

**Submission
No 469**

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

Name: Ms Wendy Bacon

Date Received: 7 September 2018

To: Chairperson Mr Nile MLC and members of the **Legislative Council Public Accountability Committee**,

Thank you for the opportunity to contribute to this Committee's deliberations.

This submission comes in two parts. The first part is a detailed examination of the Sydney Gateway Issue (Term of Reference H) and the second is a collection of different issues that are relevant to other terms of reference.

In preparing this submission, I draw on nearly 50 years experience as a journalist and citizen who is interested in Sydney's urban environment. I was previously the Professor of Journalism at UTS where I was involved in an EU/Australia partnership around the teaching of environmental journalism.

I first became involved in the WestConnex issue at the end of 2014 when I realised that people I knew were losing their homes or would be profoundly impacted by construction. I then started investigating the planning of WestConnex. I have been shocked by the immediate impacts of WestConnex on the lives of thousands of people. I have also interviewed people for whom increased cost of living pressures through tolls and traffic congestions adds to the difficulty of their already stressful lives. However, I have been equally shocked by the lack of accountability and secrecy in planning.

Over four years, I have written more than 30 articles about WestConnex and am currently researching the impacts on air quality. I have collected a large amount of information.

My name and details can be published along with my submission. I would be prepared to give evidence. However, if I can be of assistance in locating any other relevant information please contact me,

Regards,

Wendy Bacon
Journalist and researcher.

PART ONE: SYDNEY GATEWAY PROJECT

Term of Reference: F

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

This is an important term of reference that requires urgent inquiry.

Issues

The Sydney Gateway can be regarded as the canary in the coalmine for the purposes of understanding some of the fundamental flaws of the WestConnex project.

A seamless road from Sydney's West to the Sydney's Kingsford Smith Airport was a crucial and fundamental part of the project when it was announced in 2012. It remained so until 2017 when the Minister for WestConnex finally admitted in answers to parliamentary questions that the Sydney Gateway was not part of WestConnex. How and why that split occurred has not been addressed by the government or the corporations involved, but it brings into question the stated rationale for the whole project.

This submission provides a detailed analysis of events, and points to information and witnesses that this Parliamentary Committee could access to understand more fully the reasons and circumstances by which WestConnex and the Sydney Gateway were declared to be separate projects in 2017.

This analysis raises several serious questions about due process.

1. Have private interests overwhelmed public policy formation to the point where there are no longer sufficient public resources or will to protect the public interest against those parties that stand to profit from decisions? Relevant to this is the movement of key individuals between private and public sector roles without sufficient safeguards to avoid fundamental conflicts of interest. This raises serious probity and protection of public interest issues. Christopher Swann and Jason De Souza provide examples of this perceived conflict, but there are plenty of others, including including the secondment of quite senior Sydney Motorway Corporation staff from external consultancies to whom they remain accountable and which stand to profit from WestConnex contracts.
2. What are the reasons for the secrecy and lack of basic transparency that bedevil this project? Key planning documents were confused and contained inaccurate statements, which raises the question of whether the formal public planning process was reduced to a set of procedures and paper trails while the real decisions had already been made behind the scenes. After the WestConnex Delivery Authority was turned into the private Sydney Motorway Corporation, the important public accountability measure of the publication of contracts was removed.

Even after the Sydney Gateway project had hit very serious obstacles, the Minister and SMC CEO continued to mislead parliament and the public. Indeed, so little information was willingly made public that without leaks to journalists, the public would have known nothing about the unsolicited bid from Lend Lease that posed serious conflict of interest issues. Meanwhile, more millions have been spent on public relations, advertising and 'community engagement' to sell the project.

3. How and why is it possible that the motorway link to Sydney Airport has still not reached the stage of concept design, when it was the fundamental justification used to persuade the public of the merits of the project? Further, has the foreseeable problem of necessary land acquisition

for the Gateway link, by remaining unresolved to this point in the project, given extortionate price gouging power to Sydney Airport if the land is to be acquired for the missing link to be built? If so, this would constitute an outrageous failure, if not abuse, of due process which will likely result in considerable and foreseeable financial impost on the public purse and additional heavy tolling for road users. It would constitute a serious, perhaps malfeasant, failure of executive responsibility by government, and the key individuals involved, both elected and appointed, should be identified, questioned and held accountable.

Why weren't this and other difficulties foreseen in 2012 by the consultants including Lend Lease who were contracted to scope the Airport link design? Key documents need to be produced and investigated. Surely decision makers would want a key part of the *raison d'être* for the project to be in place before they proceeded with spending billions of dollars of public money. Is the reason for this apparent incompetence that the drivers of this project were mainly interested in securing a financial model that would produce future monopoly profits for private stakeholders rather than achieve public policy goals of efficient and cost effective transport planning?

This committee will have before it evidence of a huge amount of damage that WestConnex has done to the social and physical fabric of Sydney over the last five years while these events have been played out. The costs of this planning fiasco is and will be born by the travelling public, individual families and home owners/occupiers, and the broader community, to the profit of a small set of private corporations and their senior management. These events raise serious questions about the independence of NSW Planning, which seems to have been reduced to a rubber stamping exercise in the face of chaotic and inadequate transport planning.

