traffic data after the sale, points to the secrecy that has surrounded the project to date. This level of secrecy, particularly as it involves public resources and taxpayer money, is not in the public interest. Given the weaknesses in the 2013 Preliminary Business Case and the 2015 Strategic Business Case, the secrecy and lack of transparency exposes the taxpayers of NSW to unknown financial risk.

These difficulties with the Business Case point to a larger concern about WestConnex and the way the project has been developed. It is based on an assumption that the project was required; that Sydney needed more toll roads to the exclusion of public transport. The secrecy of the NSW Government in relation to WestConnex may have indicated from the very beginning the questionable validity in the Business Plan. We know that the NSW Cabinet was directed away from public transport options to think only about private transport options. Given this, how is it possible to know whether WestConnex is a more effective solution, both in terms of finance, mobility and sustainability, than other alternatives such as demand management, public transport or a combination of options not considered? For example, the Strategic Business Case (2015) failed to consider the future development of Greater Sydney including Badger's Creek airport and how it will affect freight movements.

WestConnex has now been sold (late August 2018) but the public only has access to the November 2015 Business Case and has not been given access to the traffic modelling on which that sale proceeded or how much financial risk the public will be carrying with the sale. WAG is aware that the NSW Government will have to pay compensation to Transurban and its partners if the Rozelle Interchange is not completed on time. We already know the risks of these kinds of agreements with

the example of the Light Rail Project where the private company engaged to build the project is suing the NSW Government.

<http://www.abc.net.au/news/2018-04-07/light-rail-contractor-sues-nsw-government/9629948>

The cost for the Rozelle tunnel will be covered entirely by the NSW government. This raises a number of questions/issues in terms of cost to New South Wales taxpayers of WestConnex and related projects. Firstly, given the size and complex nature of the Rozelle tunnel project the risks of it not being completed on time are extremely high thereby forcing up the cost of the WestConnex project overall as a result of the compensation agreement; and the general costs associated with projects taking longer than planned. Secondly, now that the sale of 51% of WestConnex is completed, we do not know what agreements have been made about future financial commitments/projects. Thirdly, we do know that Transurban has tightened its grip on Sydney's toll-road industry and that grip is likely to increase in the future. This monopoly control underwritten by decades of taxpayer toll money is an open-ended financial risk for the people of NSW. Finally, we know that the planned F6 Stage 1 has no northern exit before St Peters Interchange but we do not know how this has been structured into the WestConnex sale and therefore its impact on costs.

(a) (ii) Improper and Inadequate Business Case Assumptions and Compliance with SEARS Requirements

The Strategic Business case (2015) only considered costs in the most cursory way. There were only six pages devoted to costs in the 319page report, and only four pages in the KPMG report *WestConnex Full Scheme Appraisal*. The report was only informed by P50 costs estimates - this means that there is a 50% chance that they will be exceeded. It is not known whether a Final Business Case was ever prepared. Given the cost of the project, and the serious and significant impact it is having on the Greater Sydney Region this indicates that the NSW Government has, at the very least, been disdainful of public accountability.

The independent SGS Economics and Planning Report 2016 review of the Business Case, commissioned by City of Sydney Council, was highly critical of the WestConnex business case assumptions.

<https://www.sgsep.com.au/news/latest-news/westconnex-business-case-review>

The criticisms raised in this document about WestConnex are serious ones and WAG expected that a government that valued accountability would have considered it appropriate to answer the issues raised. Instead most of the criticisms have been left hanging with no response. SGS reported that any benefit of WestConnex "...is likely to be marginal at best and it is quite possible that the actual BCR (Benefit-Cost Ratio) for WestConnex is less than one" (the benefits are likely less than the costs). The NSW government never properly responded to this criticism.

In fact, SGS Economics and Planning estimated that the land taken for the interchanges alone at Rozelle and St Peters had a market value of approximately \$3.7 billion. They noted that if this cost was taken into account, the BCR would fall from 1.64 to 1.23. This oversight in costing cannot be justified. (SGS Economics and Planning, 2016. *WestConnex Business Case Review*.) Given that throughout this submission we are raising concerns about costs that have not been accounted for (such as social and community costs) and understatement of costs for example underestimated traffic flows as the basis for environmental impacts, and so on, it is highly dubious that the cost-benefit ratio claimed by the government is a reliable figure.

(a) (iii) SEARS - the Secretary of Planning's Environmental Assessment Requirements.

When WAG first encountered the SEARS, we were encouraged to believe that there would be a serious environmental assessment. Unfortunately, the reports put forward by AECOM were very disappointing. A very good example of this is that SEARS required the RMS and SMC to consider alternatives. The EIS turned this into a farce. There was no genuine inquiry into alternatives, the EIS providing a tick box approach to demonstrate in the most superficial way that this requirement had been met. A genuine review of alternatives should obviously be carried out by those who have no commercial interest in the project under review. Thousands of submissions to NSW Planning about the EIS pointed to the inadequacy of the 'alternatives' section. In response, NSW Planning argued the dismissive tick box response in the EIS about alternatives was an adequate answer to SEARS. It is this kind of dismissive treatment of the public that breeds contempt for planning processes.

Recommendations (a):

All business cases over the life of the WestConnex project should be made public.

In future key data in major infrastructure projects should not be kept secret.

Independent fit and proper reviews of the relationships between government and private enterprise which could potentially lead to conflicts of interest and create unknown risks to the public should be undertaken in tendering processes for work on major government projects.

Major project business cases should be publicly released before Environmental Impact Statements are undertaken. After the EIS is complete and assessed, any additional costs identified should be included in an updated business case.

Former NSW Premier Mike Baird, and former Minister for Transport and now NSW Premier Gladys Berejiklian should be called to give evidence to the Inquiry as to why financial details of the WestConnex project have been kept secret.

"Commercial in confidence" should not be allowed to override government obligations to taxpayers to properly evaluate State Significant Infrastructure projects.

That there be a change of planning laws to require a Parliamentary Committee or independent regulator to oversight compliance with SEARS requirements.

Proper consideration and evaluation of alternatives in an EIS should not be allowed to become a tick-box exercise. The consideration of alternatives should be done by an independent consultant, not the proponent of the project.

(b) The cost of WestConnex project, including the size and reasons for overruns

(b) (i) Costs of the Project that are excluded from the Business Case.

In relation to this TOR, WAG makes the point that social and psychological impacts, loss of community including heritage, sense of history and natural amenity all carry costs. Rather than being properly accounted for, these costs have been carried by the public, both collectively and individually. The true cost benefit analysis of the project should take into account all the costs associated with the project

not just estimates that relate to the narrow confines of construction costs in a very narrow consideration of environmental impacts. The costs to individuals and communities should be evaluated and added to the overall cost of the project. As far as WAG is aware, no evaluation has been carried out to translate the impacts on the community and individuals of the costs of living for a long period of time in a construction site.

The lack of serious engagement with objections to the project pervades the entire planning process. Costs to the community are pushed aside at every point. The weak business cases are relied upon in NSW Planning documents.

The EIS Response to Submissions reports is particularly disturbing in its failure to engage with serious evidence and arguments. This occurs because the EIS process is so firmly in the grip of the proponent. This problem is exacerbated by the failure of NSW Planning to seriously review the Response to Submissions. With few exceptions, the final NSW Planning assessment report simply regurgitates much of the original application. A clear example of this occurred when the EPA objected to approving Stage 3 of the project without an assessment of the construction impacts. The Committee should inquire into why NSW Planning did not heed this advice, especially as it already knew the difficulties of enforcing conditions of approval.

The St Peters community has been dealing with the impacts of WestConnex since October 2014. The most outstanding issue in this regard has been the failure to take into account the impact of long-term construction on a community. This has resulted in underestimation, poor predictions and limited evaluation of the construction impacts and their cumulative effect. In a questionable failure of insight, although the EIS reports did acknowledge that there would be construction impacts, it was considered these would be 'insignificant' and able to be addressed by mitigation. It cannot be emphasised too much the cost to the neighbourhood, to individuals, to families, of the ongoing construction in the St Peters neighbourhood for five years and still continuing. In failing to take account of the length and intensity of the construction period, the impacts of construction were discounted and inadequately considered by the EISs for all three stages of WestConnex and treated as 'insignificant'.

In an unforgivable oversight, there was no serious assessment of daily, monthly and yearly impacts accumulating over time. Even acknowledged significant impacts were dismissed because it was assumed that mitigation would resolve those impacts satisfactorily. With construction continuing for years, the impacts were never going to be 'temporary' as claimed or easily mitigated. In fact, mitigation has tended to take place only after residents have complained and complaints have been assessed as genuine. This has resulted in a lack of fairness in the treatment of individual residents which in itself is a cost to the community in the impacts it has in the neighbourhood. Residents have continued to experience impossible living conditions over long periods of time and the failure to take this into account is a significant understatement of the costs of the project.

The local impacts and the time and energy needed to deal with them should be costed. However, as they were not fully described or evaluated in the EIS, they were not accounted for. Examples of costs that were inadequately accounted for include the amelioration costs for problems endured by residents during construction, the costs to the EPA in dealing with pollution complaints, and the costs to the Compliance section of the NSW Planning dealing likewise with residents' complaints about inadequate or non-compliance with the conditions of approval. Homeowners who live within metres of major construction and will be living two doors from a seven lane major road, have been left to struggle with sleepless nights because mitigation has been denied.

This is an example where the cost of both construction and the project itself in the long run have been borne by individuals in the community until the appropriate authorities are forced to take action. Surely it would have been far cheaper to install the mitigation early in the construction period

rather than forcing people to endure the impacts and fight for a resolution. The delays effectively transferred the cost of impacts to the community. Tenants are in an even worse position as they are offered nothing unless their landlords are prepared to press for mitigation. In a global city such as Sydney and in an apparently liberal democracy it is hard to fathom how our planning practices have allowed this to happen.

Case study 1: impacts on St Peters residents of WestConnex construction

Listed below are some of the impacts of construction that WAG is aware have been experienced by the community in St Peters. These have been collated by resident Anne Picot. To develop this list, Ms Picot has drawn on her own experiences, the St Peters Facebook page, and/or matters brought to the attention of the Inner West Council's WestConnex Community Liaison Forum (WCLF) to be addressed by the Council's own WestConnex unit.

The complaints include:

- Vehicle exhaust, diesel fumes from trucks and machinery, dust and offensive odours from construction sites (the offensive odour from the St Peters Interchange site in 2017 is now the subject of legal action by the EPA).
- Long periods of penetrating noise (e.g. pile driving on the Interchange site for weeks at a time).
- Night work construction noise (often because the Traffic Management Centre will not give permission to close streets during the day). The noise from concrete cutting to open the road surface has been a particular source of complaints. Why does it so often begin after 10pm?
- Traffic disruptions (e.g. changes to directions of one-way streets over several days or weeks, full road closures, half-road closures, limiting access to side streets).
- Failure to coordinate the activities of associated utilities with the WestConnex projects so that residents have had to endure work noise and disruption from the electricity, gas and/or water agencies during the night in addition to the noise and disruption from the WestConnex project during the day.
- Inadequate traffic control (too few traffic controllers in number, poorly briefed, focused on vehicle movement, not pedestrians).
- Poor signage (e.g. not large enough or not placed at a distance sufficient to enable vehicles and pedestrians to respond safely) to help residents deal with traffic disruptions.
- Poor notification of disruptive work (that is, night work or drastic traffic changes) with not enough notice given for people to make alternative arrangements, incomprehensible or wrong descriptions of the work or changes to streets, last minute changes to location or exceeding the notified length of time of work.
- Parking of WestConnex workers' vehicles in residential streets.
- Damage to residents' cars from WestConnex workers' vehicles parked in local streets.
- Heavy vehicle movements, vehicle idling, and increased volumes of truck traffic on local roads around the construction sites, increasing vehicle pollution (a known carcinogen).
- Increased ordinary traffic on local streets displaced by or avoiding the construction sites and vehicles.
- Inadequate responses to complaints (the stakeholder relations officers of the new M5 contractors generally have downplayed or disputed the complaints rather than address them).
- Failure to carry out ameliorative work adequately (e.g. noise treatment of premises, where residents have struggled to have the approved modifications carried out) as required under the conditions of approval.
- Adverse health impacts from the dust and vehicle pollution with respiratory problems, asthma, increased infections, particularly for children.
- Failure to put signs and street amenities in place because they were not required before the roads are operational.

- Loss of trees and parkland to the detriment of the community (that is, the impact of loss of shade trees and nearby parkland was marked during the hot weather, made worse by the heat radiated from increasing expanses of concrete surfaces).
- Loss of sports grounds, requiring activities to be relocated some distance from the neighbourhood to the inconvenience of players and families.
- Dangerous traffic movement around the school and preschool, including heavy vehicle movement with no traffic controllers to help during school drop-off and pick-up periods.
- Damage to, and shoddy repair work of, footpaths leading to the school and other streets adjacent to construction sites, including metal plates with edges poking up, signs re-posted so they blocked use of the footpath, lumps of asphalt laid unevenly, obstructing the way for prams or wheelchairs.
- Asbestos waste left uncovered when houses were demolished and no water suppressant or other safety measures until after residents' complained.
- Poor demolition practices which sent dust everywhere and in one instance dropped a quantity of bricks from a wall onto the road and broke a water pipe.
- Use of school car park (enclosed lands) for workers' vehicles and trucks to do U-turns.
- Failure to uphold agreements made 3 years ago with the school about vehicle movement and communication.
- Houses shaking with consequent damage (that is, cracking) from the explosions, the heavy construction work and vibration of the tunnelling.
- Noticeable loss of wildlife in our area – e.g. bats, owls and other birds, bluetongues – but we have noticed an increase in the number of rats.
- Loss of tenants from the health impacts in one instance and inability to let the property since leading to financial hardship.
- The overriding problem that generally the conditions of approval governing the restoration of street conditions and amenity or amelioration of the project's impacts, only come into effect when the roads begin operations. As construction work is in its third year in St Peters and its fifth in Haberfield, the "temporary" impact is too long to ignore the adverse effects. For small children, for high school or tertiary students, for elderly people, for people with movement impairments or other chronic health problems, 3-5 years is a significant length of time.

All these complaints have led to poor relations between the contractors, their workforce, and WestConnex and the residents who feel they are treated by contractors and the state government as collateral damage.

Case Study 2: St Peters Residents – Janet Ward

Janet Dandy-Ward is a founder and key member of the WestCONnex Action Group (WAG). She lives in Roberts Street, St Peters, a suburb that will be devastated by WestConnex. She is a friendly and familiar figure in the streets of St Peters, Newtown and in Sydney Park, squeezing the organisation of weekend campaigning stalls into her busy life. Since 2014 Janet has always maintained that Stop WestCONnex is part of a bigger picture and has made numerous submissions, talked to media and campaigned alongside those in her community and across the impact zone of WestConnex. Her observations of the planning process and impacts the project will have on her community and the rest of Sydney, are documented in this piece on cumulative impacts

<https://m5e1s.org/category/cumulative-impacts/>

“For me and my family the most individually impacting issue has been the unanswered questions about children’s safety at St Peters Public School. I spent 3 months in late 2016 trying to establish whether St Peters Public School would be a safe option, given the construction site so close by and the imminent removal of people’s homes from the area.

We moved away for 8 months in 2017. Since returning, the issues have been ongoing – noise, dust, un-notified night works and road closures, poor behaviour by construction workers. I have to be away from the suburb to feel relaxed and that's a shame because it's where we live. When there are issues with the St Peters Interchange and construction sites at Campbell Road (St Peters), it seems to take an almighty effort from the community to make any change to the contractors' behaviour. Where is the compliance to the planning conditions?"

Janet Dandy-Ward (August 2018)

St Peters resident and parent of child at Stanmore Public School

Janet has made a personal submission to the inquiry which WAG endorses.

Case Study 3: St Peters Residents – Dr Jacinta Green

WAG also endorses the submission of Dr Jacinta Green who lives four metres from the major WestConnex Campbell Street construction site. Her house is surrounded on three sides by construction. Common sense would suggest that the noise from road work would be very loud indeed. That noise and the vibration of her house has prevented her from sleeping, or even being able to work in her house during the day. When she lodged a series of complaints, she was told that modelling showed she would not be noise affected. She asked to see the modelling. This was refused on the basis that it was commercial in confidence. The time wasted on asserting the impacts of WestConnex on her life has absorbed days of productive time for Jacinta, Councillors, project staff and other resident supporters. Eventually after months, SMC conceded and paid for double glazed windows on the front of Dr Green's home - but not on the back that is also exposed to intense noise.

"I have made a submission, but I would also like it on record that writing my submission and documenting the way I have been treated over the past four years was incredibly distressing. Lodging complaints (which is so necessary) and the efforts you have to go to, to ensure your complaint is lodged is incredibly distressing. The number of times I have rung up to complain about un-notified night works and been informed that there are no workmen on sight is ridiculous, my bedroom overlooks the work site. I have sent through photos and videos of night works and still had multiple staff members state that there was no work happening. The contractors cannot simply say that they aren't getting complaints when they make complaining so distressing, when they fail to lodge your complaint. Perhaps they should be asked to document how many calls they get from residents. I am tense and anxious all the time, I dread Friday afternoon, when the weekly email comes through, I dread hearing the reversing beeps at 5:30 in the morning as it signals works I haven't been notified about. There needs to be a third party that channels the complaints and doesn't dismiss, ignore or downplay phone calls from residents in distress"

Dr Jacinta Green, 5th September 2018

Case Study 4: St Peters Residents – Kate Cotis

In another resident story, Elizabeth Farrelly captured the impacts of the construction on St Peters community in this Sydney Morning Herald column.

<https://www.smh.com.au/national/nsw/the-sydney-suburb-where-fresh-air-is-a-luxury-20180830-p500s0.html>

Already it WestConnex) has turned the Cotis' three-storeyed family terrace into a living nightmare, 24/7. Out front, their street is dug up, differently each day so access is a daily challenge. The concrete-drills and jackhammers are deafening, so loud Cotis can't hear the bell and I must text my arrival. Sometimes the work goes all night, a few steps from the kids'

bedrooms. Fifty metres on again is the interchange, currently a vast death-zone. That's the front. Out back is the so-called green link.