Questions.

An examination of the background facts leads to a number of questions for the Committee to explore and seek documentary evidence about:

On what date did the government decide that the Sydney Gateway was not part of WestConnex?

Who made the decision and who advised that it should be taken?

What was Lend Lease's 2013 Airport Link Reference Design which it was paid to undertake for the Preliminary Business Case? What did it recommend?

What went wrong with these plans? How are they connected to the Lend Lease unsolicited bid to construct the Sydney Gateway?

Did SMC advise the Government that the Sydney Gateway should not remain as part of WestConnex? To whom was that advice given? When were the then Minister for Roads, the WestConnex Steering Committee and Cabinet told of that advice (assuming it was received)?

Was consideration given to making that decision public at the time the advice was considered? What were the reasons why it was not made public? Given that the objective of WestConnex giving motorists in Western Sydney easier access to Sydney Airport was a fundamental part of the proposed project, this was an important decision.)

When did Christopher Swann and other executives in charge of the New M5 become aware of the obstacles to proceeding with the Sydney Gateway? What actions did they take on the basis of that information?

Where are the documents that explain the decision to separate the WestConnex and Sydney Gateway projects?

When did the then Minister for Planning Rob Stokes and Secretary of Planning become aware that the Sydney Gateway was no longer part of WestConnex? Were they aware of this when they approved the New M5, which described the Sydney Gateway as part of WestConnex?

Was the Secretary of Planning informed of this decision? Where is the document?

What were the circumstances that led Lend Lease to make an unsolicited bid for the Sydney Gateway? What were the circumstances and reasons for the refusal of that bid?

Did Christopher Swann or Jason De Sousa play any role in relation to the Lend Lease's unsolicited bid? What role did they play in relation to the business case and the tender for the M4/M5, both when they worked for the government and for Capella/Lend Lease?

When did the Minister for Roads Duncan Gay become aware that the Sydney Gateway was no longer part of WestConnex?

What matters were discussed with Capella Capital at the meeting with Minister for WestConnex Stuart Ayres in May 2017? Who attended that meeting?

Who made the decision to award a contract to MBB Pty Ltd in February 2016 as "Provision of Technical Manager Roads, Sydney Gateway for the RMS Motorway Development"? When was the decision made to extend this contract to 2018? What work has been performed under that contract? <https://tenders.nsw.gov.au/rms/?event=public.cn.view&CNUUID=81835995-E1BD-829D-3F56DC669CC787AB>

In June 2017, the RMS website page for the Sydney Gateway stated that a project overview would be provided for stakeholders. Were the public and local Councils included as stakeholders? Did that provision occur? Does that document exist? Was that document made public?

Why is the information in a report about options for the Airport referred to by the SMH in February 2018 not a public document? <https://www.smh.com.au/national/nsw/sydney-airport-road-block-to-state-governments-18-billion-link-to-westconnex-20180131-h0r78i.html>

Where is the \$800 million that is supposed to be allocated from the WestConnex budget to the Sydney Gateway now? Why has the Sydney Gateway been at concept planning stage for 4 years? Why was only \$7 million devoted to the Sydney Gateway in the 2018/2019 budget?

Background events

In preparing this submission I have tracked through the documentation and events surrounding the Sydney Gateway in order to prepare a timeline. However, the information on the public record is limited. This is just one example of the lack of transparency that pervades WestConnex. There is however a large amount of information that would be well known to individuals who could be questioned or contained in government documents.

Sydney Gateway beginnings at the core of WestConnex

The original reason for WestConnex given by the Government to the public was to connect Western Sydney to Sydney Airport and Port Botany.

In July 2012, Infrastructure NSW (INSW) was set up and In October 2012 recommended:

WestConnex is delivered in 3 to 5 stages. It estimates reduced travel times of 'tween 15 & 35 mins between Sydney's west and SW & airport and Port Botany. INSW has forecast a target cost for project of around \$10 b & rec'd it be mostly funded by tolls.

The INSW 2012 Annual report described the \$10 billion 'WestConnex' motorway as the highest priority project to be completed in the first 10 years. The 33km scheme includes an extension of the M4 to Sydney Airport and duplication of the M5 East to transform Sydney's traffic congestion and support more efficient freight movements.

The context in which these early events took place needs to be considered in the light of the history of failed tollroad projects, which was driving the desire to find a new model of private tollroad financing in which the public would carry more of the risk. (See Part Two (a) of this submission.)

Christopher Swann was a key player in WestConnex during these early stages. He took up a position with INSW as its Director 'Investment and Reform' in July 2011 when it was established. He had previously spent 8 years as a division director with the Macquarie Group. According to the INSW Annual Review 2012/2013, his annual salary was approximately \$460,000 (which was more than any other executive apart from the Chief Executive Paul Broad). His duties included leading INSW's involvement in the development of the WestConnex Business case and representing INSW on the Sydney Motorways Office Steering Committee. He assessed unsolicited bids alongside NSW Treasury and RMS. He is described as an expert advisor on transport and private financing components on the Infrastructure Strategy. (See Linked In <https://www.linkedin.com/in/christopher-swann-7ba31433>)

Early in 2013, a large number of private consultants and companies were brought into the Sydney Motorway Office to prepare the Preliminary Business case. (See Note 1 on page) Many of these companies had vested interests in tollway construction and management and some had been involved in failed tollway projects. This is not an appropriate way to plan and manage a huge infrastructure project.