It's inescapable. Each of the house's fifteen windows receives a constant noise-barrage – to say nothing of air-quality ...Complain, you say? Request mitigation, compensation, even compulsory acquisition? Call the council, cops, lawyers? The department? The minister? The Premier? They've tried all that, of course, ad nauseam.

After the SMH column was published, another resident (unnamed) posted a message on Facebook dismissing Kate Cotis for her criticisms of the project. This led Dr Jacinta Green to defend Cotis on the St Peters Residents Facebook page (members only page, a screenshot of the post in questions can be provided) <https://www.facebook.com/groups/StPetersResidents/>

"Kate speaks for me!

Several days ago a resident of Church St was brave enough to speak to the media about her experience with WestConnex.

There was an anonymous comment posted on the story, apparently by a Church St resident, undermining her lived experience and claiming that most residents in Church St are happily coexisting with WestConnex.

I don't know who this anonymous keyboard warrior is, but Kate's experience mirrors mine and almost every resident I speak too.

I'm glad people out there are not feeling impacted, but that does not mean others are not. You may not work at home like both Kate and I do, so we are bombarded 24 x 7 or your hearing may be ruined from too many rock concerts, but your experience does not invalidate our experience.

There are also a small number of people who WestConnex have consistently treated well and have had soundproofing installed for over 6 months, while the vast majority have been denied any sound proofing. Part of Kate's story was the inconsistent way residents are treated.

I am horrified that a member of our community was so dismissive of the impacts Kate related. I am also concerned that this comment by this resident may stop other residents expressing how they feel.

Kate speaks my truth as well" Dr Jacinta Green

This exchange shows how WestConnex has done more than eat into the community's fabric and open space. It has caused enormous stress and sense of loss, both amongst those who stayed and those were forced to leave. While community spirit has survived, WestConnex has also promoted division amongst residents, leaving some feeling satisfied or lucky and others feeling disadvantaged and punished. In a situation like this, there are bound to be tensions between the desire of residents to stand up for their rights and a desire to protect the reputation of the area and local schools.

Under the SEARS for WestConnex Stage 2, WestConnex was required to produce a Social and Economic Impact study. If the Committee reads this report, members will find that it consists of a detailed description of the demographics and community and educational institutions across the local government areas affected. This is largely produced as a 'tick-box exercise'. Nowhere is there any serious attempt to assess what the impacts of this project, as well as the cumulative impact of other nearby projects, would actually be on the area. There is no recognition in the New M5 EIS that WestConnex might have learnt from distressing experiences reported by people who were already living through Stage 1.

In this submission so far we have focussed on St Peters and surrounds where we have many members. WAG also has members in other areas which have been devastated as well. We endorse the submissions of our members and supports from these areas. This includes the submission of Aurelia Roper-Tyler and her family from Homebush; Kathryn Calman from Beverly Hills and Kingsgrove; and

many others in particular from Haberfield including Josefa Sobski and Sharon Laura from the Haberfield Association.

(b) (ii) Cost and approach to mitigation of construction

Residents have been put under enormous stress by the failure of NSW Planning to take the objections raised in submissions to the EIS seriously. After demolition and construction commenced, residents repeatedly found that their complaints were not taken seriously by WestConnex (SMC) and their contractors (CPB Contractors and others). Only very occasionally were complaints treated as problems that needed to be addressed. It does seem that for the most part many complaints from residents have been treated with contempt as residents who complained were seen as opponents of the project. The reliance on the requirement to complain before mitigation became available has contributed to an unworkable system and been a source of local tension and the cause of disputes, as contractors have failed to deal adequately with the complaints and the additional costs of ameliorating the problem conditions.

The Environmental Protection Agency has been one of the two principal government agencies to which residents have applied to deal with complaints about pollution (e.g. noise, dust and odours). WAG is of the view that the EPA has been hamstrung by the restrictions placed on its ability to deal with the WestConnex projects as a result of the project status as “critical state-significant infrastructure”. As a result, for example, when overwhelming odours in St Peters were not controlled by the CPB contractors, one option might have been for the EPA to order the company to stop work until the problem was rectified. However, this power was specifically removed by the NSW Critical State Significant Provisions. The NSW EPA expressly pointed this out to residents in response to complaints in order to explain why quicker more effective action could not be taken. (See end of Submission for the relevant correspondence correspondence.) Significantly, a decision to designate projects as CSSI does not require reasons to be given to the public. That is, these decisions bypass the democratic process.

The approach taken by the EIS and NSW Planning to finding that any significant construction impacts would be mitigated by the application of conditions, left the community at the mercy of the construction companies once construction had begun. Some residents determinedly asserted their right to decent living conditions without having sufficient information, such as construction noise modelling, onsite dust monitoring or vibration records. Once the main approval is granted, the community had no opportunity to even comment on sub plans, such as the Construction Noise Management Plans. After the impacts turned out to be more serious than anticipated, community engagement staff asserted, in the face of complaints, that mitigation and plans were being followed, so complaints lacked merit. This left residents feeling distressed and unfairly treated.

Case Study 5: Failure of community engagement in St Peters-Community Social Management Plan

Under the New M5 Instrument of Approval Condition B66, the SMC was required to produce a Community Social Management Plan including a Community Cohesion Plan. Both of these documents were required to be produced by one year after approval of the EIS which should have been April 2017. A version of the plan dated May 2017 was published on the WestConnex website on 16 August 2018. There may be earlier published versions but WAG has not located any. The document published in August 2018 is missing two key appendices including the so-called ‘Community Cohesion Plan’.

(<https://www.westconnex.com.au/sites/default/files/New%20M5%20MCoA%20B66%20-%20Community%20%26%20Social%20Management%20Plan%20%28Rev05%29%20May%202018%20Online%20redacted.pdf>)

WAG has never been informed of the existence of the plan. Despite this, the plan states that WAG was approached for feedback during its preparation (page 11). We are not aware of that. It also notes that there were meetings with some schools but not others. One of those with whom no contact was made appears to be McCallums Hill Public School where children protested in December, 2015.

<http://www.altmedia.net.au/nsw-air-quality-regulator-lacks-capacity-to-review-westconnex-pollution-risk/112681> <https://www.theleader.com.au/story/3657502/pollution-concerns-raised-over-westconnex-plans/>

There is a record of complaints contained in the document that only appear to cover the period up to the end of March 2017 only. This record includes WAG member reports that asbestos was removed in St Peters without proper protection. WAG has a record of these complaints, documented by video. The report fails to state whether this or any other complaints were substantiated; and WAG is not aware of any action taken in relation to the asbestos complaint. WAG is also aware that hundreds of complaints have been laid since March 2017 that document problems with odours and noise. We do not know if it is intended to add these to the relevant document at a later date.

This document, which is strangely marked 'commercial in confidence', states that WAG was one organisation consulted in the preparation of the report. The report re-states much of what was in the EIS Social and Economic report. It does document the processes through which SMC claims to deal with the community but contains no substantial evaluation as to whether the processes outlined are put into practice, are satisfactory and if they are not satisfactory, how they could be improved.

This case study provides an example of the very frustrating aspects of the WestConnex governance and compliance system. The fact that management systems are formally in place is taken as proof that they are working to resolve complaints and failings in the project implementation. At a grassroots level, this gives an appearance that the community's interests are being protected but in reality acts as a screen hiding serious dysfunction and distress.

(b) (iii) Financial Cost Overruns

Given the secrecy and a lack of transparency in relation to the WestConnex project, it is difficult to trust any financial information available about the project. The public are already aware that there have been cost overruns on the Stage 1 A M4 widening – WAG refers the committee to a court case late last year in which CPB contractors took court action against their consortium partner, Rizzani De Eccher with whom they were undertaking the M4 widening. The case states that 50% of the losses on the project were \$87 million; and records their concerns about paying contractors and the need to secure payment by SMC. The judgement found that the consortium agreement had become 'dysfunctional'. In paragraph 30 of the background to the judgement, it is stated that:

"By August 2017, RdE was pressing CPB, among other things, for an updated cash flow plan including a reasonable plan for the management of outstanding payments and a detailed breakdown of the remaining activities cost versus the original budget cost to complete the project updated on weekly basis."

The judgement is long, but it is clear that there was considerable doubt about the timely completion of the project, and further legal action was considered possible. WAG has found no further reports of any actions between the parties and with the SMC. (CPB Contractors Pty Ltd v Rizzani De Eccher

Australia Pty Ltd [2017] NSWSC 1798 (19 December 2017 <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2017/1798.html>)

WAG notes that while NSW Planning SEARS were issued in mid-2017 to cover for an additional element of the WestConnex M4 widening project, named as the Westbound Ramp to Hill Road, no further action appears to have been taken on this project. It is not clear if this additional project will be an extra cost to WestConnex or is no longer proceeding as part of the project at all.

The completion of the Stage 2 New M5 was originally supposed to be brought forward to 2019 by the \$2 billion concessional loan from the Federal government. That time saving disappeared by 2017. The completion date is now reported to be during 2020 or even early in 2021. This delaying of the completion of the project has to mean cost overruns. While it is not possible from the public's point of view to know what these cost overruns are, WAG is of the view that the Inquiry should investigate the reasons for and the likely costs of these extensions of time to complete the project. There have certainly been cost overruns that are a matter of dispute on the New M5. WAG assumes these are still a matter of secret negotiations between CPB contractors and the NSW government. On May 3rd, 2018, Rachel Eddy reported in the *New Daily*,

"WestConnex contractors have demanded another \$700 million to finish the second stage of the controversial project, leaked letters show. The NSW opposition released the confidential letters on Thursday to reveal the new M5 could also be one year behind schedule.

The letters, seen by The New Daily, reveal CPB Dragados Samsung Joint Venture demanded an extra \$625 million in "contractor delay costs" and another \$79.7 million in "change costs" in May 2017. The completion date was also put at January 2021, a year after the government's claim. WestConnex Minister Stuart Ayres said the M5 was still on track to open in early 2020, and had not blown out its \$4.335 billion budget. "WestConnex continues to be on time and on budget," Mr Ayres said in a statement to The New Daily on Thursday. Contract claims and variations are part of the delivery of any large-scale infrastructure project."

<https://thenewdaily.com.au/news/state/nsw/2018/05/03/westconnex-cost-blowout-leaked-letters/>

It is likely that disputes over the actual cost to the NSW government of the New M5 are continuing. As the report above makes clear, the NSW government is resisting claims from the contractors that the costs blew out because they faced new elements and challenges in the project that were not expected. The NSW Minister for WestConnex, Stuart Ayres, acknowledged claims of up to \$700 million. Secrecy around the project means that the public may never know what happens around these claims unless there is a 'leak' or a court case. Simon Thomsen, for example claims that: 'The NSW government now faces more than \$2 billion in claims from contractors on crucial Sydney infrastructure projects.'

<https://www.businessinsider.com.au/the-nsw-government-now-faces-more-than-2-billion-in-claims-from-contractors-on-crucial-sydney-infrastructure-projects-2018-5>)

There have been no reports of cost overruns on the M4 East but a serious dispute about tunnel safety raises questions about whether costs are being saved on the Stage 1B M4 East in order to bring the project in on budget and by early 2019. In July this year, there were reports that Electrical Trades Union officials had attended the M4 East site for a second time in response to "concerns from workers about risks to their health and safety, including ongoing problems with the emergency warning lights and sirens".

"Nearly a week after the evacuation system in the tunnel failed, with audio alarms and warning lights along much of the length not in operation, project management have admitted that they still cannot guarantee the integrity of the emergency system,"

“Rather than fix these problems, management are still insisting on stop-gap solutions such as turning off the lights in the tunnel to let workers know there is an emergency. It is extraordinary that workers are being told that if there is a fire, explosion, or collapse in the tunnel, they will be notified by the lights being cut, forcing them to evacuate using only headlamps. This solution would be unacceptable on any worksite, yet for some reason management considers it appropriate on the largest infrastructure project in the country.”
ETU National Secretary Allen Hicks.

Although the dispute was settled, these practices need to be seen in the light of residents’ concerns that their safety and health are being put at risk by contractors rushing and cutting corners in attempts to meet deadlines.

In the case of fixed sum contracts, there is an incentive to cut costs. This has been obvious in many ways during the WestConnex construction process. The consequence of this approach is to transfer costs to individuals and the community and to add to the ultimate social costs borne by the community. This process was enabled by the inadequate assessment of WestConnex construction costs that were never properly costed. This issue overlaps with the TOR for Governance (c)

WAG is appalled to read that part of the WestConnex privatisation deal could involve the NSW government paying compensation to Transurban should the WestConnex Rozelle Interchange not be completed on time. Given that, as the NSW EPA pointed out, a project concept has been approved without the construction impacts being evaluated, it is not possible to know the cost.

(b) (iv) Major elements not included as costs of the project

The Government has misled the public about the full costs of the project. In announcing the Rozelle Interchange plans, the then NSW Minister for Transport, Duncan Gay, stated that the previously project cost of \$16.8billion announced in November 2015 now included a new proposed tunnel under the Iron Cove Bridge “at no extra cost”. Common sense suggests that this is unlikely. If a major project changes by adding limbs and dropping others, surely it would change, if only in minor ways. Further, it is very hard to see how the Rozelle Interchange was costed for the EIS when it is only at a concept stage.

<https://www.smh.com.au/national/nsw/new-tunnel-under-victoria-road-added-to-westconnex-at-no-extra-cost-government-says-20160721-ggart9.html>

(b) (v) An accurate costing of WestConnex should have included the full costs of property acquisition

The NSW government has acknowledged that only some of the costs of acquiring property for WestConnex have been included in the WestConnex \$16.8 billion costs, but has refused to make public which compulsory acquisition costs have, and which have not, been included in the WestConnex budget.

In August 2016 then Finance Minister Perrottet told a budget estimates hearing that 427 properties were to be acquired for WestConnex, with 111 still to be acquired at that time. Documents obtained by the NSW Opposition under freedom of information laws indicated that as at 10 June 2016, Roads and Maritime Services had spent \$634 million on acquiring properties, and that the figures showed

the expected cost of requiring the remaining properties by negotiation as \$728 million, bringing costs up to as much as \$1.5 billion.

<https://www.smh.com.au/national/nsw/cost-of-westconnex-property-acquisitions-set-to-exceed-15b-20160914-grg2zc.html>

(b) (vi) An accurate costing of WestConnex should have included extra road-works that flow immediately on from the project itself

WAG considers that all road costs associated with the WestConnex project should be included in the cost of the project, not just the major roads comprising WestConnex. Other roads are reported to be:

- Works to widen Marsh Street that adjoins the WestConnex site at Arncliffe.
- Extra roadworks being considered from the corner of Euston Rd and Maddox Street in Alexandria to continue to Moore Park.
- Extra roadworks required to resolve serious traffic congestion around the Anzac Bridge and St Peters Interchange that will remain even if Stage 3 is completed. M4-M5 EIS acknowledges that RMS is already engaged in planning future road works to deal with this problem.
- Work on future local roads to handle extra traffic, some of which will absorb Council resources.
- Pressure on 2 lanes Edgeware Road once Campbell Street is 6 lanes.
- Cost to the Inner West Council of repairing the streets and putting in measures to stop rat running to avoid tolls.
- Gardeners Road. Extra work near the airport that does not include Gateway.

Recommendations (b):

All costing of major projects should take account of the full range of environmental, health and social impacts of that project.

The Inquiry should seek from all relevant agencies an account of the time and costs to them in managing complaints over the extensive construction period.

The Critical State Significant Infrastructure Provisions must be repealed.

The restrictions on compliance in dealing with matters during construction need to be clarified/removed and the period of construction be recognised as a period in which complaints can legitimately be made and responded to in appropriate manner.

Both the EPA and NSW Planning should be asked to inform the Inquiry about the number and variety of complaints, and the time taken to deal with them. The time for both agencies should include:

- Dealing with complaints and investigations, legal advice and preparation of matters for court or other bodies.
- Liaison through community forums and consultative committees.
- Participation on committees such as the air quality, inter-agency committees or regular meetings.

Even these figures would not reveal the actual flow of complaints and dissatisfaction with the project. RMS to publicly document and cost all road works in connection with WestConnex, either as the primary WestConnex roadways or as required ancillary roads necessary for the WestConnex project.

Sydney Motorway Corporation failed in many cases to record complaints.

(c) 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 governance of WestConnex includes the full range of techniques and systems used to manage the project from its preliminary planning stage to the management of the impacts of construction and operation. It also includes the compliance, feedback and complaint mechanisms that follow construction and extend into the operation phase.

From the beginning, there has been an alarming lack of transparency and accountability in the project.

The role of the RMS in relation to the WestConnex Delivery Authority and later the Sydney Motorway Corporation (SMC), and now Sydney Transport Partners (STP), has always been unclear to the public. It is completely unsatisfactory that Australia's largest infrastructure project has been planned and managed through a publicly owned private company that has not even been prepared to disclose to the public the address from which it conducts its operations.

The compliance systems that have been put in place have failed residents, leaving them despondent and exasperated.

Citizens have a right to expect that a project of this size would be subject to rigorous assessment and quality assurances processes available.

(c) (i) Hidden influences lie behind formal structures

The company structure of the Sydney Motorway Corporation and the reasons for a corporate structure have never been properly explained to the public. Worryingly, it includes Trust companies.

Behind the government and corporate structures lie the informal relationships through which real power is exercised. Tollway, road and construction lobbies have contributed millions of dollars to the Coalition and Labor parties. Movement of staff between private companies, government and government consultancies provide an added incentive to favour private company solutions that may not be in the public interest.

In June 2016, then Senator Lee Rhiannon produced a report on Road Lobby Political donations. The report found:

During the period between 2010 and 2015, a massive \$13,270,226 has been donated to the Liberal, National and Labor parties. Of this, \$6,636,638 was donated to federal and state branches of the Labor party and \$6,565,299 to the Coalition, including \$5,651,442 to branches of the Liberal party and \$758,607 to the National Party. This is a conservative figure because transparency in donations varies in different jurisdictions. Due to our weak disclosure laws, it is near impossible to know how much money is being paid to political parties, by whom, or for what purpose. So it is likely that the figures presented here are an underestimate.

https://lee-hiannon.greensmps.org.au/sites/default/files/160627_donations_roadway_wc_0.pdf

Road lobby networking functions, movement of staff between private companies, government and government consultancies, along with access to private meetings with Ministers, all help increase the influence of the road lobby. These factors might not in themselves be a problem if it was not for the sidelining of the community, including independent experts, from input into the planning process.