One of these companies was Lendlease who was granted \$2,489,507 to undertake an Airport Access Link Reference Design between January 1st and April 29th 2013.

In March 2013, Macquarie Capital was granted a \$3 million contract until 2070 by RMS for financial scoping. In July 2013, it produced a financial scoping document which referred to the St Peters East Airport link as Stage 2:

Stage 2: M5 – East Airport Link WestConnex is 33 kilometres in total length, which includes capacity improvements on existing motorways as well as new sections of motorway. It aims to better link Sydney's west with its international gateways and key places of business. WestConnex will act as a catalyst to renew and transform parts of Sydney, creating urban renewal and public transport improvement opportunities. All stages of WestConnex will be subject to user toll charges.

<http://images.smh.com.au/file/2014/04/06/5328174/WestConnex%2520-%2520Financing%2520Strategies%2520-%2520Macquarie%2520-%2520FINAL%252016%2520July%25202013.pdf>

Nearly all early reports about WestConnex included either references to the airport or Sydney Gateway, as the stretch of road to the airport was named. The connections to Sydney Airport and Botany Bay were fundamental to the project and were a key component of WestConnex in the 2013 Preliminary Business case.

In 2013, October 2013, the SMH reported, "To trumpet the benefits, the O'Farrell government has been touting impressive travel time savings. "We'll take about 40 minutes off a trip to the airport from Parramatta," Roads Minister Duncan Gay said. ('The Good News: WestConnex will cut travel times - in 2031.) Even back then, the claims produced some media scepticism because they would take 18 years to eventuate. They also faded somewhat with the admission that

"Even on the government's own estimates, which show drastically reduced travel times for motorists using the \$11.5 billion WestConnex and on most nearby roads, not everyone will be a winner. Traffic modelling published in WestConnex "Strategic Environmental Review" last week shows travel times could increase for motorists using alternate routes to the new tollway."

The Stage One 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 associated map included lines to the airport and Port Botany.

The Sydney Gateway began as part of WestConnex Stage 2.

On January 2014, Christopher Swann was appointed as the Project Director, WestConnex Stage 2. His Linked In page describes his role as lasting for 21 months covering government approval up to execution of the D&C contract with the CPB Dragados Samsung consortium.

Confusion reigns - is the Sydney Gateway part of WestConnex Stage 2 or 3?

On November 3rd 2014, the then Director the New M5 Christopher Swann signed off on behalf of the WestConnex Delivery Authority for Aecom's application for New M5. On page 1 Sydney Gateway is described as a component of Stage 2 WestConnex. but 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 inconsistency suggests that at this time the then WDA and the New M5 team headed by Mr Swann were already aware of uncertainty around the Sydney Gateway.

In October 2015, Christopher Swann left the SMC and joined the RMS to head Motorway Development in Roads & Maritime Services. He was now in charge of preparing the business cases for Western Harbour Tunnel, Northern Beaches Link, M1 Princes Motorway and the client role for the WestConnex M4-M5 Link, and development of the 20 year New South Wales State Infrastructure Strategy. This is a role that would have enabled him to be fully engaged and on top of all information for future tollway projects.

The confusion about the Sydney Gateway continues in the amended New M5 EIS application filed in October 2015, on page 1 the Sydney Gateway was still part of Stage 2 but again on page 24 it has shifted to Stage 3.

This amended application was filed by the head of RMS Ken Kanofski rather than Swann's replacement at the SMC as previously, again suggesting confusion in the planning processes.

Jason De Souza moves from Minister for Roads Duncan Gays office to Lend Lease

While the New M5 project was moving through the NSW Planning process, there was movement in the Minister's office. In October 2015, **Jason De Souza** left the office of Minister for Roads to join Lend Lease. He had joined Duncan Gays staff in 2012 after working as senior policy officer for Premier Barry O'Farrell. During the year before the election of the O'Farrell government in March 2011, he had worked as a lobbyist for conservative-aligned lobbying firm Statecraft, owned by Michael Priebe, ex-NSW State Director of the National Party. Previously he worked for a firm called Castalia and for the Howard government. (See Jason De Souza's Linked in profile).

In November 2015, the New M5 EIS was lodged. In this document, 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 government was still committed to the Gateway. (See Chapter 7 of the EIS).

"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."

Who was doing the concept planning for the Gateway at that stage? Had it already shifted to the RMS from the SMC?

On November 2015, the WestConnex Strategic Business case was released. It clearly stated that the Sydney Gateway was part of Stage 2 WestConnex (p 18) On page 19, it's stated that Sydney Gateway delivery time frame is marked 'Indicative Construction'. It is dependent on further development work, so timeframes may change. At the latest, it will open by 2023. (<https://www.westconnex.com.au/sites/default/files/WestConnex%20Updated%20Strategic%20Business%20Case%20-%20November%202015.pdf>)

On page 152 , it is stated: 6.4.5 Stage 2 – The Sydney Gateway will connect the St Peters Interchange to the Sydney Airport precinct. It will provide the major link between Sydney motorway network and international gateways. Although it falls as part of the Stage 2 project, it is anticipated to be delivered in a similar timeframe as Stage 3. Design was underway and it was on track to be completed by 2023.

From the point of view of WestConnex critics, there was now a huge question mark hanging over the fate of the Sydney Gateway. Ecotransit issued a media release which read:

There is still no completed design for the main justification for the entire WestConnex project – its links to Sydney Airport and Port Botany. There are no plans for financing Stage 3.

The Business Case admits to 'surface road congestion' at Rozelle, Concord, St Peters and Haberfield; locals in these areas call this effect 'Tollways to Traffic Jams.' The Business case details increased traffic along Victoria and Parramatta roads. Any social benefit that might be expected when the tollways open – a predicted travel saving time of 6 minutes – comes at enormous social costs: additional people affected by noise and pollution, homes lost, and the loss of equity in the provision of efficient public transport.

<http://ecotransit.org.au/wp/wp-content/uploads/2015/11/Media-Release-WestConnex-Business-Case-just-one-big-CON.pdf>

Journalists too were asking questions about what had happened to the WestConnex link to Sydney Airport. On December 1 2015, the SMH reported:

"under the latest plans for the "Sydney gateway", a motorway of two lanes each way would split much closer to St Peters in Sydney's inner west than had been previously envisaged. One arm of the new roadway would connect to the international terminal and the other to the domestic terminals known as T2 and T3. The tentative plans would require moving a rail freight line near the northern boundary of the airport about 500 metres north. The single rail line connects Port Botany to Sydney's west.

Sydney Motorway Corporation chief executive Dennis Cliche said possible corridors for the roadway from St Peters to the airport would involve navigating around a significant number of properties. The new motorway connection could result in significant changes to Qantas Drive, which is at the northern edge of Sydney Airport and connects to Airport Drive and Joyce Drive. Shifting the rail link would also require commercial negotiations with organisations such as Sydney Airport, transport companies Asciano and Qube, and NSW Ports.

"The rail link is right in the middle of this zone," he said of the plans to build the motorway links to the airport terminals from the interchange at St Peters. "By moving the rail, we have got more opportunity."

This report implies that the planning for the Sydney Gateway was still happening in the SMC's offices but that it had struck significant problems with financial, timing and engineering implications.

In January 2016, RMS lodged an application with Planning for the Stage 3 WestConnex. 3 Unlike the earlier applications, this document carries no signature, an exact date of completion or the name of AECOM, the company who prepared it AECOM. (I have been informed by RMS that AECOM did prepare the Stage documents.) On page 1 of this document, the Sydney Gateway is still described as part of WestConnex. Two further amended documents were filed later in September 2016 and March 2017, neither of them disclosed that the Sydney Gateway had dropped out of WestConnex.

In early February 2016, RMS awarded MBB Pty Ltd a \$1.1 million contract to manage roads for the Sydney Gateway. MBB is a project management consultancy firm that has been involved in the WDA, the NSW M5 and the M4/M5 link. MBB has been involved in WestConnex since at least February 2015 when the company was awarded a \$350,000 contract as Interface and Project Controls Manager. It's not clear exactly what this means and no more details are provided on the MBB website.

<https://www.mbbgroup.com.au/https://tenders.nsw.gov.au/rms/?event=public.cn.view&CNUUID=81835995-E1BD-829D-3F56DC669CC787AB>. (Negotiations for this contract are highly likely to have been underway inside RMS at the time the Stage 3 document was lodged.)

By now, it is clear that the Sydney Gateway project had moved from SMC to RMS. But when in April 2016, Infrastructure Australia published its project business case evaluation of WestConnex, its report still relied on the assumption that the Sydney Gateway was part of Stage 2. (Who provided them with that information? Did anyone in the NSW government seek to correct it?)

http://infrastructureaustralia.gov.au/projects/files/Final_WestConnex_Project_Evaluation_Summary.pdf

In June 2016, RMS issued a fact sheet for the Sydney Gateway - did anyone see it?

<https://web.archive.org/web/20170624133018/http://www.rms.nsw.gov.au/documents/projects/sydney-south/sydney-gateway/sydney-gateway-factsheet.pdf>

Sydney Airport and Port Botany drive the NSW economy with \$31 billion of output each year – and growing. Sydney Gateway, a project of national significance, is being planned to free up transport for both Sydney Airport and Port Botany. The proposal features a seamless, high capacity road link between the WestConnex St Peters Interchange, Sydney Airport and beyond towards Port Botany. The project will also duplicate the rail line to the port to get more freight onto trains and off trucks. Roads and Maritime Services will carry out geotechnical testing and other field investigations to help inform design concepts and a business case for the project.