(c) (ii) Early history of WestConnex

In 2011 a new body, Infrastructure NSW (INSW) was established. It was heavily weighted with private infrastructure interests, including ex-Premier Nick Greiner who had an early involvement in the NSW tollway industry after his retirement from politics. By October 2012, WestConnex had been imposed on NSW Transport plans as a top priority, despite criticism that the government was committing to a project of huge scale without a detailed business case or modelling to back up its decision.

In mid-December 2012, Macquarie Capital was granted the financial scoping contract for WestConnex until 2070. Macquarie also had been involved in toll-roads in the US. The purpose of this unusual contract should be investigated.

<https://tenders.nsw.gov.au/rms/?event=public.cn.view&CNUUID=9E8AB610-B320-7DE0-E39C78CD1A92895F>

Christopher Swann who had previously worked at Macquarie was the executive at Infrastructure NSW and was responsible for the planning of WestConnex. He went on to head the New M4 project at the Sydney Motorway Corporation, until he shifted his employment to Lendlease after Planning approval for Stage 2 of WestConnex was granted by NSW Planning.

On January 16 2013, the NSW Acting Premier, Andrew Stoner announced that several companies had been chosen to be involved in helping design and justify the WestConnex tollway project through the Sydney Motorway Office. Leighton Contractors, and its subsidiary Theiss Constructions were paid \$4 million to be “industry partners.” AECOM was selected as the traffic modeller. All of these companies had been deeply involved in failed tollway projects. All had a commercial interest in the project going ahead. Needless to say, they found the WestConnex tollway project was a great idea. They were now ideally positioned for further involvement. AECOM went on to be granted other contracts on the project and has been responsible for three EISs. AECOM early contracts can be viewed on *Why WestConnex*. <https://whywestconnex.herokuapp.com/>

At this early stage, the key decisions that have shaped all further decisions in relation to WestConnex had been made without any independent review and without a business case.

Leightons operating under the name of CPB contractors have been granted \$billions worth of contracts on WestConnex Stages One and Two.

Macquarie too remained in the picture but has ended up on the side of Transurban who has successfully bought 51% of SMC. In February this year, Michael West reported:

Transurban is seen as the [strongest contender of the three bidding teams, with the trio of Morgan Stanley, UBS, and Macquarie Capital on hand to advise](#). On releasing its interim financial results this week, Transurban was curiously reluctant to confirm that AustralianSuper, Abu Dhabi Investment Authority and the Canada Pension Plan Investment Board were its partners in the bid.

How was it possible that Macquarie could be holding a financial scoping contract with the NSW Government while it was advising Transurban?

For more material, see:

“Blind Faith unlocking the secrets of WestConnex” Michael West February 2018

<https://www.michaelwest.com.au/blind-faith-unlocking-the-secrets-of-westconnex/>

Submission to Senate Inquiry into Operations of existing and proposed toll roads in Australia from Wendy Bacon, journalist and researcher. (Submission No 32.)

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TollRoads/Submissions

(c) (iii) Conflicts of Interest, lack of due diligence, fit and proper criteria

Like thousands of residents, WAG members are concerned about the lack of accountability and secrecy that permeates the WestConnex project. In previous submissions WAG has raised these issues.

In April 2016, WestCONnex Action Group joined forces with Victoria's Yarra Campaign for Action on Transport and WA's Rethink the Link to make a submission to the Senate Committee on the establishment of a National Integrity Commission. We supported it on the basis that a federal anti-corruption body would be well-placed to investigate issues related to WestConnex, the East West Link and Perth Freight Link. Our arguments in this submission are relevant to the governance of WestConnex. These include unresolved corruption allegations at the time major contracts were granted, influence exercised through the road lobby via donations, lack of transparency, lack of independent oversight.

The WAG section of this submission can be found at:

http://www.westconnexactiongroup.org.au/westconnex_issues

In February 2017, the respected academic and retired WA Labor Premier, Carmen Lawrence published a piece about the lack of due diligence that applies in Australia to the granting of government contracts to companies against which allegations have been raised in relation to corruption. All Dr Lawrence's sources are credible media and other sources. We urge the Committee members to read the range of allegations and findings that existed against Leightons (CPB-CIMIC) and AECOM at the time the NSW Government was not just granting them major contracts but inviting them into the Sydney Motorway Office to assist in planning the case for WestConnex, in which they have been major beneficiaries.

<https://www.theguardian.com/commentisfree/2017/feb/02/corporate-corruption-and-government-failure-to-act-whos-running-this-country>

(c) (iv) Private Corporations outside public scrutiny and accountability

WestConnex has been designated as critical State Significant Infrastructure under the Environmental Planning and Assessment Act 1979 (“EPA Act”), meaning “it is considered essential for the State for economic, environmental or social reasons” (NSW Planning State Significant Infrastructure Fact Sheet

https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/~/_media/64D6718B78B943DBA05E8BABEFF4FC93.ashx) It is a public project and as such the public must have the right to obtain and scrutinize information relating to the project, and to hold those in charge of undertaking the project to account.

The structure adopted by the NSW Government for the development, funding, building and operation of WestConnex is the antithesis of this principle and in fact shields the project and the Government from public scrutiny.

The proponent of the project, NSW Roads and Maritime ("RMS"), is a government body, accountable to the public, including under laws requiring competitive tenders for and release of Government contracts, and freedom of information laws, such as the Government Information (Public Access) Act 2009 ("GIPA"). Private corporations such as Sydney Motorway Corporation ("SMC") are not subject to GIPA or other laws which make those undertaking public projects accountable to the public.

We note that although the SMC published financial accounts, much information about the finances remains unclear. No financial accounts have been published for 2017/2018. This means that no up to date information is available about expenditure. <http://www.sydneymotorway.com.au/reports>

In appointing SMC to undertake the project, the Government has excluded a state significant infrastructure project, involving the expenditure of billions of dollars of public moneys, from public scrutiny. Complaints and requests from WAG to SMC for investigation of serious safety concerns about demolitions in St Peters were dismissed, and information denied on the basis of "commercial in confidence". For example, when residents observed asbestos being removed without protection in Brown Street, St Peters, WAG members contacted SMC to find the name of the contractor involved in that part of the project, SMC refused to give the name on the grounds that it was 'commercial in confidence'. (See Appendix (c)(i))

The company structure has exacerbated ill-feeling in the community and permitted the secrecy and lack of transparency which has characterised this project.

RMS has continued to be actively involved in the project, in the compulsory acquisition of property and ancillary roadworks along the WestConnex project route. This has blurred the lines between public and private, and allowed RMS to hide behind the cloak of privacy to which public bodies should not be entitled. WAG is aware of many GIPA applications to RMS initially also refused on the grounds of "commercial confidentiality".

Further, the legal and operational structure adopted by SMC to undertake the project, using a series of contracts and subcontracts with private companies, is in fact a structure used by large corporations, and replaces public accountability principles with privity of contract principles. The contractors and sub-contractors actually undertaking the project, its design and construction, are only accountable to the company with which they have contracted. Unlike Government, they have no direct obligation to the public.

We do not know what the terms of these contracts are, but if, as is likely, they are fixed term, fixed price, construction contracts, there is a huge incentive on the contractor to cut costs. This means that financial and time saving considerations totally outweigh any personal impacts on residents near the construction, or environmental and social considerations.

Even the obligation to inform and consult with the residents impacted by construction has been contracted out to SMC, and by SMC, to the main construction joint venturers. One of WAG's members, Rhea Liebmann, was a member of the Community Reference Group run by SMC. In more than 10 meetings, not a single issue raised by her was resolved by taking the community's concerns into account. At the end of 2017 this Group was dissolved by SMC and a new Community Reference Group set up by RMS.

These inevitable and foreseeable consequences of the private structure used for WestConnex have had devastating impacts on residents. Complaints to SMC about demolition dust breaches were commonly responded with a denial, advising that they had spoken to the sub-contractor concerned who had assured SMC they had complied. Residents have been left powerless.

(c) (v) Private corporations exempt from planning and compliance obligations

As noted above, WestConnex has been designated as critical State Significant Infrastructure under the EPA Act. This means that the project is exempt from local government and other planning laws and requirements, and the application of many enforcement measures, such as the power of the Environment Protection Authority to issue stop work notices for breaches of environmental licences. Judicial review processes are also limited.

These provisions of the EPA Act assume public accountability for the projects, and were designed to apply to public projects undertaken by Government bodies, not private corporations with profit motivations. This is unacceptable. A Government undertaking a critical Significant State Infrastructure Project is subject to compliance and disclosure pressures through Parliament, which private corporations are not.

The private structure adopted by the Government for the project has resulted in contractors knowing they are immune from prosecution and judicial review, therefore being able to weigh up the cost of fines for breaches against their contractual obligations to build the project. An example of this is the breaches by CPB Contractors in the remediation of the St Peters Interchange knowing that the EPA has no powers to issue a stop work order. (see Appendix (c)(ii) letter from EPA to WAG) The EPA has had no option but to take legal proceedings against CPB Contractors for their breaches, currently underway, but which will likely take years to go through the courts, and is of no benefit to the residents who were exposed to the odours. The EPA's powers to issue a stop work order were legislated to ensure the EPA could stop works causing serious environmental damage. Private corporations with no obligation to public health and financial motivations were not intended to be exempt. It should also be noted that it took hundreds of complaints from residents for the EPA to take legal action, and requires those residents, already so terribly impacted, to provide affidavits and spend many hours with the EPA for the action, further compounding the impact on them.

It is clear that in adopting the private corporation structure for the project, the Government was only concerned about the privatisation of the project, and did not consider (or give any weight to) the legal, social and environmental impacts this structure would necessarily have.

(c) (vi) Failure and Manipulation of the Planning System

It is clear that the Government has intended to drive the project through, irrespective of the impacts and proper planning process. The Government has used a literal and legal approach of complying with the letter of the law, rather than the spirit and intent. It has reduced the basic tenets of planning law, such as public consultation on the Environmental Impact Statements, into a box-ticking exercise process, rather than complying with the intent of the planning requirements, which is to ensure that environmental impacts are accurately and properly identified AND addressed.

The use of interested and partisan consultants, such as AECOM, to undertake traffic modelling and produce the Environmental Impact Statements, has meant that there has not been a proper and full review of the impacts of the project, which is the legislative intent of the SEARS and EIS requirements.

The Government's use of private consultants, and refusal to disclose crucial assumptions, such as the traffic modelling, on the basis that this information is "commercial in confidence", has prevented true and public review of the Statements and means that the public has been left in the dark on significant impacts such as air pollution.

Compliance with these critical planning requirements, intended as checks and balances for proper governance of large public projects such as WestConnex, has been turned into only a process to be followed. The public expects the NSW of Planning to be an independent reviewer and enforcer of proper process for Government infrastructure projects. However, it has ignored tens of thousands of objections from the public, independent experts as well as Government departments and agencies, such as NSW Health and the Environment Protection Authority, on each of the Environmental Impact Statements and other WestConnex plans, required to be put out to public consultation. It permitted an "indicative design" for Stage 3 of WestConnex to form the basis of the EIS, which by necessity means the environmental impacts cannot be properly identified, and therefore addressed.

In December 2017, the NSW EPA submitted its response to AECOM's EIS for Stage 3. It found that the assessment is so lacking in detail that it is not possible to "determine whether mitigation measures proposed are appropriate." The EPA recommends that approval should not be given to the project without further detailed environmental work. The EPA criticised the AECOM EIS for assessing as 'short term' consecutive construction impacts that could last four years; failing to assess potential contamination of waterways including Rozelle Bay and Whites Creek; and a lack of quantification of noise and vibration impacts. In a covering letter, the NSW EPA Regional Director Metropolitan, Giselle Howard, wrote that the EPA was concerned about "significant and ongoing impacts experienced by the communities at Haberfield and St Peters, particularly in relation to noise and vibration." She found that there is "minimal evidence to suggest that this has shaped the approach to mitigation" in the EIS. The EPA considers that these "need to be quantified and assessed in detail" before approval, rather than in a post-approval plan. EPA submission, October 2017

<https://majorprojects.accelo.com/public/04c879e2dde507c0ad93a7d6ad95d23d/WestConnex%20M4-M5%20EPA%20Submission.pdf>

Wendy Bacon, "EPA rejects WestConnex EIS" December 2017

<http://www.altmedia.net.au/epa-rejects-westconnex-eis/128946>

In reply to the Response to Submissions report for Stage 3, the EPA maintained its position but faced with the political reality that approval was a foregone conclusion, recommended conditions of approval and requirements for mitigation that experience has shown, in the cases of St Peters and Haberfield, are impossible to maintain.

It is a matter of huge concern that NSW Planning did not order far more detailed work and was prepared to approve a 'concept' for the Rozelle Interchange. This leaves residents exposed to intolerable risks, documented in relation to Stages 1 and 2.

It appears that the role of the NSW of Planning in the WestConnex approval process has been to check that planning process requirements have been met, rather than an independent review of the impacts and ensuring that foreseeable impacts are properly identified and mitigated. This is clearly demonstrated by the Minister for Planning and his Department's failure to impose stricter conditions on the Approvals, to ensure that residents, public health and the environment are protected as far as possible. Instead, the broad conditions of approval allow for a myriad of plans and sub-plans which the NSW of Planning has approved without public consultation, but which will have significant impacts. Further, using the corporate structure of private contractors and sub-contractors, the Government has devolved responsibility for both the preparation and enforcement of these planning obligations to the same companies which have financial interests in keeping compliance costs to a minimum. For

example, the conditions of approval should have required independent compliance monitoring instead of allowing the main contractors to self-regulate compliance. This has resulted in the contractors denying or failing to report breaches and required the community to report and pursue breaches.

(c) vii) Notification Requirements of Construction Noise

The M4 East and New M5 EIS(s) stated that it was not necessary to provide specific protection, standards and management plans for the impacts of construction noise on residents along the route, as they were considered “temporary”.

In fact, residents next to M4 East construction have been subjected to constant demolition and construction noise (including very noisy high impact works) not only during the days, but overnight and on weekends since 2015, and St Peters residents since 2016. WAG endorses the submissions of St Peters residents Tamara Regan Thompson and Dr Jacinta Green about the impacts of demolition and construction on residents. These impacts for years are far from “temporary” and the cumulative effect is devastating, and entirely foreseeable. It is a complete failure of the planning process, if not negligent, for RMS to have made this assumption and for the NSW Planning to have accepted this.

For example, the New M5 Construction Noise and Vibration Management Plan and sub-plans, approved by the NSW Planning, only require residents to be offered alternative accommodation if exposed to two or more nights of noisy night works from 6pm to 5am. It is not acceptable for residents to have to endure 2 sleepless nights before being entitled to alternative accommodation. This is exacerbated by the fact that the NSW Planning has approved a construction noise prediction model, used to identify residents impacted by noisy night works, which seems to limit those determined as “sensitive receivers” to an area less than the area actually impacted by night construction noise. This has allowed night works at 2 work sites for 5 consecutive nights from 27 August, 2018 to 1 September, 2018. The work sites in St Peters are less than 500m apart yet residents in the area between the work sites have not been offered alternative accommodation. It should be noted that WAG members have on a number of occasions requested the New M5 contractor, CPB, to provide the construction noise model and the approved documents specifying the alternative accommodation/noise mitigation measures obligations. CPB refuses to provide these.

(c) (viii) Failure to accept responsibility for damage to homes caused by construction

WAG endorses submissions from Kathy Calman and John English to the Inquiry in this regard. Other claims have been denied or individually settled. There has not been an equitable or open/accountable IWC provision of home inspection reports.

(c) (ix) Failure of community feedback and consultation - leads to extreme cynicism about planning

The so called ‘community consultation’ events were farcical. When the Traffic Manager was asked what would happen in Euston Road when 7 lanes of traffic got directed into 2 lanes of traffic at Maddox Street, the community member was told ‘that’s a very good question’. It’s an indicator, at the very least, of just how much has not been thought through about this project. Written questions were encouraged but were left unanswered.

At a consultation at the Tom Foster Centre in Darley Street, all WestConnex staff were briskly removed into a room behind locked doors when someone decided WAG members present were about to make

a collective statement. This ended the 'community consultation' prematurely - and was totally unnecessarily.

Recommendations (c):

Decision-making representatives of companies that have been involved in planning processes in relation to WestConnex should be called to account at this inquiry. This should also include the provision of relevant documents and communications between government agencies and private enterprise in relation to the WestConnex project.

That the enquiry should include consideration of how the public can be protected from the impact of private interests capturing the planning of public transportation services into the future.

The NSW Planning Act should be changed to require independent oversight and mandated conditions of approval.

The provisions of the EPA Act regarding State Significant infrastructure should be amended to prevent a public project being undertaken by private corporations.

The former and current NSW Minister of Planning and Secretary of Planning should be called to give evidence to the Inquiry about the planning processes in relation to the WestConnex project.

That an independent body be established to undertake assessments of claims of damage in relation to WestConnex construction. Alongside this, the NSW Government set up a fund to pay the independently assessed damages. These costs would be included in the cost of the WestConnex project.

The Inquiry should require the NSW government to provide an independent assessor to investigate conditions of mitigation in relation to night noise.

(d) The compulsory acquisition of property for the project

As with all other aspects of WestConnex, the acquisition of property for the project has been characterised by secrecy, lack of transparency, inequitable and unjust treatment of individuals affected. There has been a politically driven premature rush to acquire property before the project has been properly scoped and designed, before the NSW public have been able to review and comment on the Environmental Impact Statements, and before the granting of Planning approvals. The former and current Premiers and relevant Ministers have hidden pertinent information and recommendations, have refused to take into account community impacts and expert concerns, and have mislead the NSW public.

Despite the Premiers and Ministers paying lip service in media interviews and public statements to consideration of the impacts of property acquisition on communities and individuals, the way in which the acquisitions were carried out and the treatment of owners by the project proponent, Roads and Maritime Services ("RMS"), clearly demonstrates that the overriding priorities of RMS and Government were to push the project through and to save costs in the acquisitions. The impacts on

residents and communities were insufficiently considered, if at all, and in practice, were dismissed or ignored.

These failures of proper governance resulted in significant harmful impacts on residents affected by compulsory acquisitions for the project, the cost of the project, and a real loss of faith by the public in proper process and good governance.

(d) (i) Premature issuing notices of possible acquisition before road design finalised or EIS published or project approved

In the politically driven rush to proceed with the project, the compulsory acquisition of properties was underway before the road had been properly designed or the Environmental Impact Statement ("EIS") published, let alone approval of the project had been received. The result had devastating impacts on those residents and small business owners affected, as well as their communities.

Owners were put under unnecessary stress and their property values significantly impacted because the Government prematurely issued acquisition packs before knowing which properties would actually be required for the project.

In St Peters, RMS door knocked and issued acquisition packs to 80 residents and business owners on Melbourne Cup Day, November 2014, advising them that their property may be acquired for WestConnex New M5 project. At that time RMS was fully aware that not all the properties notified would need to be acquired for the project.

A WestConnex Delivery Authority spokeswoman said "the number of properties that actually need to be acquired will be confirmed when the preferred design for the New M5 is selected in mid next year. 'Property acquisition will be carried out under the Land Acquisition (Just Terms Compensation) Act 1991,'" she said."

"Roads Minister Duncan Gay said the preferred design was due to be announced mid next year, with an Environmental Impact Statement due by the end of 2015."

<https://www.dailytelegraph.com.au/newslocal/inner-west/devastated-st-peters-residents-doorknocked-and-given-westconnex-land-acquisition-packs/news-story/31b2eac7daecf6d31c5474eb42f830a1>

Inner West Courier, 5 November 2014

In fact, in January 2015, the WestConnex Delivery Authority issued Property Acquisition Notices for only 41 of the 80 properties.

<https://www.smh.com.au/national/nsw/westconnex-letters-anger-st-peters-residents-20150124-12xgkd.html>

In the interest of full disclosure, please note that Pauline Lockie, a St Peters resident whose home was taken for WestConnex, and who is featured in this and other media reports on compulsory acquisitions for the New M5, was a co-founder of WAG. Pauline resigned from WAG when she ran for, and was elected, as an Independent Councillor at Inner West Council.

The acquisition of property for the project before the road had been properly designed, and construction and operational impacts on residents adjacent to the routes properly assessed under the environmental assessment process, plus the RMS's priority to save on acquisition costs, also resulted in a failure to acquire properties immediately adjacent to the construction sites. Not acquiring these properties has subjected residents to terrible noise and dust for years, including many night and

weekend high noise works. WAG is aware of a number of owners who requested that RMS acquire their properties because of the impact, but were refused.

“Issa Maroun Nassrallah's house at Granville is now 2.5 metres from the M4 which sits directly above his backyard. Since the motorway was built, Mr Nassrallah said his life has been a ‘living hell’ because the Government has refused to buy his property. ‘My backyard never sees sun ... you know all day we never see the sun in my backyard ... it's not fair what they're doing to me,’ Mr Nassrallah said.

He used to have a sun-drenched backyard, now the grass is dead because it is completely overshadowed by the freeway. It is noisy and dusty and he says unsafe for his young children to use. Inside the house is now full of cracks, initially from the construction and now from the constant vibration from trucks going past.

Last year there were weeks where Mr Nassrallah and his family had to live in a hotel, as it was too unsafe to remain there while construction went on.

Unfortunately, Town and Country Real Estate in Merrylands estimated the WestConnex has devalued Mr Nassrallah's property by \$200,000.

‘It is a big eyesore and they [the Government] made no effort to minimise the damage,’

<http://www.abc.net.au/news/2017-08-09/westconnex-overshadows-house-and-leaves-it-falling-apart/8787194>

(d) (ii) Treatment of residents acquired - undervaluing, inequity, bullying, fight for entitlements

To have one's home taken is devastating for anyone, and particularly for those who are elderly and have lived in their homes for decades. If residents are not paid market value and unable to repurchase an equivalent property in their communities, and badly treated by Government, it can cause severe mental health and financial problems that can impact individuals for their lifetime.

WAG was contacted by many residents and it was widely reported in the media that those whose properties were acquired, were offered prices significantly below their market value. They were often bullied into accepting the offer, required by RMS to fight for every payment to which they were entitled, and treated very badly by RMS staff.

This appeared to be the result of political pressure to progress the project as quickly as possible and to save costs in property acquisitions for the project, and a systemic bullying culture within RMS.

In most cases, the amount offered to residents, even including the additional payments required under the NSW Land Acquisition (Just Terms Compensation) Act (“Just Terms Compensation Act”), was significantly below market value and was insufficient to allow them to repurchase in the same suburb, thereby forcing them to leave their suburb and community.

“HUNDREDS of thousands of dollars separate the offer from the Roads and Maritime Service and independent valuations of Haberfield families’ homes which are being compulsorily acquired for the WestConnex motorway.”

<https://www.dailytelegraph.com.au/newslocal/inner-west/negotiations-over-westconnex-compulsory-home-acquisitions-make-homeowners-angry-with-massive-differences-in-offers-and-valuations/news-story/5171cfb6b3dcdbe70e898b25cdf4c763>

Inner West Courier 28 July 2015

"Slater and Gordon's compulsory acquisitions lawyer Vincent Butcher is representing about 100 home and business owners affected by the process.... "I deal with compulsory acquisitions all over the state and this project is unique – this is an unprecedented number that look set to go to the Valuer-General," Mr Butcher said.

"We would say that is because RMS has been trying to wear people down and many aren't budging." Mr Butcher said the discrepancy between the original price offered by the RMS and the price some home owners had managed to eventually secure was significant. "We're seeing up to 60 per cent difference between what is achieved and what were the original offers," he said. "Some of that is just fluctuation in the market, but some of that is that RMS valuers are using comparative sales our clients would say are not comparable."

<http://www.abc.net.au/news/2015-12-01/home-owners-losing-houses-to-westconnex-call-for-more-money/6988528>

ABC Online, 1 December 2015

The bullying and harsh tactics and treatment of residents by RMS staff was also widely reported, and effectively meant that only those who were sufficiently educated or able, and had the financial means to take RMS to Court to dispute the value offered by RMS, actually received close to market value. Only those who did this and could afford a larger mortgage were able to buy back into their community.

"St Peters resident Shelley Jensen has been scouring suburbs throughout Sydney in recent weeks in the hope of finding a home that even partly resembles the three-bedroom house in St Peters she has been forced to give up.

But real estate agents have "just laughed" when she asked them what the \$960,000 the government will pay for compulsorily acquiring her home on Campbell Street in the inner-city suburb will buy her elsewhere in Sydney.

"The whole thing is quite terrifying. I am used to [St Peters] and I have connections in the area."

Ms Jensen's task of finding a new home is made harder because her ability to borrow money is compromised by the fact that she had to stop working two years ago due to a medical condition.

"I have no borrowing capacity – I'm living off the smell of an oily rag," she said. "I haven't seen an ethical approach at all from the government. I have just seen RMS giving the minimum that they have to pay."

<https://www.smh.com.au/national/nsw/absolute-insult-for-st-peters-residents-turfed-out-of-homes-for-westconnex-20161018-gs4xbk.html>

Sydney Morning Herald, 19 October 2016

Even residents who complied with RMS demands were treated like squatters in their own homes. The resident featured in this Sydney Morning Herald article, Shelley Jensen, told Rhea Liebmann, a WAG spokesperson, that the morning she was due to vacate her home, a RMS staff telephoned her to check whether she had cleaned the property, and told her a cleaning fee would be deducted from her compensation payment if not. The home was due to be demolished.

The rules of good governance and natural justice demand that when a Critical Significant State Infrastructure project such as WestConnex requires the acquisition of residential and small business property, owners be treated equitably and justly in acknowledgment that they are losing their home or business for the "greater good" of such an infrastructure project.

Adding insult to injury, RMS also harshly applied provisions of the Just Terms Compensation Act by forcing residents to pay RMS market rent for their own property after the acquisition had been legally

completed but before RMS required vacant possession. RMS also consistently initially denied homeowners' claims for payments to which they were entitled under the Act, such as moving expenses, and required residents to fight for each payment. RMS also vigorously defended any court actions by residents for increased compensation, forcing them to spend large sums on legal costs.

"It was bad enough when each had their inner-city St Peters home forcibly acquired by the state government at a price they say means they can't afford to move elsewhere in the area, given the strength of the Sydney property market.

Now, after an 18-month struggle, they and others are paying thousands of dollars in rent to the acquiring authority, Roads and Maritime Services, for the privilege of staying while pondering or being forced to appeal to the courts.

'I'm totally trapped,' said Mr Capuano, who must pay \$665 a week until he is forced to leave by early September on top of an existing \$30,000 legal bill to date.

I understand that they need our homes. But the way they've gone about it has been unfair and unjust. They stress you out to get you out."

<https://www.smh.com.au/national/nsw/homes-taken-now-trapped-westconnex-residents-must-pay-to-stay-20160715-gq68gs.html>

Sydney Morning Herald 16 July 2016

Even when the Government repealed these rental payments and increased the solatium (inconvenience) payments to owners in October 2015 after community outrage and media exposure (see paragraph D.3 below), it did not reimburse or increase the payments made to owners whose properties had already been acquired.

No compassion was shown or help provided to residents for whom English was not their first language or who may not have understood the compulsory acquisition process. One 68 year-old St Peters' resident, Van Ngo, was forcibly arrested when he resisted being evicted from his own home. His family told WAG members that Mr Ngo did not understand he was legally required to leave even though he had not agreed a price for his property with RMS. RMS did not provide him with translation or counselling assistance.

<https://www.smh.com.au/national/nsw/homeowner-arrested-during-westconnex-eviction-20161209-gt7pyv.html>

(d) (iii) Ministers and Government failure to address complaints

As can be seen from the above media reports of the treatment of residents, the former NSW Premier Mick Baird, the current NSW Premier and former NSW Minister for Transport and other responsible Ministers consistently publicly acknowledged the impacts on residents and paid lip service in the media, assuring residents were being fairly and respectfully treated, but these assurances were never followed through. They were effectively lying to the public.

On 16 July 2016, Duncan Gay, then Transport Minister said:

"Mr Gay said: "Like the Premier, it is of utmost importance to me that property acquisitions are carried out with compassion and understanding.

"We always try and work with property owners to make the transition as smooth as possible."

<https://www.smh.com.au/national/nsw/homes-taken-now-trapped-westconnex-residents-must-pay-to-stay-20160715-gq68gs.html>

26 February 2017 - Sydney Morning Herald

"Finance Minister Victor Dominello has vowed to review how a Sydney home owner was offered less than an official valuation by the NSW Valuer-General for his property, forcibly acquired for the \$16.8 billion WestConnex motorway."

<https://www.smh.com.au/national/nsw/minister-vows-to-review-westconnex-property-valuation-20170226-gulkpg.html>

This promise was never followed through.

It was only when the failure of Government to fairly treat residents was exposed in the media that any action was taken, such as when media revealed that Government had deliberately hidden the Russell Review which found the provision of the Just Compensation Act to be unfair (see below).

(d) (iv) Deliberate financial harm to homeowners through compulsory acquisition

In January 2016, a Sydney Morning Herald investigation revealed that the NSW Government was aware of a 2013 Joint Standing Committee on the office of the Valuer-General report by David Russell, SC on the NSW land valuation system ("the Russell Review") which found the compulsory acquisition system under the Just Terms Compensation Act was "unfair and inadequate". The Review made a large number of recommendations for changes to the price paid and the acquisition process. Despite this, Government made no changes to the Act before commencing the WestConnex acquisitions.

"Hundreds of \$millions worth of property is being forcibly resumed by the NSW government to make way for major infrastructure projects such as the WestConnex motorway using a system it was warned three years ago was unfair to landowners."

<https://www.smh.com.au/national/nsw/warning-of-unfair-process-unheeded-as-government-forges-ahead-with-property-resumptions-20160110-gm2mm8.html>

<https://www.smh.com.au/national/nsw/landmark-review-of-compulsory-acquisition-kept-secret-by-baird-government-20160111-gm3eo1.html>

The Russell Review recommendations and 2014 Government response can be found here:

https://www.finance.nsw.gov.au/sites/default/files/David_Russell_SC_JTC_Review_Report.pdf

https://www.finance.nsw.gov.au/sites/default/files/NSW_Government_Response.pdf

In August 2016 the Sydney Morning Herald further uncovered correspondence between Premier Baird and Treasurer Perrottet which confirmed not only that the Government was aware of the Russell Review but deliberately did not implement recommendations to make the acquisition process fairer because this would delay and increase the cost of WestConnex acquisitions.

"Now, [leaked documents reveal](#) that, in December, Finance Minister Dominic Perrottet wrote to Premier Mike Baird telling him to not act on many of the recommendations, following advice from an interdepartmental committee.

"The key concern of agencies, such as Roads and Maritime Services, is that a number of the recommendations would likely have adverse impacts including increased disputation, valuation complexity, additional costs and delay to the completion of infrastructure projects".

"On this basis, I recommend that at this time no further action be taken to address the review report."

<https://www.smh.com.au/national/nsw/baird-government-rejected-westconnex-fairness-advice-due-to-project-delay-fears-20160823-gqyz9k.html>

It was only after this was made public and the resulting public backlash that Premier Baird agreed to implement some of the recommendations in the Russell Review, such as no longer charging homeowners rent and increasing the sum paid to homeowners for the inconvenience of being acquired (solatium) from \$25,000 to \$75,000, but rejected a key recommendation of the report by that all home owners be compensated on a "reinstatement basis" to ensure they can afford to an "equivalent" home.

<https://www.smh.com.au/national/nsw/compulsory-acquisitions-owners-get-more-time-money-but-fairness-questions-remain-20161018-gs4peu.html>

It is clear, and unacceptable, that in breach of every rule of good governance the Government deliberately inflicted financial damage on residents and small businesses whose properties were compulsorily acquired for WestConnex in order to save costs and delays to the project.

(d) (v) Manipulation of laws and regulatory powers to achieve political aims and rush project through

In order to achieve political aims and rush the project through, the Government has utilised any laws and regulatory powers available to it, irrespective of whether the laws and powers were intended to be used for infrastructure projects such as WestConnex, and has influenced, manipulated and pre-empted due regulatory process. This has greatly impacted on the public's faith in the Government, the legal system and due process.

The Property Acquisition Notices issued for the majority of properties compulsorily acquired in St Peters for the project were acquired under existing RMS road reservations which had been in place since the 1950's, 1960's and 1970's, but which were not put in place for WestConnex. This was in order to progress the project before due planning process and public consultation had been completed and planning approval granted. This assumes that planning approval would be granted, eroding public confidence in proper process.

Further, one resident inquired of RMS what their plans were for the road reservations when they purchased their property. It was only months later the acquisition packs were delivered by RMS for their property, yet they'd been told there were no plans, suggesting a deliberate attempt by Government to keep WestConnex plans secret, irrespective of the appalling impacts on those affected.

"We moved here in good faith after being told there were no plans for the area but this has obviously been in the works for a while," Ms Lockie said.

"We changed schools for our five-year-old daughter, , based on what they told us, which we would never have done if we knew the truth."

<https://www.smh.com.au/national/nsw/westconnex-letters-anger-st-peters-residents-20150124-12xgkd.html>

Similar tactics were used when RMS found that it had not issued Compulsory Property Acquisition Notices for parts of Sydney Park in St Peters it required for construction. It used provisions of the NSW Roads Act to commandeer these lands.

(d) (vi) Failure of Due Process and Probity in WestConnex Property Acquisitions

The undue political rush to progress WestConnex without proper process and project planning in Stages 1 and 2, has been repeated in Stage 3 property acquisitions, clearly indicating that no lessons were learnt.

Although the indicative design for the M4-M5 Link was not published until May 2017, in August 2016 RMS notified the leaseholder (Tdrahhciel Pty Ltd) of a Transport for NSW owned property at Darley Road Leichhardt (which had been leased and left derelict and unoccupied for many years) that the site was required for a WestConnex tunnelling site. As a result of GIPA information requests made by local community group, Leichhardt Against WestCONnex, it was revealed that prior to this notice, the lease had been extended by Transport for NSW for 20 years, enabling the leaseholder to sub-lease the site to Dan Murphy's. The same month that RMS advised the leaseholder of the compulsory acquisition of the site a major renovation of the site for a Dan Murphy's bottle shop (reported to be between \$5-7 million in value).

The extension of the lease and establishment of the Dan Murphy's business on the site prior to its compulsory acquisition, meant that the cost of compulsorily acquiring the site was millions of dollars greater than if the site had not been improved or the lease term extended. Media reports suggest that the cost of compensation was up to \$50 million. [The mystery of the bottle-shop, the WestConnex tunnel, and the \\$50m bill.](#)

In July 2018, after the appointment of the principal contractor for the M4-M5 Link, the Government announced that the Darley Rd site was no longer required for the project. It is not known whether the acquisition of the site has been completed.

The dealings around the Darley Rd site not only impacted the cost of the project, but also raise serious issues of probity.

Aside from the poor practices regarding those members of the community who have had their homes forcibly acquired there is another impact. The case studies below demonstrate that there are further consequences and impacts for the community;

Case Study 6: Property acquisition, Ngaire's story

Ngaire, her partner and their young son live right on the edge of the construction zone in Campbell St, St Peters. In her submission she highlights the stress and the uncertainty that followed for many St Peters residents after the delivery of the acquisition packs on Melbourne Cup day 2014. Ngaire is a local artist.

"Tuesday, November 4, 2014. Melbourne Cup Day

It was about 10am. I was walking home from just having read with the kindy kids. I saw clusters of uniformed people wandering about. I thought they were Mormons. No. As I passed some I saw their shirts had the NSW, New State of Business logo. I had no idea what was going on. About an hour later, there was a knock on the door. Two of these young uniformed people told me my home may or may not be acquired for WestConnex.

They said everyone whose home was on the old road reservation (from the 1950s) was being notified. Our house isn't on the reservation I said. Yes it is, they said. No it's not. Yes it is. No it's not. Yes it is, have a nice day.

I went inside, sat down, read and reread the letter they gave me stating what they had said; my home may or may not be compulsorily acquired. I was in shock. It wasn't registering.

For months we lived in limbo not knowing if our home was to be taken or not.