This fact sheet is linked to an archived webpage from June 2017. Who wrote it and to whom was it distributed? Despite considerable obstacles in its way, the promotional blurb smoothly continues to promise it will be 'seamless' and 'high capacity'.

In October 2016, Dennis Cliche was still claiming that motorists would be able to get to from Parramatta to the Airport in 40 minutes. But the timeline for achieving the time savings had shifted - eight years earlier, from 2031 up to 2023.

When WestConnex is completed in 2023, the benefits for motorists used to daily traffic jams on one of Sydney's key bitumen arteries, Parramatta Road – the major east-west road of metropolitan Sydney, linking Parramatta with the CBD – will be "phenomenal", promises Dennis Cliche, chief executive of Sydney Motorway Corporation (SMC). "You will be able to get on that motorway and travel from Parramatta to the airport in 40 minutes with no traffic lights," Cliche tells AFR Weekend from the 33rd floor of a skyscraper in downtown Sydney.
<https://www.afr.com/business/infrastructure/roads/westconnex-what-could-go-wrong-20160919-grjtlo>

Dennis Cliche must have known at this stage that any motorway link to the airport was not part of WestConnex. Without knowing the route, how could he possibly glibly make these promises?

Sydney Gateway quietly removed from WestConnex to RMS

Sydney Motorway Corporation, NSW Planning or RMS never announced that the Sydney Gateway was no longer part of WestConnex. Without inside knowledge, readers of the publicly available information could have reasonably expected that it remained a key part of WestConnex.

Senior executives in RMS and SMC secretly took the decision that the Sydney Gateway could not be achieved within the framework of WestConnex. The Minister Duncan Gay and his staff must also have been told or were actively involved.

Any information about the Gateway came from media revelations or through parliamentary questions by Labor and Greens MPs.

In November 2016, the Camperdown exit on the M4/M5 link was dropped. This raised even more questions about the Stage 3 and the Airport Link. How many people would want to use the M4/M5 link if rather than linking to a road to the Airport, it ended in a traffic jam at St Peters.?

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>

Looked at in hindsight, this statement is deliberately vague and is consistent with the decision that the Sydney Gateway was no longer part of WestConnex. But only an insider would know that.

Having worked on the business cases for more Sydney toll roads and managed the RMS ‘client’ role with SMC for the Stage 3 M4.M5 link, Christopher Swann in January 2017 left RMS and joined Capella Capital, a partner firm of Lend Lease. Now both he and Jason De Souza were working for Lend Lease.

Capella Capital provides high quality strategic, financial and implementation advice to select clients, enabling them to capitalise on our team's significant transaction history in financing, developing and investing in projects and businesses in the infrastructure sector. Capella Capital is a partnership between Lend Lease and a team of senior industry executives who have a substantial track record in the infrastructure sector.(See Linked In <https://www.linkedin.com/company/capella-capital/> and <http://www.capellacapital.com.au>

Opposition MPs try to get information about the Sydney Gateway

In April 2017, the Shadow Minister for Roads Jodi McKay asked the Minister for WestConnex Stuart Ayres

- *When will the design be finalised for the Sydney Gateway project?*
- *When will the design be made public for the Sydney Gateway project?*
- *What is the expected start date of construction of the Sydney Gateway project?*
- *What project timelines have been met for the Sydney Gateway project?*

The Minister for WestConnex did not respond to these questions until May 10.

In May 2017, Minister Ayres met with Capella Capital. On May 10 2017, Minister Ayres responded to Jodi McKay. He did not answer Ms McKay specific questions. He instead said: “Information about the Sydney Gateway project is available on the Westconnex website.”

<https://www.parliament.nsw.gov.au/la/papers/Documents/2017/10-may-2017-questions-and-answers/125-QandA-P.pdf>. Perhaps there was information on WestConnex website at that time but a search does not reveal any useful information now.

On May 22, 2017, the SMH reported that the head of NSW RMS Ken Kenofski had said that RMS was working with stakeholders such as Sydney Airport to refine the design which would have its own environmental impact statement. While the \$800 million cost of the gateway is included in the total \$16.8 billion bill for WestConnex, any duplication of the freight line will have to be funded separately by government. He suggested that the link to the airport would 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.” (By stating that the RMS was working on the project, he implied but did not explicitly say that the Sydney Gateway had been removed from WestConnex.)

It was now clear that the Sydney Gateway would require more funding than the \$800 in the WestConnex budget.

Minister Ayres finally states that Sydney Gateway is a separate project from WestConnex

On August 9, Ms McKay asked the Minister for WestConnex:

My question is directed to the Minister for WestConnex. Is it true that because discussions with Sydney Airport Corporation about the route of the Sydney Gateway have produced nothing, the Government still has no preferred route or design for the project?

To which he replied:

The question related to Sydney Gateway, which is not part of the WestConnex portfolio

Minister Ayres later added the following elaboration:

It does not include the Sydney Gateway, which is a project that the Government is working on with a number of key stakeholders around the airport site, including the Commonwealth Government in relation to a transport rail line, and a number of landholders. As I said in my earlier answer, the budget for WestConnex has allocated in it \$800 million towards the delivery of Sydney Gateway. One thing this Government recognises is that on top of delivering an expanded M4, on top of delivering an expanded M5, on top of making sure the M4-M5 link —

As I was saying, WestConnex is made up of those three roads. The allocation of \$800 million out of the \$16.8 billion that has been allocated to deliver WestConnex is going towards the delivery of the Sydney Gateway project. It is an important part of the Sydney motorway network, ensuring that we can create good access to the airport and to the port.

On August 10, Shadow Treasurer Michael Daley asked Ayres:

The WestConnex business case refers to the Sydney Gateway 45 times as being part of the WestConnex project. The Sydney Gateway is listed as a WestConnex project on the WestConnex website and Tim Reardon, the secretary of Transport for NSW, said under oath in last year's budget estimates that the Sydney Gateway is a part of WestConnex. On what basis and when did the Minister suddenly decide that the Sydney Gateway was no longer part of the WestConnex?

To which Ayres responded:

Absolutely, the WestConnex business case references the Sydney Gateway project. That is one of the reasons why in the budget for WestConnex there is \$800 million allocated to that project. What I will say to the member for Maroubra is that WestConnex is made up of the M4 project, the M5 project, and the M4-M5 link. It is being delivered by Sydney Motorway Corporation and it has a distance-based tolling regime across all 33 kilometres.

The Sydney Gateway project does not have the same tolling regime as WestConnex, and it is not being delivered by the Sydney Motorway Corporation. What is WestConnex? WestConnex is the largest infrastructure project anywhere in the country. It is about saving travel times for motorists across Western Sydney and making sure that this Government finally finishes the M4 for those people who have waited generations to get that road finished.

It is so people who live in the south-west of Sydney do not get banked up in the traffic that was created by the Labor Government by not making sure the M5 tunnel was wide enough, and it is about making—....

Daley:

Point of order: My point of order is taken under Standing Order 129. That answer is as clear as mud. When did you suddenly decide it was no longer part of WestConnex? You have no idea. You are contradicting each other.

Ayres:

The final piece of the WestConnex project—which I am very pleased to continue to remind the House that the Leader of the Opposition has supported—is the M4-M5 link that links both the M4 and the M5 with four lanes in each direction.

Now for the first time, the Minister had clearly acknowledged that Sydney Gateway had been shifted out of WestConnex and that \$800 of the \$16.8 billion WestConnex budget would be allocated to the project. However, it was not clear how much the Sydney Gateway would cost. \$1.8 billion was suggested but it was not clear if that would cover all property acquisition costs. It was also not clear what route it would take or why so little progress had been made with a crucial element of the original WestConnex project in five years.

<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 the motorways to \$17.8 billion.

Also on August 10, Jodi McKay asked:

When was the masterplan for the Sydney Gateway presented to Roads and Maritime Services?

Has Roads and Maritime Services approved the Sydney Gateway masterplan?

What is the current estimated total cost of the Sydney Gateway?

When will the final cost of the Sydney Gateway be announced?

Ayres did not answer these questions until September 14.

On August 10, Premier Gladys Berejiklian told Channel 7 news ““It [Sydney Gateway] feeds into the project WestConnex but it is not part of it; it never was.” She was either remarkably ignorant of the details of WestConnex despite being Transport Minister and Treasurer and Premier during its development, of this was a lie.

In August 2017, RMS filed the Stage 3 M4/M5 EIS. A close reader concerned about progress with the Sydney Gateway would have observed that without any explicit notification, the Sydney Gateway was now no longer described as part of WestConnex but as part of ‘other projects’ along with the Western Harbour Tunnel and the F6. (See executive summary Vol 1A page i)

Was the Planning Department informed of the change of status of WestConnex or the possibility that there could be significant delays in delivery, including the possibility that it might not be delivered at all? This was certainly relevant to the traffic modelling scenarios.

On September 4, 2017, the ABC reported that Lend Lease had submitted an unsolicited bid to build the Sydney Gateway, which would be likely to carry a separate toll.

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>

On September 6, the Minister for Roads Melinda Pavey failed when asked to say on one date she discovered that the Sydney Gateway was not part of WestConnex. Instead she said,

When we started to do the homework it was very clear that the definition of WestConnex, and to the Sydney Motorway Corporation, was the 33 kilometres of tunnels that finished at St Peters interchange, but we had committed to the public that we were also going to improve access at Port Botany... The Sydney Motorway Corporation has never had a commission to study Sydney Gateway.

Then she added:

The Sydney Motorway Corporation took over the development of the delivery of the WestConnex project on 1 October 2015. At that stage Sydney Gateway was already an RMS project. It has never been a Sydney Motorway Corporation project.