Then we got a letter in the mail saying that they (RMS) didn't need our house at the moment.

Four years and considerable heartache later, we still don't know what the RMS are planning.

Turns out, a corner of our property is on the old road reservation.

RMS wants the surplus land - the land on the old reservation that will not be used for WestConnex. They want the "Residential" zoning changed to "Infrastructure".

I am not sure what all the implications are, but it means the old reservation, instead of being removed from the unused land as promised by representatives of the WestConnex Delivery Authority, will be further entrenched.

If RMS gets their way, it means we will always be in limbo until they finally take our home (probably without fair compensation).

A minor point, but one worth noting, is that even though just a small section of our property is on the old reservation, the entire lot will fall under the new Infrastructure zoning. Multiply this by the dozen or more properties that were only partially cover by the old road reservation/s, and you have a very sneaky land grab worth many millions. This is in addition to the less sneaky but equally unscrupulous land grab of surplus land.

It has been very difficult to tell the difference between WDA/SMC and RMS.

In many regards, WDA/SMC have been doing the bidding of the RMS.

This department has had too much unchecked power for far too long.

An investigation into WestConnex is, by extension, an investigation into the RMS"

Ngaire Worboys

St Peters Resident

WAG endorse Ngaire Warboys' submission.

Case Study 7: Property acquisition, Emma's story

Emma Pierce is a special education consultant and researcher. Emma, husband Damien and their two children, and have lived in the same cul-de-sac for ten years. Emma, eloquent and energetic, says they felt "pretty fortunate" to be living in an "amazing little community" in St Peters. She has been campaigning as one of the founder members of the WestConnex Action Group since 2014.

" and have grown up attending pre-school together. They played in the school playground most days when their older siblings were being picked up from school. The little girls were excited to be starting school together this year but their friendship is just one of many that has been cut short by WestConnex.

Instead, the community of St Peters is being torn apart as families, including , are forced to leave to make way for the WestConnex tollway.

Emma says these are "massive concerns", particularly with fine particulate emissions from pollution stacks being touted as the modern asbestos. But it's the thought of her daughter losing her best friend to the WestConnex relentless appetite for houses that upsets her. "Lots of friends are having their houses acquired and not given the just compensation that they deserve, and also people who are renting are forced out because they can't afford to re-rent in the area where they've lived for a really long time."

<https://m5eis.org/2016/01/25/emmas-story-from-my-backyard-to-bigger-picture/>

Ms Pierce has made a submission to the committee which WAG endorses.

(d) (vii) At home noise mitigation works

WAG received many complaints of delays, errors and downgrading of at-property noise abatement measures offered to residents affected by the New M5 St Peters construction and operational noise.

Residents were advised in early 2017 that the type of noise abatement measures they would be entitled to were contained in the New M5 Construction Noise and Vibration Management Plan (CNVMP), dated 6 October 2016, and that inspections of each property would be undertaken to advise the detailed works offered for each property. Appointments for property inspections were scheduled for March 2017, but then cancelled. Residents were advised by CPB that these works had been put on hold and that they would be contacted in the future. New appointments were not arranged until July 2017, and residents did not receive their property reports and offered noise abatement works until August 2017.

During those 8 months, residents were subjected to daily demolition noise and dust, piling and construction noise, and many weekend and all-night heavy construction noise. Construction is well under way but the at-home property noise abatement measures promised to residents still have not been agreed with many residents, let alone completed.

Table 6.2 of the New M5 CNVMP sets out the standard noise and vibration mitigation measures to be implemented for the construction of the New M5 project as required to reduce construction noise. Item NVM24, covering operational noise mitigation measures states:

Where reasonable & feasible, operational noise mitigation measures or equivalent temporary measures will be installed at the start of construction, and in areas identified as having high noise impacts (including at or adjacent to construction work sites or ancillary facilities), and where existing noise barriers are to be altered.

Where this is not feasible and reasonable, a report will be submitted to the Secretary for approval, providing justification as to why along with details of the temporary measures that would be implemented to reduce construction noise impacts until such time that the operational noise mitigation measures are implemented. The report will be provided to the Secretary prior to the commencement of construction works which would affect the identified receivers.

It would appear that NSW Planning approved this delay in the noise mitigation works for the St Peters residents until well after the start of construction, and temporary construction noise mitigation measures have not been provided to residents. This reflects the principle that construction noise was not considered by NSW Planning as having adverse effect on residents, which has been clearly demonstrated. This was recognised by the Department in the Stage 3 Conditions of Approval which include construction noise impacts. WAG requested that the Minister amend the Conditions of Approval for Stages 1 and 2 to include similar provisions to protect residents still subjected to construction of those Stages. We were advised that the Department and Minister have no power to amend conditions to Approvals already granted unless the Proponent, RMS, makes a modification application. At the RMS Community Reference Group meeting in July 2018 WAG member, Rhea Liebmann, requested that RMS make a modification application. No response has been received.

In addition to the delay in completing the home noise abatement measures, the works offered to a number of residents have been downgraded from those specified in the CNVMP. The works offered to the owners of properties at Brown Street (Tamara Regan and) and Church St (Jacinta Green) were downgraded from Type 2 (as specified for their properties in Appendix E, Table E.2, CNVMP) to Type 1. Table E.2 identifies both properties as being affected by local roadworks construction noise as well as operational noise. However, the types of works offered to direct and opposite neighbours were not downgraded. No explanation for the change in Type of works offered was provided.

The offer for Brown St now does not provide for any acoustic treatment for any of the windows along the length of the house facing the expanded Campbell St. Following complaints by the property owners, CPB advised them that these changes were due to each property now being considered on its own merits based on a new noise model. On 15 August 2017 of CPB advised Ms Regan as follows:

“The New M5 noise abatement program assesses and treats each property on its own merits, and takes into consideration the following factors:

- Differences in level/height of house
- Differences in identified treatments
- Differences in number of facades identified
- Differences in location of actual houses
- Differences in impacts from noise collated which produced the noise model
- Differences in amount of sound “barriers” and “obstruction” i.e. houses, gardens, etc. present
- Differences of treatment as outlined in EIS/Noise Model”

This provides no explanation for the downgrading of the treatment works offered for Brown St, and none of these factors have changed since the publication of the CNVMP, except the “noise model” referred to.

At a meeting with CPB on 29 August, CPB agreed to review the assessment of Brown St, but on 22 September CPB advised the owners that “as a result of the meeting a further validation response was requested from the acoustic consultants, . The consultants confirmed that the treatment proposed and identified in the scope of work is within the requirements of the assessment.” CPB did not provide any reason for the consultant’s view or any avenue of appeal.

The residents of Church St had to chase up the initial property inspection appointment, which finally occurred on 17 August. On the 28 August the residents requested a copy of the noise modelling after having been bombarded by out of hours work and without offers of alternative accommodation. After multiple emails and phone calls, a copy of the report for Church St was forwarded to Ms Green as an explanation of why they were not eligible for alternative accommodation. The noise model has never been supplied. In this report Ms Green was surprised to see that her property was in fact listed as requiring soundproof windows to deal with the construction noise.

The property report for Church St contains a number of errors (incorrectly describing the property as a single storey, when it is 3 storeys) and specifies apparently illegal work, such as the installation of aeropacs in both adjoining party walls which are fire rated.

After approximately 8 weeks of ongoing lack of sleep due to night works, on 10 November Ms Green discovered that neighbouring properties further away from the road and the noise were having the Type 2 sound proof windows installed. Ms Green contacted CPB and within a few hours received a

noise abatement offer of type 1 Aeropac ventilation systems. This is clearly not acceptable. Her master bedroom window now directly overlooks the Princess Highway intersection which will double in size and all houses between hers and the St Peters Intersection have been demolished.

At the request of the residents a meeting was held on 1 December 2017 with Ms Green, Ms Regan, Rhea Liebmann from WAG, 6 CPB representatives, SMC, Inner West Council representatives and Rob Sherry, NSW Planning WestConnex, Inner West Compliance Officer.

At that meeting CPB advised the residents that the downgrading of their treatment works was due to a new noise model being used by CPB to determine at-home noise abatement works. We were advised that this model was “not yet” a public document but “would be contained” in the Operational Noise Management Plan which was then still with NSW Planning for approval. The Department subsequently approved the Operational Noise Management Plan which has downgraded residents’ entitlements to noise abatement works to allow homes to be only partially soundproofed.

It is not acceptable for CPB to determine noise mitigation works based on unapproved and unpublished data and plans. Residents are unable to verify or confirm this information, their use by CPB assumes that the Department will approve the plans and models, making a mockery of the approval process. Determinations of appropriate sound mitigation works must be made on the basis of approved and published data, and actual sound data, not models.

WAG understands that Dr Green has, after much further effort and negotiations with RMS, been able to secure that her property will be provided with Type 2 sound proof windows, but that Ms Regan is still only being offered partial sound proofing on her property. WAG endorses Dr Green’s and Ms Regan’s submissions to the Inquiry.

The reality experienced by residents affected by New M5 construction in communications with CPB is polite but unhelpful, and a general failure to consider and address residents’ concerns. Residents are fobbed off by a restatement of obligations, specific concerns are not addressed, instead residents are referred to technical and complex management plans, sub-plans and ancillary documents without explanation or guidance. These documents are very difficult for residents to interpret and understand, leaving them completely uninformed of their entitlements and powerless to enforce them. Different residents have been treated differently to neighbours with no reason being provided.

The conditions attached to the New M5 Approval and the myriad of plans and sub-plans approved by the Department under those conditions have failed in any way to protect or ameliorate impacts on residents. The conditions and plans fail to take into account the cumulative impact of more than 12 months of demolitions and construction noise and disruption on residents. Contractors’ obligations are very difficult to interpret/understand by a non-expert, so leave the JV Contractor in control of the information available to the public. CPB and SMC are making no effort to clarify their obligations, and are deliberately withholding specific information from residents, questions are not answered or obfuscated, and information promised is not delivered.

Recommendations (d):

The government needs to account to the Inquiry for the processes it has followed in the acquisition of property; the appalling way it has treated individuals who either owned or rented property that has been acquired; and appropriate remedies made to the affected people.

The Inquiry should review processes of acquisition undertaken by the NSW Government in relation to the WestConnex construction and make recommendations in relation to acquisition processes.

(e) The recommendations of the Audit Office of New South Wales and the Australian National Audit Office in regards to WestConnex

(e) (i) NSW Audit

In December 2014, the NSW Auditor General released a scathing assessment of the governance of WestConnex. The then Auditor-General Grant Hehir's report found that the project was beset by a "lack of independent monitoring of the concept, business case and tendering for WestConnex."

The then Minister for Roads Duncan Gay's response was predictable and characteristic of how the NSW Government has handled any criticism of WestConnex. "We respectfully disagree, we have followed world best practice on procurement and delivery and it complied with the processes set by cabinet," he said.

Mr Hehir's criticisms should have caused alarm amongst citizens of NSW. This is after all Australia's biggest infrastructure project. (Damning report into WestConnex motorway released by NSW auditor-general Jake Saulwick, 18 Dec 2014.)

<https://www.smh.com.au/national/nsw/damning-report-into-westconnex-motorway-released-by-nsw-auditorgeneral-20141218-129r7t.html>

(e) (ii) Federal Audit

The Federal Audit report speaks for itself. What is disturbing, is that there was never any indication it was taken seriously by the NSW Government, despite its implications for public accountability and for the Australian taxpayer.

The Australian Audit Office report into WestConnex found the project did not go through "the established processes to assess its merits of nationally significant infrastructure investments". It also found the Department of Infrastructure and Regional Development provided advice prior to the first payment of \$500 million in mid-2014, that the funding was "of a magnitude not yet required". According to the audit, the decision to provide the \$500 million loan led to the project being approved without the Federal Government obtaining any analysis on whether statutory funding requirements had been met.

For a short report see: <http://www.abc.net.au/news/2017-02-14/westconnex-funding-was-not-properly-assessed-report/8270134>

Further evidence of the failure to protect the public in government contracting processes is provided in this story by Wendy Bacon. Commenting on the Auditor General's findings she wrote:

Decisions made, Advice follows:

These points are not hard ones to grasp. One would expect that senior public servants in DIRD, who collectively have hundreds of years' financial experience in the public sector between

them, could have provided advice. But instead of exercising judgement themselves, the Department decided to spend \$3.5 million on consultants. The basic details of these contracts were included in the report but have so far failed to attract the notice of journalists.

As the audit report explains, the legal advisors (Allens) were brought into the picture very late. Indeed, by the time \$668,000 of its legal advisory services were procured, the fundamental terms of the loan "had already been negotiated and agreed with the NSW Government".

In a pattern of decision-making that is familiar with WestConnex, the real decisions had already been made in behind-the-scenes negotiations between the Federal Minister for Infrastructure, Jamie Briggs, the NSW Premier, Mike Baird and Minister for Roads, Duncan Gay. A memorandum of understanding was signed with the NSW Government in May 2014. (Briggs has since retired after allegations of inappropriate conduct, Baird resigned to go back to banking and Gay has been removed from his Ministry and will soon retire.)

The report found that if legal advice had been obtained earlier, the Australian government might have been in a 'stronger starting position', a point that the Department itself later acknowledged. In fact, NAO analysts found a note from the Department's legal advisors that it was apparent that "it was the WestConnex Delivery Agency's intent that the loan was to be a concessional loan affording minimal rights to the Australian Government."

Allens would have been well aware of issues relevant to the funding of WestConnex. They were one of a select group of companies chosen by the NSW government to help develop a business case for the toll-roads in late 2012. That contract was to provide "strategic legal advice for the WestConnex business case". In December 2014, Grant Hehir in his earlier role as NSW Auditor General had found that business case to be "deficient" and failing to meet basic standards. Between May 2014 and July 2015, Allens was also paid more than \$3 million by the WestConnex Delivery Authority for its work advising on contracts to build the first stages of WestConnex. In announcing the Stage 1 \$2.7 million contract that was awarded to a consortium including Leightons and Samsung, Allens senior partner Leighton O'Brien enthusiastically endorsed the WestConnex project in the legal press.

I contacted Allens Senior Corporate Communications Manager, Germaine Graham, whose name appeared on the media release promoting the award success. I sent Graham a series of questions, including "I find it surprising that Allens would be both advising the NSW and Federal governments. How do you manage perceived conflicts of interest?" To which Graham replied, "I'm afraid we are unable to provide any commentary around client matters. Sorry we couldn't be more helpful." (This did not surprise me. The purpose of legal PR is to promote the firm and its clients.)

(Why were WestConnex contractors chosen to provide independent advice on WestConnex loan? March 27, 2017)

<http://www.wendybacon.com/2017/why-were-westconnex-contractors-chosen-to-provide-independent-advice-on-westconnex-loan/>

While it might be argued that such apparent conflicts of interest as Allens held in this case can be managed adequately, this sort of decision making undermines public confidence in public decision making, especially when it involves Australia's biggest infrastructure project and \$2 billion dollars that was arranged on disadvantaged terms to the Australian government taxpayer.

The status of the \$2 billion concessional loan after privatisation is one of the many matters about WestConnex that remains unclear.

Recommendation (e):

The NSW Government should explain to the Inquiry why it dismissed the findings of the New South Wales Audit Office and the Australian National Audit Office.

(f) The extent to which the project is meeting the original goals of the project as articulated in 2012

It is quite obvious that the project, which was initially created to link the West of Sydney with Botany Bay and Sydney Airport, is not meeting its original goals. At this point neither of those destinations will be any easier to access after traffic is brought up to the St Peters Interchange. The Airport Gateway is currently disappeared from the project in 2017 and just how vehicles, particularly trucks, will get from St Peters to Port Botany remains as much a challenge as it is today.

The EIS for Stage 3 M4/M5 acknowledged that the RMS was already working on massive traffic congestion that would be caused around St Peters and Anzac Bridge. The absurdity of continuing to build roads to create the need for more roads is understood by many members of the public.

The same public relations claim of “saving 40 minutes” between Parramatta and Sydney Airport continue to be stated as if nothing has changed in the project between 2012 and 2018. That 40 minutes could be easily used up getting from St Peters to Sydney Airport.

Recommendation (f):

Relevant NSW Government Ministers and departmental representatives be called before the Inquiry to explain and justify changes to the WestConnex project as they have evolved between 2012 and 2018 and into the future.

(g) The relationship between WestConnex and other toll road projects including the Sydney Gateway, Western Harbour Tunnel, F6 and Beaches Link

The original political messaging around the project was all about Western Sydney getting to the CBD, Botany Bay or Sydney Airport. But as it became clear that WestConnex was not going to Botany Bay or Sydney Airport (the Sydney Gateway dropped out of the project), other projects and rationales were developed.

(g) (i) F6 Stage One

The current design for Stage 1 F6 shows that drivers would not even be able to get out of the F6 at Arncliffe and would be forced to continue on the New M5 to St Peters, such plans seem to be more

about supporting the privatisation deal than assisting motorists of Sydney with costly traffic congestion.

On January 5, 2018 a WestCONnex Action Group (WAG) press release “called on the Government to halt the sale of WestConnex and make all business case documents for planned tollways in Sydney public”.

WAG’s call followed a Sydney Morning Herald report based on a leaked business case for the F6 tollway which revealed a 130% revenue threshold had to be reached before any share of toll revenue would return to government coffers. Instead the benefit will flow to whichever consortium buys the 51% share of WestConnex. (‘Leaked documents show Sydney’s F6 extension to benefit new owners of WestConnex’ by Matt O’Sullivan 3/8/18) <https://www.smh.com.au/national/nsw/leaked-documents-show-sydneys-f6-extension-to-benefit-new-owners-of-westconnex-20171031-gzbrwx.html>

“This latest leak clearly shows that the Government is desperate to make the early sale of WestConnex, before any of the Stages have been completed, attractive to private investors, and is yet another example of the total lack of transparency surrounding the project,” said WAG spokesperson Anne Picot.

“We call for the Government to halt the sale and disclose the complete business cases for the WestConnex, F6, Western Harbour Link and Sydney Gateway. This latest revelation supports what we have always said, that the WestConnex tollway system is an investor opportunity for private interests and not a transport solution”

(g) (ii) Western Harbour Tunnel

The proposals for the Western Harbour Tunnel have been rushed and carry huge environmental risks to the Harbour. The planning of this project was accelerated after the abandonment of the ill thought out Camperdown exit. The implications for traffic congestion and air quality on the North Shore are serious. Despite this, the Government has committed \$100 million in its 2018/19 budget papers to the Western Harbour Tunnel but only \$7 million to the Sydney Gateway that was supposed to be a fundamental and key element of WestConnex.

This again shows how the planning of these tollway projects has been driven by the NSW Government’s determination to rush the privatisation deal through before the next election.

Recommendations (g):

Relevant NSW Government Ministers and departmental representatives be called before the Inquiry to explain the long-term outlook and plan for the various toll roads that are continually being proposed, added on, removed in relation to the WestConnex project.

The Government should explain to the Inquiry its vision for sustainable transport in the Sydney region into the future; and how WestConnex and the new roads frequently being announced fit with this.

(h) The circumstances by which WestConnex and the Sydney Gateway were declared to be separate projects in 2017

WAG is glad to see that this is a TOR as the circumstances in which the Sydney Gateway disappeared out of WestConnex requires urgent investigation.

As with all aspects of WestConnex, the Government has been secretive and misleading about this part of the project.

The original reason given by the Government to the public for WestConnex was to connect Western Sydney to Sydney Airport and Port Botany. All references to WestConnex included the Sydney Gateway as the connection from the St Peters Interchange to the Airport and Port. It was considered a fundamental part of WestConnex in the 2012 and 2015 Strategic Business Cases, which specified that the Gateway was part of the project.

WAG has endeavoured to track the documentation filed with NSW Planning to find out when the Sydney Gateway disappeared from WestConnex. All the documents were prepared by AECOM.

The M4 East Environmental Impact Statement published in September 2015 stated that

“WestConnex is one of the flagship projects in delivering Tomorrow’s Sydney. WestConnex will widen and extend the M4 and M5 and join them together to form a continuous, free-flowing motorway with connections to the city, airport and port.”

<https://westconnex.com.au/sites/default/files/M4%20East%20-%20Community%20update%20-%20EIS%20-%20September%202015.pdf>

The map showed lines to the airport and Port Botany.

On 3/11/2014, the then Director of the New M5, Christopher Swann, signed off on behalf of WDA for AECOM’s application for New M5. On page 1, Sydney Gateway is described as a component of Stage 2 WestConnex. On page 23, the project is described as part of Stage 3

[https://majorprojects.accelo.com/public/dc0967627622d2ced33e79e17cbff267/\[Superseded\]%20WestConnex%20New%20M5%20SSI%20Application%20Report%20Part%201.pdf](https://majorprojects.accelo.com/public/dc0967627622d2ced33e79e17cbff267/[Superseded]%20WestConnex%20New%20M5%20SSI%20Application%20Report%20Part%201.pdf)

This demonstrates that at this time the then WDA was already aware of uncertainty around the Sydney Gateway.

The confusion continues in the amended application filed later, in October 2015: on page 1 the Sydney Gateway was still part of Stage 2 but on page 24, it has shifted to Stage 3. This application was filed by the head of RMS, Ken Kanofski rather than Mr Swann, again showing the confusion in the planning processes.

In Vol A of the New M5 EIS lodged in November 2015, the Sydney Gateway is still described as being part of the WestConnex suite of works.

The New M5 Environmental Impact Statement published in November 2015 specified that:

“The project is a component of the wider WestConnex program of works to provide a 33 kilometre motorway linking Sydney’s west and south-west with Sydney Airport and the Port Botany precinct. The component projects of the WestConnex program of works and their current status are...Sydney Gateway (undergoing concept development and subject to planning approval).”

https://majorprojects.accelo.com/public/0a1b66c3f633f114865653bc3bbfa48f/New%20M5%20EIS_Vol%201A.pdf

There are many references in this EIS to the Sydney Gateway. There is mention of Councils, including Botany Council, being concerned about what was happening with the Sydney Gateway but the response was that the NSW Government was still committed to the Gateway. (See Chapter 7 of the EIS).

City of Sydney 7.38

"The Gardeners Road bridge would provide direct access to and from the St Peters interchange and improve access to Sydney Airport and Port Botany. Additional access would be provided via Campbell Road bridge. The NSW Government is committed to delivering the future Sydney Gateway, which is currently undergoing concept development and subject to separate environmental assessment and approval."

Never did the Sydney Motorway Corporation, NSW Planning or RMS ever state that the Sydney Gateway was no longer part of WestConnex, leaving readers of the documentation to reasonably expect that it remained part of WestConnex.

However, in 2017 the Gateway was dropped from the WestConnex project without any public announcement or explanation. Any information about the Gateway has come from media or Opposition investigations.

In January 2017, the then Roads Minister, Duncan Gay said that "the construction of the gateway would "come in on the end" of that for the M4-M5 link – the third and final stage of WestConnex – and "certainly we are open to be able to start it at different times"... "We may well be able to start it before the completion of the other. But we need to finalise the plans before we could give exact dates. [The gateway could be completed] potentially before 2023,"

<https://www.smh.com.au/national/nsw/westconnex-link-to-sydney-airport-could-be-opened-earlier-than-2023-gay-20161214-gtayf2.html>

In May 2017 the Government continued to state that the Sydney Gateway was a part of the WestConnex project, indicating it would be built after the M4-M5 Link:

"Pressed at a NSW inquiry into toll roads on why the gateway was taking so long, Roads and Maritime chief executive Ken Kanofski said it was "logical" for the new road to the airport to be completed at about the same time as motorists began driving on the final stage of WestConnex, a link between the M4 and M5 motorways due for completion in 2023."

<https://www.smh.com.au/national/nsw/logical-for-westconnex-link-to-sydney-airport-to-be-built-last-says-top-bureaucrat-20170522-gwa0f5.html>

However, in August 2017: "WestConnex Minister Stuart Ayres told Parliament on Wednesday that the gateway was not part of WestConnex, and that the \$16.8 billion for the toll road included an "allocation" of \$800 million for the connection to the airport."

<https://www.smh.com.au/national/nsw/1-billion-cost-blowout-in-westconnex-gateway-project-to-sydney-airport-20170810-gxt6wc.html>

As this article in the Sydney Morning Herald notes, leaked Transport for NSW documents obtained by Labor, estimated the cost of the gateway at between \$1 billion and \$1.8 billion, more than double the original estimated cost, which threatened to push the total costs of WestConnex to \$17.8 billion.

In September 2017, the NSW Opposition asked the Government to confirm whether an unsolicited proposal for a separate Gateway project had been received from Lend Lease.

"A spokesman for NSW Roads Minister Melinda Pavey said in line with the Unsolicited Proposals Guide, the NSW Government does not comment on whether or not a proposal has been received."

Ms Pavey's spokesman said the NSW Government continued to work with key stakeholders to develop the concept design for Sydney Gateway.

"Sydney Gateway is a separate project that does not come under the WestConnex program and is not included in the WestConnex tolling regime."

<http://www.abc.net.au/news/2017-09-04/sydney-gateway-plan-reportedly-submitted-as-fears-grow-for-toll/886906>

In November 2017 the Sydney Morning Herald reported that the Government had rejected a bid from Lend Lease to construct the Sydney Gateway. The article also notes that:

"The Minister for WestConnex, Stuart Ayres, told a budget estimates hearing in September that Lend Lease was "very much interested in working with the stakeholders around providing a solution to Sydney Gateway".

Mr Ayres, whose ministerial diary shows he met Lend Lease and its infrastructure financier Capella Capital in May, has said a separate business case for the gateway will be developed."

<https://www.smh.com.au/national/nsw/state-rejects-lendlease-bid-to-build-sydney-gateway-link-to-airport-and-port-20171026-gz8e6q.html>

In February 2018, the Sydney Morning Herald revealed that negotiations with Sydney Airport for the acquisition of land needed for the Sydney Gateway had stalled, delaying the Gateway project as the State cannot compulsorily acquire airport property crucial for the gateway.

Leaked Cabinet documents obtained by the Herald and the ABC showed that separate tolls, freight levies and access fees for the airport were considered to close the \$600 million gap in funding for the link, and that the single biggest cost of the gateway is about \$550 million in property acquisitions, half of which was expected to go to Sydney Airport.

<https://www.smh.com.au/national/nsw/sydney-airport-road-block-to-state-governments-18-billion-link-to-westconnex-20180131-h0r78i.html>

These reports, leaked Government documents and Government media statements clearly show that the Government has consistently misled the public about the WestConnex connection to the Airport and Port Botany, and that the real reason for the dropping of the Sydney Gateway from the WestConnex project was the inability of the Government to acquire the airport land needed for the Gateway at an acceptable cost, again indicating that the Government announced and proceeded with the project before it had undertaken proper due diligence and costings.

We would request that the Committee call the Minister for WestConnex, Stuart Ayres, the Chief Executive of RMS, Ken Kanofski and Christopher Swann, now in charge of Infrastructure at Lendlease, to give evidence to the Committee about the events surrounding the Sydney Gateway. In early 2017, Mr Swann moved from RMS to Lendlease. <https://www.linkedin.com/in/christopher-swann-7ba31433/>

- On what date and by whom was it decided that the Sydney Gateway was no longer part of WestConnex?
- What were the reasons for the change?
- Why were these reasons not made public at the time the decision was taken?
- Where is the \$800 million that is supposed to be allocated in the WestConnex budget to the Sydney Gateway now? Why has the Sydney Gateway been at concept planning stage for 4 years? Why was only \$7m devoted to the Sydney Gateway in the 2018/2019 budget?

Recommendation (h):

As per Recommendation (f) - Relevant NSW Government Ministers and departmental representatives be called before the Inquiry to explain and justify changes to the WestConnex project as they have evolved between 2012 and 2018 and into the future; and specifically address the questions above.

(i) the cost of the project against its current valuation as determined through the sale of the Sydney Motorway Corporation and whether it represents a good investment for NSW taxpayers

WAG is of the view there is total confusion around the true value of the project. There are a number of competing claims which need to be independently verified before any judgement can be made as to whether WestConnex is a good investment for NSW taxpayers.

Recommendation (i):

There needs to be an independent review of all financial claims and budgeting of WestConnex which is mired in confusion and competing claims. This needs to be done by independent experts who are demonstrably free from pressure to politically produce the case to suit their employers.

(j) Any other related matter

(j) (i) Health Costs - Introduction

As we have made very clear in the above, we have very strong concerns about the impacts of WestConnex. One area that has not yet been addressed in our discussion under earlier TOR is the impacts of the WestConnex project on the health of affected communities in the short-term and the long-term; and the cost of those impacts. The health impact studies in the EIS depended on a quantitative assessment of health risks on mortality and hospital admissions. These types of assessments are based on large scale statistical analyses that may provide useful long term data for large generic populations, however they do not capture the impacts on health of specific local events/projects such as WestConnex in the immediate and short term period, including their costs. And significantly, they do not take into account mental stress and illness that may not result in hospital admission but is an enormous cost to the individuals and families involved. These costs may extend beyond the period of construction that residents are currently being subjected to and have long-term mental and physical impacts for people living in the local areas, that is not reflected in large-scale quantitative studies.

Here we draw your attention to the main health impacts arising from the WestConnex project and the failure of the business case to take into account the cost to the community and to individuals and to the health system of these health impacts. In summary these health impacts relate to the impacts of

noise, the impacts on air quality, the impacts of night work arising from WestConnex construction and the health impacts of a car dependent society underpinned by the massive scale of the WestConnex toll road project. Further to that there are serious health issues arising from the stress experienced by individuals who have lost houses and/or whose daily lives have been disrupted by the immediate presence of WestConnex construction in their street/neighbourhood.

A recent article by Elizabeth Farrelly (2018) and published in the Sydney Morning Herald (<https://www.smh.com.au/national/nsw/the-sydney-suburb-where-fresh-air-is-a-luxury-20180830-p500s0.html>) provides a direct account of the daily impact on the health of people living in St Peters, impacts that derive from the "home invasion" nature of the construction of WestConnex. In the case study presented in the article "...each of the house's fifteen windows receives a constant noise-barrage ...". As Farrelly (2018) points out, there are "...countless studies linking cardiovascular, gestational diabetes, emphysema and possible juvenile delinquency to fine particulate pollution." (There are links in the article that take you to various studies on these impacts.) This is before the multilevel St Peters interchange complex will be operating in the area that will be a permanent scar on the landscape, impacting every day and permanently on the health of the people living in the area.

Further to this, the health risk assessments depend on the air quality studies which depend on the traffic studies, which even supporters of the project recognise are uncertain. That is the large-scale health data provided to the EIS inasmuch as it is useful is only as good as the underpinning data. Indeed, if as predicted by Transurban, the traffic estimates under-estimated traffic numbers, there could be more congestion near the tunnel portals and in the tunnels. If this occurs, it will increase the health risks for those living around WestConnex. That is, the health costs associated with WestConnex based on an understatement of traffic flows and hence air quality impacts are unreliable.

Earlier this year WAG corresponded with the NSW Minister for Health, Minister for the Environment, and Minister for Planning about the serious and direct health impacts of the WestCONnex project. The correspondence is provided at the end of the submission and sets out our concerns, most of which are addressed in this submission.

(j) (ii) Health Costs – Noise

As discussed in other TOR above, noise emanating from the WestCONnex construction site is a huge issue. Studies show that the potential health effects of noise pollution are numerous, pervasive, persistent and medically and socially significant. Noise produces direct and cumulative adverse effects that impair health and that degrade residential, social and working environments with corresponding real (economic) and intangible (well-being) losses. Noise represents an important public health problem that can lead to hearing loss, sleep disruption, cardiovascular disease, social handicaps, reduced productivity, negative social behaviour, annoyance reactions, absenteeism and accidents. It can impair the ability to enjoy one's property and leisure time and increases the frequency of antisocial behaviour. Noise adversely affects general health and well-being in the same way as does chronic stress. It adversely affects future generations by degrading residential, social, and learning environments with corresponding economic losses. The aim of enlightened governmental controls should be to protect citizens from the adverse effects of airborne pollution, including those produced by noise. People have the right to choose the nature of their acoustical environment; it should not be imposed by others.

(PDF) " Noise Pollution & Human Health: A Review ". Available from:

https://www.researchgate.net/publication/319329633_Noise_Pollution_Human_Health_A_Review

WAG has posted on its Facebook page a number of videos taken by residents recording the noise in St Peters and Haberfield. These demonstrate extreme noise very close to homes in the early hours of the

morning. We do not know why these noise levels were ever approved because the noise modelling is not available to the public. We can supply these videos on request.

(j) (iii) Health Costs – Air Pollution

Case Study 8: Air Pollution at St Peters School

In 2015, an air monitor was placed at St Peters school. The purpose of this monitor was to collect data for the New M5 and M4.M5 EIS. Parents at the school were very concerned about the health impacts of WestConnex both its construction and its long term impacts. In response to their concerns, the New M5 Community Engagement team made assurances in writing that the school community would receive these results. This has never occurred. Instead, broad monthly reports have been posted on a WestConnex and Air quality page, often many months after they were prepared and with no explanation. The reports are in PDFs and are not linked in any further analysis to enable the community to make sense of the data. Wendy Bacon and open data analysts Luke Bacon and Henare Degan have analysed the results to produce these reports:

<http://www.wendybacon.com/2018/dangerous-pollution-at-st-peters-school/>

<http://www.altmedia.net.au/westconnex-pollutes-primary-school/131975>

The reports show that compared to other OEH monitors in Sydney, the St Peters monitors recorded higher levels of PM 2.5 during the period of extreme odours in St Peters (early 2017, discussed in an earlier section). Why were parents never given this information? This seems a significant oversight. Levels of PM 10 climbed after construction began and consultants Pacific Environment did find that it was likely that local construction was responsible for daily exceedances of national limits of PM 10. This was not predicted in the New M5 EIS. This provides some evidence to explain why the anecdotal experience of health impacts is worse than the official statement that health impacts would be ‘temporary’ and/or mitigated by standard management practices.

The lack of information provided to parents has been a source of tension within the school, some parents believing that the school community has been discouraged from making their concerns about pollution at the school public known due to community grants from WestConnex. At a public meeting in St Peters in early August 2018, parent Christina Ho expressed her disappointment with the failure of the school to provide leadership to the parents in seeking access to air quality data that would enable them to assess the health risks.

From a public accountability point of view, the lack of information that has been made available to residents in St Peters has been intolerable. Many have complained of health impacts including on their young children. One preschool parent Myfanwy Waddell told City Hub:

The air monitoring results confirm the worst fears of local parent Myfanwy Waddell who had two little boys at the St Peters preschool in 2017, one of whom still attends the preschool. Ms Waddell was very concerned about the air quality at the preschool last year when the odours from the St Peters Interchange were overwhelming. “I felt that it must be dangerous and couldn’t believe it was allowed to happen so close to a preschool”, she told City Hub. (The NSW EPA is prosecuting WestConnex CPB Contractors for failing to control the odour emissions in 2017.)

While Ms Waddell knows that it’s very difficult to prove any particular case is due to pollution, she can’t help wondering whether the high PM results are connected with her family’s very poor health over the last year. Her youngest child has had pneumonia twice, once in May last

year and again in January this year. He has since been diagnosed with asthma. She herself has also suffered from pneumonia and conjunctivitis, her husband a very bad cough and her older child has had gastro, flu and colds over the same period.

Parents like Ms Waddell face a very tough choice when their children are settled in the preschool and the teaching is good. City Hub has talked to other residents living near the WestConnex sites who believe that construction activities near their homes are linked to respiratory illness, asthma and very severe conjunctivitis.

<http://www.altmedia.net.au/westconnex-pollutes-primary-school/131975>

Case Study 9: Air Pollution in Haberfield

In accordance with the conditions of approval, six monitors were installed along the M4 East route in December 2017. The reasons for the installation of the monitors was to allay intense concerns about unfiltered ventilation stacks. The aim is to demonstrate that the stacks do not negatively impact on air quality.

It concerns WAG greatly that these monitors have been under the control of CPB Contractors and that the required Air Quality Consultative Committee is under the control of SMC and RMS. What will happen once the M4 East project is transferred to Transurban and its partners? The OEH, EPA, NSW Health or NSW Planning have no input or representation on these committees. The level of information provided in monthly Ecotech reports is below what would be needed to enable the community to seek independent advice about the risks and reasons for recorded air pollution levels.