Since many documents had clearly stated that the Sydney Gateway was part of WestConnex, it would be good to know what documents the Minister was given to study while she did her 'homework.' Also, if the Sydney Gateway was not part of WestConnex, who was responsible for describing it as part of Stages 2 and then 3 of WestConnex. In fact, it was part of WestConnex and the Minister's answer was obviously false. One can only agree with Dan Mookhey who retorted:

The Hon. DANIEL MOOKHEY: Yes, but we have Infrastructure NSW in 2011 and 2012 saying that the entire rationale for the whole WestConnex was the Sydney Gateway. We had Infrastructure NSW do that work six years ago and then we find out on 10 August that the Premier just willy nilly deletes it from the project and then, lo and behold, you now come here and tell us that you have not done any of this work. Has the RMS produced anything that resembles a benefit-cost ratio or a funding model to pay for the \$1.8 billion of this project in order to realise the vision of which the Minister is proud?

It was left to the Secretary of the Department of Transport Tim Reardon to make this whole extraordinary process seem normal.

What we will commit to is continuing to develop that project. As we said, it is six years away from now. We will go through the normal steps we would go through for any major project with Infrastructure NSW—strategic business case, final business case, pre-procurement, commissioning, et cetera. That is what we will do.

Mookhey then asked Reardon if he had any specific dialogue with Lend Lease about an unsolicited proposal to build the Sydney Gateway? To which Reardon answered:

I have discussions with a multiple amount of contractors and the nature of those discussions are usually about the infrastructure projects that we have on foot at the moment or those in planning. The nature of those discussions I will not go into.

The public needs to know much more about these discussions and how they relate to the political decisions that are made.

On September 14, the Minister for WestConnex Stuart Ayres responded to the questions Jodi McKay had asked on August 10 that:

I am advised information is available on the Roads and Maritime Services website.

On October 11, the Greens MLC Mehreen Faruqi asked the Minister representing the Minister for Roads:

1. *What projects comprise the Sydney Gateway?*
2. *How much will be invested for the tollway component, including the capital, operational and maintenance cost of the tollway component?*
 - a. *What is the benefit cost ratio and net present value (at a discount rate of 7 per cent) for the toll road component?*
3. *What is the capital, operational and maintenance cost of the Botany Bay rail duplication component?*
 - a. *What is the benefit cost ratio and net present value (at a discount rate of 7 per cent) for the rail duplication component?*
4. *Why is the Government not proceeding with full priority on the Botany Bay rail duplication component?*
5. *Has the Government received an unsolicited proposal from any organisation to build the Sydney Gateway?*
 - a. *If yes, who from?*
 - b. *Will the Government be going to tender for the Sydney Gateway?*
 - c. *What is the expected cost to the Government, including staff time, for the assessment of the unsolicited proposal?*
 - d. *Will the proponent of the unsolicited proposal be required to compensate the Government for assessing the unsolicited proposal?*

The answers came on November 14, 2017

The \$16.8 billion WestConnex motorway program will deliver better road access across Sydney and better connect important economic parts of Sydney. The WestConnex budget includes an \$800 million contribution to the road component of Sydney Gateway. The full scope of Sydney Gateway is a separate project that does not come under the WestConnex program.

I refer to the response I provided at the Budget Estimates hearing.

and (4) Transport for NSW has developed a Strategic Business Case for the duplication of the Port Botany Rail Line.

In accordance with the Unsolicited Proposals Guide, the NSW Government does not comment on whether or not a proposal has been received

In its October 2017 submission to the Stage 3 EIS process, the City of Sydney submitted,

The Project can no longer claim to provide a direct motorway connection to Sydney Airport and Port Botany because the Sydney Gateway, the proposed connection between this \$17

billion roadway and the Port and Airport, is no longer part of the WestConnex project, has no business case and no delivery date.

There is significant risk the Sydney Gateway will not be delivered and it is clearly not within the \$16.8bn funding envelope identified for WestConnex . The removal of the Sydney Gateway from the WestConnex program raises significant questions around Hon Stuart Ayres, Minister for Western Sydney, Minister for WestConnex and Minister for Sport at Portfolio Committee No. 5 Industry and Transport, Western Sydney, WestConnex and Sport. 6 September 2017 (Budget Estimates)

On November 13, 2017 the Sydney Morning Herald reported that the Government had rejected a bid from Lend Lease to construct the Sydney Gateway because the project would have required a large equity contribution or high tolls. The story quoted both leader of the Opposition Luke Foley and the Minister for Road Melinda Pavey:

"better road access to the port and airport was the fundamental objective of WestConnex, yet five years into the project the government was "still clueless on how to deliver what they promised". After the farce of pretending the gateway was not part of WestConnex, the Premier should stand up and tell us how many more billions of dollars this is going to cost and how much more in tolls we are going to have to pay for this shemozzle," he said.

A spokesman for Roads Minister Melinda Pavey said the government continued to assess its options for the gateway project "The government is working closely with its stakeholders Sydney Airport, Qantas, port and rail authorities on all aspects of the project, including duplication of a three-kilometre section of the Port Botany freight line to streamline rail operations," she said. <https://www.smh.com.au/national/nsw/state-rejects-lendlease-bid-to-build-sydney-gateway-link-to-airport-and-port-20171026-gz8e6q.html>

The SMH 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 Lendlease and its infrastructure financier Capella Capital in May, has said a separate business case for the gateway will be developed."