(j) (iv) Health Costs -Dust Storm

In April 2018 there was an intense dust storm in Haberfield.

<http://www.wendybacon.com/2018/haberfield-school-children-cop-westconnex-dust-storm/>

The aftermath of this dust storm provides a good example of how CPB Contractors push back on residents' concerns. One complainant was even told that the incident was caused by two grass blowers and later than it was merely a regional event.

<http://www.wendybacon.com/2018/haberfield-dust-storm-not-just-a-regional-event/>

To whom or where should the public turn in this situation?

No monitors at all have been placed on the south side of Parramatta Road or west of the Homebush stack where many thousands of people live. For these reasons, it is hard to understand how this monitoring exercise can allay community concerns about the health risks of unfiltered stacks. The monitoring exercise appears to be a cynical political exercise rather than a genuine attempt to assess the impacts of the stacks on local air quality. In this regards, WAG endorses the application of the Haberfield Association in respect to its concern about SMC pollution monitoring at Haberfield.

There is even greater concern for the children at the child care centre that is opposite the large Parramatta Rd construction sites and the apartment blocks that have been left exposed by demolition of the homes that separated them from Parramatta Rd.

And it's not just the school. If the PM10 was 405 µg/m3 at Haberfield School yesterday, what was it at Peek A Boo Childcare Centre that fronts directly onto Parramatta Rd opposite the construction site? When the wind blows from the north, what is the air quality in the apartments that you can see in the photo at the top of the story? Before WestConnex, hundreds of residents living in these apartments were protected from the roadside pollution by other buildings and trees. Not only were those buildings stripped away but they have been

left within metres of a congested road and construction site, without even a noise wall. (<http://www.wendybacon.com/2018/haberfield-school-children-cop-westconnex-dust-storm/>) Photo can be found at this URL)

The EPA has so far not taken action in relation to this dust storm incident. We understand this is because a resident's video failed to capture dust actually blowing off the massive construction site but only across the road adjacent to it. The failure to act may be understandable if the evidence is not strong enough to prosecute. But this does not allay the on-going concern that the impact of construction sites on the health of residents has been continually underestimated in the WestConnex EIS assessments.

After more than eight months of monitoring along the M4 East, the average PM 2.5 levels recorded by the Ecotech monitors are about 11 u/gm³. They have been above 12 u/gm³ at the nearby Ramsay St monitor since the end of July. (The national annual limit is 8 u/gm³; the WHO limit is 10 u/gm³), While it is the case that pollution levels have been higher in Sydney this year and regional influences are dominant, it is not true that the levels at the Ecotech monitors are the same as at the NSW OEH monitors at Chullora and Earlwood monitors, as the AQCCC committee has been told. There is the possibility that the higher pollution levels in Sydney this year are due to warmer weather linked to global warming. Given the very strong likelihood of continuing increases in temperatures over time, air pollution and the costs associated with it can only increase. This raises questions about the EIS and considerations of cost within that report. It also raises the broader question of the appropriateness of a toll road network as a vision for sustainable transport in the Sydney region. In short the WestCONnex project, with its minimal consideration of costs, in particular environmental costs, can only be seen to have understated the health impacts and the costs of those health impacts for Sydney residents and communities. As we move further into global warming these impacts and costs will intensify, thus raising further concerns about how the WestConnex project and car dependency could have been considered an appropriate, sustainable and efficient use of public resources. In this regard WAG endorses the concerns expressed by St Peters resident Anne Picot in her submission about how the impacts of climate change have not been sufficiently assessed in the AECOM EISs.

(j) (v) Health Costs – Night Work

An important point in relation to night work that we want to stress is that the EIS clearly understated the impact of night work. As a project gets behind as is always bound to happen, night work increases (as do other practices such as speeding, uncovered loads, failure to keep dirt mounds appropriately covered, and so on as has been documented in the media at different times) therefore the impacts of the night work are never fully accounted for. In St Peters and in Haberfield residents have been subjected to periods of consecutive nights of work, intermittent night work over several months and both of these occurring over several years. There is plenty of evidence that demonstrates the terrible impacts of interrupted sleep both on physical and mental health and individual submissions from people directly affected by night work will tell you these stories. Our purpose here in this WAG submission is to emphasise that once again the EIS understated the impacts of night work to the enormous detriment and cost of the residence living in the areas directly affected. This shows a lack of regard for the health of the citizens of Sydney and that this project was going ahead regardless of any costs. WestCONnex has and will argue that they are not responsible for all the night work. However, this is somewhat

In this submission in relation to health WAG is arguing that the EIS clearly understated the impacts of air pollution, noise pollution and sleep disruption in the construction stage (likely five years plus) and the likely long-term/permanent impacts on local residents of, for example, the St Peters Interchange. In so doing it failed to take into account the health costs of the project. WAG is not in a

position to undertake this assessment itself, however it is of the view that like many aspects of WestCONnex, those involved in the decision-making need to be called to account as part of this inquiry into the costs of WestCONnex. Further, independent health experts need to be consulted as to the full extent of the likely health impacts and costs of these impacts both of the construction stage, the St Peters interchange, and the massive increase in traffic and thus air pollution that is likely to result through Newtown, Erskineville and Alexandria as a result of the WestCONnex project. We hold the same concerns for Rozelle and Haberfield and for all residents living near the portals.

(j) (vi) Health Costs - Air Quality Community Consultative Committee (AQCCC)

WAG endorses the Haberfield Association submission and Rasmu Torkel's submission about the AQCCC.

(j) (vii) The Value of trees to the community

The WestCONnex Action Group ran a very successful campaign regarding the loss of trees and habitat for wildlife. The campaign was launched with a family picnic.

“The campaign aims to emphasise how much the condemned trees – which have been wrapped in blue ribbon by local residents – mean to local people and families, and as habitat for native animals. Residents have also maintained a 24/7 blockade camp in the park since September to stop the destruction, which last month saw WestConnex abandon early tree destruction works on Euston Rd”

WAG press release:

http://www.westconnexactiongroup.org.au/media_alert_save_sydney_park_adapt_a_tree_launch

http://www.southsydneyherald.com.au/artists-urge-adopt-a-tree-to-save-sydney-park/#.W5B_LugzY2w

Image 1. Trees on Euston Rd alongside Sydney Park. Residents wrapped the trees in blue ribbon in late 2015 to raise awareness of their imminent destruction.

Photo: @lorrie graham photographer

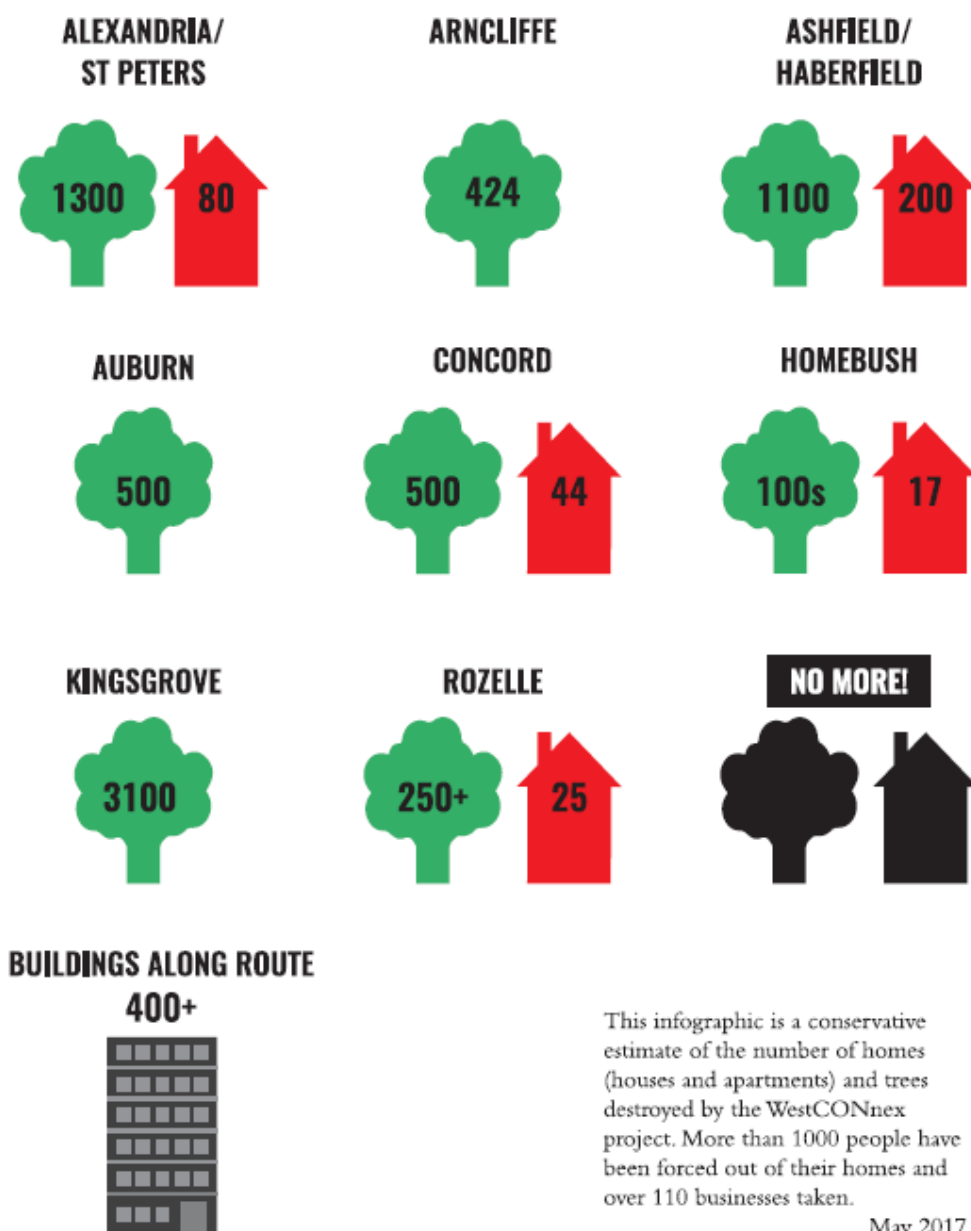


This Image 2. Young girl wraps tree in Sydney Park.

Photo: @lorrie graham photographer

However, what is forgotten in this is that alongside the community, environmental and habitat value of trees there is a dollar value in mature trees that all the Environmental Impact Studies (M4, New M5 and M4–M5) have failed to take into account. With more than **7,274** (see infographic below) trees destroyed in Kingsgrove, St Peters, Alexandria, Homebush and Haberfield for the WestConnex project (a tally taken from the arboriculture reports for WestConnex and WAG's own research), WAG estimates at least **\$10million of value has been lost to the community**, if you measure the benefits a street tree brings across its life.

WESTCONNEX DESTRUCTION



Even with the replanting proposed by SMC, it will be decades before the new trees gain the same size and value of those that have been removed. Most of the replanting will also be in park areas, not street side, so the reduction in temperature and air pollution that street trees bring to urban neighbourhoods has been permanently lost.

And it is not only street trees that have been lost. The destruction of 1.4 hectares of the 1.8-hectare Beverly Grove bushland area, next to Canterbury Golf Course, is costly in terms of biodiversity loss. This remnant of Cooks River/Castlereagh ironbark forest had been preserved in the first M5 project, due to its ecological value.

The basic value of a tree can be roughly determined by its trunk diameter at breast height (see Tree Valuations in City of Melbourne table). Therefore, even a highly conservative estimate puts the basic value of the 1000 mature trees destroyed across a 7.5hectare swathe of Sydney Park, St Peters and Alexandria at close to \$1million plus (500 x 10cm trunk diameter trees, 150 x 15cm trunk diameter trees, 50 x 20cm trunk diameter trees).

Tree Valuations in City of Melbourne

Tree Valuation Fact Sheet City of Melbourne

<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/Tree-valuations.DOC>

The basic monetary value of a tree is determined by matching the trunk diameter at breast height (DBH) with its corresponding base value:

DBH cm	Base Value	DBH cm	Base Value	DBH cm	Base Value
6	\$ 309.92	50	\$21,522.33	100	\$ 86,089.33
8	\$ 550.98	55	\$26,042.03	105	\$ 94,913.49
10	\$ 860.89	60	\$30,992.16	110	\$104,168.09
15	\$ 1,937.00	65	\$36,372.74	115	\$113,853.14
20	\$ 3,443.57	70	\$42,183.77	120	\$123,968.63
25	\$ 5,380.58	75	\$48,425.25	125	\$134,514.58
30	\$ 7,748.04	80	\$55,097.17	130	\$145,490.97
35	\$10,545.94	85	\$62,199.54	135	\$156,897.81
40	\$13,774.29	90	\$69,732.35	140	\$168,735.09
45	\$17,433.09	95	\$77,695.62	145	\$181,002.82
				Base Value	

There is also the value of the direct benefits that a mature tree brings. The US Forest Service estimates that for a planting cost of US\$250 – \$600, a single street tree returns over US\$90,000 of direct benefits in its lifetime. ("Urban Street Trees – 22 Benefits" Burden, D. (2006) Glatting Jackson and Walkable Communities Inc.) http://walkable.org/download/22_benefits.pdf)

These benefits include:

- providing shade, which prolongs the life of footpaths and asphalt by three to four times (ABC video "What is a tree worth?") <http://education.abc.net.au/home#!/media/30762/value-of-trees>
- reducing air temperature
- reducing air pollution
- storing carbon dioxide

- reducing the need for drainage infrastructure, because the trees take up water
- reducing soil erosion
- traffic calming.

“Urban Street Trees – 22 Benefits” Burden, D. (2006) Glatting Jackson and Walkable Communities Inc.
http://walkable.org/download/22_benefits.pdf

In some areas, it is the local councils that are left to replant trees, not SMC, so there is an additional cost to the taxpayer at a local level. Also, at RMS road widening at Campbell Road, St Peters, the approval plan shows replanting of trees but the community is dubious as to whether this will happen.

Recommendations (j):

The Committee require the NSW Government to work with local communities impacted by WestConnex construction and independent social researchers to undertake qualitative research into the mental and physical health impacts for individuals, families and communities living in construction zones.

That independent experts be consulted about air quality monitoring and measurement and that communities be fully informed on a regular basis of air-quality measurements, associated risks and appropriate mitigation.

The Committee require the NSW Government work with local councils and community organisations to ensure that appropriate mitigation in relation to schools and childcare centres is implemented.

The Committee inquire into the costs that have been borne by affected individuals and communities as a result of mitigation coming after the event rather than being in place when health events are known to be likely to take place.

That the Inquiry request the NSW Government to provide detailed costing of the impacts on health caused by noise and air pollution on people living in and around construction sites for WestConnex. This must include the invasive conditions that disturb a community's standard of living although they may not require hospitalisation.

That the Inquiry insist the NSW Government provide accurate and reliable figures of pollution levels at any school within a reasonable distance of construction works and ongoing ventilation stacks. These must be researched and confirmed by independent companies then acted upon to make sure school children are not subjected to unreasonable levels of pollution.

There should be a full and proper assessment of the financial and environmental value of the thousands of trees destroyed in the construction of WestConnex so far.

The NSW Government should be required to provide an account of habitat lost as a result of the removal of trees for the WestConnex project across the different construction sites and the impact of this on local plant, bird, insect and animal life. There needs to be a halt to any further tree destruction until this assessment has taken place.

Correspondence

From WAG to Mr Dennis Cliche Chief Executive Officer Sydney Motorway Corporation GPO BOX 3905 Sydney NSW 2001 21 February 2017

Dear Mr Cliche,

We request your urgent intervention in relation to serious health and safety breaches on M4 East and New M5 WestConnex worksites.

You will be aware of the terrible accident which occurred yesterday on the WestConnex St Peters Interchange construction site when a young construction worker was pinned under a concrete bar and had to be freed by emergency rescue services.

This was not an isolated incident. As a community group, WestConnex Action Group receives reports on an almost daily basis of on-going and very serious health and safety compliance failures occurring on WestConnex construction sites. We have encouraged residents to report these, and have ourselves also reported many, to Sydney Motorway Corporation (SMC), the Department of Planning and where relevant, the Environment Protection Agency and SafeWork NSW. Despite these reports and a number of investigations there has been no change in worksite practices or compliance.

In addition to yesterday's accident, the failure of SMC and its contractors to ensure strict compliance with health and safety requirements on WestConnex worksites also resulted in two other very serious incidents in just the last two weeks:

1. On Saturday 11 February 2017 at approximately 11pm, a large sheet of iron roofing, with wooden beams still attached, was blown from partly demolished terraces at Campbell Street, St Peters over safety fencing into the front fence of the terrace house opposite before landing on Campbell Street blocking the entire road. This could have easily killed or severely injured anyone walking or driving on the road at that time.

After seeking our advice, a nearby resident reported the incident to the WestConnex 24 hour telephone line, but no-one from SMC was available to deal with the accident. The resident therefore had to call police and emergency services which cleared the road of the debris around 1am. SMC did not respond until 7am the following morning, so clearly did not have an emergency response plan in place or failed to implement it.

Further information on the incident:

http://www.westconnexactiongroup.org.au/major_westconnex_safety_breach_renews_calls_for_halt

2. Hazardous and improper partial removal of asbestos from Brown St, St Peters on 13 January 2017, and again on 10 and 14 February 2017, and false information given by SMC to neighbouring residents about asbestos removal from homes being demolished.

Asbestos material was first removed from Brown Street on 13 January, with warning signs and suited workers, but on a very windy and hot day. In response to a complaint from a neighbour that asbestos removal under those conditions was in contravention of NSW Department of Health guidelines, on 16 January Cleo from the WestConnex New M5 Community Relations Team advised him that "An environmental representative regularly visits the site and upon receipt of your message visited the site on Friday afternoon and confirmed that the safety and hygiene procedures were being followed and were adequate". The asbestos warning signs were taken down from the property fencing the following day.

On 18 January another resident wrote to SMC complaining that one wall and sheeting under the roof eaves which appeared to be fibrous cement had been left behind at Brown Street. Cleo responded to that resident: "I've confirmed with the team that we expect to finish asbestos removal on Brown Street by mid-next week, including Brown Street." AND "I've been advised that the material you refer to above the front verandah and on the south side of the house has been confirmed as not containing any hazardous material". These are clearly contradictory statements.

After further residents complained to SMC regarding the wall and other fibrous sheeting left behind, workers returned to the site on 10 February. That morning the New M5 Team emailed one resident as follows: "We wish to advise that asbestos removal will be carried out at Brown Street today to remove asbestos-containing material on the southern wall of the property. The removal will take less than one day to complete". SMC's advice on 18 January that the wall and eaves did not contain any hazardous material was clearly false.

On 14 February another neighbour noticed that the awning of the property, which still had the fibrous sheeting attached, was being pulled down by a bulldozer. It was only when she questioned the workers about the sheeting containing asbestos, that the workers put up asbestos warning tape and used protective suits. Work was not stopped on the site and no protective measures were taken for residents only meters away. St Peters Public School is less than 500 meters from the site.

Further information on this matter:

http://www.westconnexactiongroup.org.au/deadly_westconnex_asbestos_errors_place_residents_workers_at_risk

In addition, in its February 2017 St Peters Construction Update, published on 27 January 2017, SMC stated that "Hazardous material removal is now complete for all properties along Campbell Street, St Peters." This is clearly misleading as it suggests that all properties being demolished alongside Campbell St (including Brown St) have been cleared of asbestos, when that was not the case. This is unacceptable for something as dangerous as asbestos in such a densely populated area.

<https://www.westconnex.com.au/sites/default/files/St%20Peters%20construction%20update%20-%20Feb%202017.pdf>

Residents nearby demolition sites are being potentially exposed to highly dangerous asbestos and SMC is providing false information and assurances to residents about the presence of asbestos. We are sure you will agree that this is unacceptable.

A previous complaint of dust escaping from demolition at Campbell Street, St Peters on 19 December 2016 was also reported to SMC, the Dept of Planning and the Environment Protection Agency. We understand that the incident was investigated by all three, but are not aware of any actions taken in relation to the breach, and the above incidents confirm that on-site practices have not changed.

We have received many other reports of demolitions undertaken without adequate safety measures in place to protect residents from dust and debris, failures to hose down in hot windy and dusty conditions, inadequate pedestrian safety measures and traffic control, breaches of night work noise conditions, use by trucks of local roads and worker rudeness to residents. Complaints to the WestConnex information telephone line and email addresses are either not responded to, or if a response is received, there is a pattern of merely restating compliance requirements rather than addressing the subject of the complaint even when there has clearly been a failure in compliance.

We would be happy to provide you with details of these incidents and copies of all the correspondence and reports referred to.

WestConnex Action Group and other members of the community are greatly alarmed by the on-going failure of WestConnex workers to comply with critical health and safety requirements, the deficient compliance monitoring by SMC and its contractors of the worksites, and the inadequate responses by SMC and construction JVs to residents' concerns.

SMC's lackadaisical approach to both compliance and residents' complaints is endangering the health and safety of residents, including nearby school children, and workers. We therefore ask that as the Chief Executive Office of the entity responsible for the construction of, and compliance with the conditions of the Planning Approvals for, the M4 East and New M5 projects, you urgently intervene and halt work, order a full investigation of these incidents, and ensure that there are sufficient resources for on-site monitoring of compliance.

We seek an urgent response and explanation of what action you intend to take in relation to these very serious safety breaches.

As these incidents are so serious, and residents' and workers' health and safety are being jeopardized on a daily basis, we have sent letters in similar terms to the Premier, the Minister for WestConnex, the Minister for Planning, the Minister for Roads, the Minister for Health, and the Secretary of the Dept of Planning.

Yours sincerely,

WestCONnex Action Group

In response to this letter we received a half page reply dated 1 March 2017 that said very little more than that arrangements were commercial in confidence and could not be discussed.

Letter to NSW Ministers June 2017

FAO: Gabrielle Upton, Minister for the Environment, Local Government and Heritage and Barry Buffier, Chair and CEO, Environment Protection Authority (EPA)

cc: Premier Gladys Berejiklian, Stuart Ayres MP, Minister for WestConnex

23 June 2017

Dear Minister Upton and Mr Buffier,

We are writing to you to request that a Prohibition Notice be issued in regards to the work taking place at the Alexandria Landfill as part of the construction of the WestConnex New M5 / St Peters Interchange.

As you would be aware, on 19 June 2017 the EPA issued a Clean-Up Notice to the Licensee of that site, the New M5 construction joint venture, CPB Contractors, regarding on-going strong sulphurous smells emanating from the old Alexandria landfill site. This Notice followed scores of complaints from residents in the surrounding suburbs about the very strong odours from the site, even though the EPA had already issued a Prevention Notice on 28 March 2017 to order CPB Contractors to stop the odours emanating from the work site, and 5 Licence Variations since then.

Despite the Prevention Notice, there continued to be severe outbursts of the odour lasting for days at a time, with residents from as far as Green Square, Tempe, Newtown, Erskineville and Alexandria complaining of rotten egg, burnt rubber, and/or chemical smells requiring them to seal their homes or having to go out to avoid the odour. Residents have also complained of headaches, nausea, and being unable to sleep due to the severity of the odours. St Peters Public School is only 500m from the site.

We are aware that the EPA has acted by conducting further investigations, recording formal incidents, issuing the Prevention Notice, Licence Variations, and as of last Friday, the Clean Up Notice. However, we remain deeply concerned that the odour events are continuing, and that the Sydney Motorway Corporation (SMC) that is responsible for delivering WestConnex has repeatedly told residents that such events are expected to continue into 2018.

It is completely unacceptable for the SMC and its contractors to subject residents to these construction impacts, particularly as the EPA Clean Up Notice notes that these include not just "amenity impacts" but also "health symptoms including headaches, nausea and vomiting, stinging eyes, burning throat, onset of asthma and sleep disturbance".

We note too that, by focusing primarily on the removal of leachate, the EPA Clean Up Notice ignores the odour caused by the excavation and mounding of putrescible waste adjacent to Canal Road within the site. This will continue to be an issue until it is covered regardless of the actions to manage leachate. Leachate has a distinctive odour, and this has not been the dominant smell at times we have inspected the site boundary. At these times, the main odour issue was caused by excavation and mounding of previously buried waste.

It should also be noted that the EPA has now issued over 30 notices and licence variations to CPB Contractors in relation to this site.

It is for this reason that we are asking you now to act in your roles as the Minister responsible for administering the Protection of the Environment Operations Act and the head of the EPA respectively, and issue a Prohibition Notice to stop works at this site. We believe that the impacts of these works more than meet the criteria for issuing such a notice, namely:

“[t]hat the emission or discharge of pollutants from, or within, any premises where any activity is carried on:

- is causing, or is likely to cause, harm to the environment
- is, or is likely to be, injurious to public health
- is causing, or is likely to cause, discomfort or inconvenience to anyone not associated with
- the management or operation of the activity
- is generating a reason for the notice to be issued – s.101(1).”

Due to the ongoing nature of these emissions and their grievous impact on the local community, we ask you to give this matter your urgent attention, and to reply as soon as possible to let us know what action you intend to take.

Yours sincerely, WestCONnex Action Group

From: Ministerial Correspondence Mailbox

<Ministerial.Correspondence@environment.nsw.gov.au>

Sent: 1 August 2017 1:22 PM

To: info@westconnexactiongroup.org.au

Subject: A reply to your correspondence to the Minister for the Environment – MD17/2258

Flag Status: Flagged

Dear

I refer to your letter to the Minister for Environment, the Hon Gabrielle Upton MP and me on 23 June 2017 in relation to the management and regulation of odour from the WestConnex New M5 site at St Peters Interchange. Please accept this as a response to all correspondence.

The Environment Protection Authority (EPA) shares the WestConnex Action Group’s concerns regarding the impacts of odours on the surrounding community. The EPA has received a significant number of complaints from residents, business and the local school in relation to the site since mid-March 2017 and has assigned several EPA officers to the project to respond to the issues raised.

The WestConnex New M5 project (including St Peters Interchange) is regulated by the EPA under the Protection of the Environment Operations Act 1997 (POEO Act) through an Environment Protection Licence (licence) (No.4627) issued to CPB Contractors Pty Limited.

As acknowledged in your letter, the EPA has taken a range of actions to help address the odour issue at the site, including issuing a Prevention Notice, a Clean Up Notice and tightening the contractor’s licence conditions to require improved leachate management. In addition, the EPA continues to undertake regular odour surveys, site inspections and to monitor the contractor’s actions to minimise odour from all activities being undertaken at the site with the potential of emanating outside the WestConnex site boundary. The EPA has also investigated offensive odour events that have occurred at the site with a view to enforcement action. The EPA issued a Penalty Notice to CPB contractor for \$8,000 on 27 July for offensive odour.

The EPA is actively using the regulatory tools available under the POEO Act to ensure the works being undertaken at the St Peters site are being managed appropriately. However, a Prohibition Notice is not available in this instance, as the project has been declared as Critical State Infrastructure and under section 115ZG (3) (d) of Environment Planning and Assessment Act 1979 (EP&A Act) and is exempt from this type of POEO Act regulatory tool. Any questions in relation to this section of the EP&A Act should be referred to the Department of Planning and Environment.

The EPA has noted that since the contractor installed a second leachate treatment plant which commenced operating on 19 June 2017, the number of odour complaints has reduced considerably and EPA officers have not detected offensive odours beyond the boundary of the premises.

If you have any further questions about this issue, please contact Jacinta Hanemann, Regional Manager Operations, Metropolitan Infrastructure, EPA, on [redacted] or at [redacted]
BARRY BUFFIER AM
Chair and CEO
Environment Protection Authority

Letter to Health 2 July 2018

Regional Director, Metropolitan NSW EPA
cc
Manager Regional Operations
Metropolitan Infrastructure NSW EPA

Dear

Thank you for your letter of 5 June, 2018 in response to our letter to the Minister for Environment, Gabrielle Upton, outlining our concerns about air quality (MD18/2003).

We would preferred to have received a response from the Minister herself and consequently, we will be sending her a copy of this letter and expressing our continuing and indeed increasing concern about the air quality impacts of WestConnex.

Since we wrote our earlier letter, we have become even more concerned about WestConnex's impact on air quality, both during construction and after operation. We urge you to investigate our concerns.

We assume the EPA is aware of reports published on the 'Air quality and WestConnex' page on the WestConnex website that show that during certain months in 2017 and 2018, a Pacific Environment monitor at St Peters Public School (SPPS) recorded higher levels of particulate matters than at any NSW Office of Environment and Heritage (OEH) or other Westconnex monitor (only open in 2018) in Sydney [see http://www.altmedia.net.au/westconnex-pollutes-primary-school/131975](http://www.altmedia.net.au/westconnex-pollutes-primary-school/131975)). We believe the results at SPPS should be investigated by the EPA, as whatever checks on emissions were carried out by the EPA do not seem to have revealed these issues.

In relation to specific statements in your letter, we bring your attention the following matters.

1. The purpose and placement of monitoring along the M4 East

Your letter informs us that the Sydney Motorway Corporation (SMC) operates six monitors along the route of the M4 East. Thank you for this information. We were already well aware of the purpose of the monitoring which we understand is to assess impacts before and after the opening of the tunnel. In our view, there is little chance that these monitoring stations can perform this task in a meaningful way. For example, we assume the NSW EPA is aware that there is no monitor south of Ashfield Street and no monitor west of the stack at Homebush. Thousands of residents will be living in these locations, some in high rise buildings which are currently being built or planned. There was no meaningful consultation with the community about the placement of the monitors, as was mandated by the conditions. The process was controlled by RMS in a way that impeded genuine consultation.

We are very concerned that the EPA is not represented on the Air Quality Consultative Committees and even more concerned that SMC and RMS will be in control of the process of evaluating the monitoring results after operation.

You note that the purpose of the monitoring stations was not to measure the impacts of construction activities. That is correct. However, since the monitoring stations have been established, they supply a rich source of previously unavailable information about air quality along the route of the M4 East, and it would be extraordinary if the community was expected to ignore this information. We assumed that given your obligation to protect the state's environment you would also be interested in this evidence, especially as the OEH has limited staff and research resources to collect its own data. The Ecotech information is available one

hour after collection and therefore is a helpful way to check air quality near the monitors. Over three years or more, the data will enable a nuanced glimpse into air quality in the Inner West.

2. Air quality and Construction

It is a matter of great concern to us that NSW Planning approved air quality studies which somehow found that there would be no significant impact on air quality from construction activities lasting for several years. This appears to us and many other groups that this would be extremely unlikely. We are aware that some EPA staff share our concerns about that.

We consider that the EPA could and should investigate why SMC consultant Pacific Environment stated in its monthly reports on the monitoring results at SPPS that construction activities could be contributing to high levels of PM 2.5. At around this time, it submitted an EIS stating that construction activities would not have any significant impact on air quality. We want the NSW EPA and NSW Planning to further review the EIS findings.

In cases where monitoring provides prima facie evidence that construction is impacting on air quality, or that air quality levels are outside the predictions in the EIS, for this or some other reason, we believe that there should be an investigation. We know of no other body in NSW equipped to carry out these investigations other than the NSW EPA.

For example, at HPS, after more than 6 months monitoring, the PM 2.5 levels are averaging approximately 11 $\mu\text{g}/\text{m}^3$. This would suggest that the PM levels are beyond those predicted in any of the graphs in the M4 EIS air quality reports. While these HPS results are not quite as high as at the nearby Ramsay St monitor, the Haberfield monitor is near classrooms and a school playground. Significantly, the results are more consistently above 8 PM 2.5 than other monitors. This can be seen by comparing the information in monthly reports and by analysing the data that appears on the monitors. The SMC has recently stated in response to a resident's complaints that HPS results do not stand out from any others in the region. This is misleading.

3. Regional and Local Factors and exceedances

We agree with your statement that "Air quality measurements at any air quality monitoring station are related to both local factors, such as traffic and to regional factors, such as smoke from bushfires and hazard reduction burns." Local factors can also include off road diesel equipment, dust from construction activities and the geographical placement of the monitor.

We are also aware, as you state, that high peaks on the day do not mean that the daily average will be exceeded. This was the situation on April 9 in Haberfield when a 10 min reading of PM 10 reached 400 $\mu\text{g}/\text{m}^3$ PM 10 and an hourly average reading of 200 $\mu\text{g}/\text{m}^3$. However, the daily average of 50 $\mu\text{g}/\text{m}^3$ was not exceeded. This does not mean that the dust storm that occurred at the time of the hourly average of 200 $\mu\text{g}/\text{m}^3$ did not raise the health risks, particularly for young children and residents with asthma or that health risks were not exacerbated by a failure to mitigate adequately on the day.

You state:

The exceedance of the daily air quality goals for PM10 recorded at some of the WestConnex Sites on one day in February and one in March also occurred at other Sydney monitoring sites. These exceedances were due to bushfire smoke.

Our current comparison of the OEH and Ecotech monitoring results for the first six months of 2018 would suggest that while Chullora, Earlwood and Macquarie Park all have recorded two exceedances each of PM 10 and one of PM 2.5, the Powell's Creek monitor has recorded five PM 10 exceedances and five PM 2.5 exceedances and the Ramsay Street monitor has recorded four PM 10 exceedances and 5 PM 2.5 exceedances. The WestConnex Action Group is a small community group with minimal resources so we invite you to check our analysis. If we are correct, these findings could suggest that regional and local factors are combining to result in poorer air quality at Powell's Creek and Ramsay Street even on high pollution days across the region when there is burn off. This is another matter that needs to be investigated. It also appears possible that the OEH could be seriously underestimating Sydney's air quality problems and that as a result its reports on

National Goals are overly optimistic. We hope to see your advice on these matters and urge you to investigate roadside and construction pollution more closely.

4. Daily Exceedances and Annual Goals

You state in your letter: "The monitoring reports for the Haberfield air quality monitoring station show that there have been no exceedances of the daily air quality goal for PM_{2.5} from January to date. The annual goal does not apply, as the monitoring station only commenced operating in January."

We do understand that the annual goal of PM_{2.5} 8 µg/m³ has not been exceeded when only six months have been monitored. However scientific research shows that the annual exceedances are not the only issue when environmental health is being considered.

For example, students may be exposed to high levels of pollution during the day although as indicated above, the overall average for the day may not exceed the national limit.

We would assume that the EPA would share our concern that the PM_{2.5} and 10 levels recorded at the Powell Street monitor in Strathfield, where thousands of residents live, are currently averaging approximately 10.5 PM_{2.5} after six months. This is well above levels predicted in the EIS for areas near the western end of the M4 East. It is predicted that air quality north of the tunnel portal will worsen after the tunnel opens. We would suggest that there needs to be an investigation into whether the EIS seriously underestimated potential pollution.

5. EPA's warning letters

You state: "Most recently, in May, the EPA issued three warning letters to the licensees of each of the M4 East, New M5 and St Peters Interchange sites in relation to inadequate dust controls." Thank you for this information. We would appreciate it if you could inform us through a reply communication on what dates in May and in relation to what events, the EPA issued warning letters. Have the residents who made complaints been informed of these actions? It is important that residents be kept up to date as one of the most difficult issues that the community experiences in relation to WestConnex construction is a sense that complaints are ignored or simply "batted away" by the SMC.

We are glad that the EPA has taken some action but we remain concerned about the impacts of pollution on residents. For example, construction using diesel equipment is continuing many hours a day within 2 metres of homes in Campbell Street, St Peters. Have the emissions been tested there? It is unclear how NSW Planning could have approved such construction or contractors could have been licensed by the NSW EPA to operate so close to residents' bedrooms and living space for months on end. If Stage 3 goes ahead, this situation could even continue for years. We request that you inform us where we can find all details of regulatory action and warning notices issued and responses in relation to all WestConnex projects.

All the matters we have raised relate to serious environmental and public safety concerns. We ask you to inform us what investigations you are already undertaking or will undertake. We do not believe that SMC or RMS are being honest or transparent in relation to air quality issues and WestConnex.

We note that you refer us to NSW Health. Health refers us back to the EPA.

We intend to contact _____, Manager Regional Operations – Metropolitan Infrastructure, EPA whose name you included at the end of your letter. We have copied her in on this email.

Yours sincerely,

WestConnex Action Group

We have received a response to this letter and we will be meeting regularly with the local regional health office.