In January 2018, the RMS filed the Stage 3 Response to Submissions. Like other Stage 3 documents, the author of the document is not disclosed but RMS has informed me that it was AECOM.

In the section that responds to the City of Sydney, there is a table in which these words appear:

B 10-37

Full motorway connectivity to Sydney Airport and Port Botany would be delivered by the Sydney Gateway project (currently in design development phase and subject to final business case and environmental assessment).

B 10-39

As part of the WestConnex program of works, the project would facilitate improved connections to the St Peters interchange, improving connections between western Sydney and Sydney Airport and Port Botany, as well as providing better connectivity between key employment hubs and local communities. Full motorway connectivity to Sydney Airport and Port Botany would be delivered by the Sydney Gateway project (currently in design development phase and subject

to final business case and environmental assessment). Should the Sydney Gateway project be delayed for a significant length of time, it is expected that both the New M5 Road Network Performance Review Plan (conditioned as part of the New M5 approval) and the proposed M4-M5 Link Road Network Performance Review would confirm the operational traffic impacts of the projects on surrounding arterial roads and major intersections. In the absence of the Sydney Gateway it would be necessary to introduce a number of upgrades at the following intersections to accommodate the forecast traffic: · Gardeners Road/Kent Road · Gardeners Road/O’Riordan Street · Kent Road/Coward Street · Bourke Road/Coward Street · Kent Road/Ricketty Street.
https://majorprojects.accelo.com/public/759dd2997241286906ef78a0a62c2de0/01.%20M4-M5%20RtS_I_Executive%20summary.pdf

This suggests that the RMS was already considering that the Sydney Gateway might not be completed at all. These road works, some of which are already underway, are presumably RMS publicly funded projects that should be added to the public cost of WestConnex to NSW taxpayers. The reviews mentioned here are of course years down the track.

The NSW Health had expressed concerns about the impact of WestConnex on the air quality of residents in the Mascot area. It suggested zoning controls to limit residential development in the Mascot area. Instead of taking these concerns seriously, the RMS now dismissed these concerns on the grounds that due to the ‘uncertainty’ of the route of the Sydney Gateway, the estimate of emissions was likely to be ‘unrealistic’. It recommended that for this reason any consideration of planning controls to protect the health of present and future Mascot residents should be put off until such time as NSW Planning considered the Sydney Gateway EIS. (B1-13)

So nearly six years after the then O’Farrell government so confidently announced that WestConnex would that a seamless motorway would deliver trucks and motorists to Sydney Airport and Port Botany, there is no ‘design solution’ for the Sydney Gateway. In fact delays of a ‘significant’ period of time are considered a possibility as there is currently no viable route has been established.

On February 5th, 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>

On February 18, Jodi McKay asked the Minister for Roads with the Sydney Gateway Business case would be released. She received a reply in April that RMS is “currently working with key stakeholders to develop the design solution for Sydney Gateway for consideration by Government.”

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.

In answering their questions about the Sydney Gateway, Ministers referred MPs to the RMS webpage.

What information was available on the RMS webpage?

You can find some sketchy information about the Sydney Gateway Project on the webpage. This page has been in existence since June 2017, perhaps as far back as June 2016 when the fact sheet referred to earlier is dated.

An internet archive search reveals that this information was available in June 2017. Here is an extract::

Traffic around both gateways is already heavily congested and prone to delays as Port Botany trucks compete with airport traffic as well as through and local traffic.

Concept

Roads and Maritime is preparing design concepts and a final business case for Sydney Gateway.

Sydney Gateway was identified as a priority in both the NSW Long Term Transport Master Plan, 2012 and the State Infrastructure Strategy Update, 2014.

The link was an integral part of the WestConnex business case. It will provide a direct connection from the WestConnex St Peters Interchange to the Domestic and International Terminals at Sydney Airport.

Roads and Maritime is working closely with Sydney Airport, Qantas, port and rail authorities on all aspects of the project, including duplication of a 3 kilometre section of the Port Botany freight line to streamline rail operations.

(CONTINUES OVERLEAF)



The process:

1. Long Term Transport Masterplan, 2012
2. State Infrastructure Strategy, 2014
3. Strategic Options Study approved by NSW Government
4. Site investigations, detailed corridor study - **WE ARE HERE**
5. Final business case
6. Release project overview for stakeholder input, 2017

This document refers to a “strategic options study approved by the government”. This study should be produced. On what date was it approved by the government? Is the ‘cabinet in confidence’ document referred to in the SMH report in February 2018?

The page also stated that the project overview would be released for stakeholder input in 2017. Was this document released? Are the community and local Councils considered stakeholders? Have they been provided with the ‘overview’? Who worked on this document and under which contract?.

That page remained much the same until sometime after February 2018 when someone decided to change it.

If you visit the page now you will find that the flowchart, map and ‘overview’ that were only the page for many months have disappeared and instead these words appear:

“The process

1. Long Term Transport Masterplan, 2012
2. State Infrastructure Strategy, 2014
3. Strategic Options Study approved by NSW Government
4. Site investigations and design development – **We are here!**
5. Preliminary concept design
6. Environmental assessments
7. Environmental assessment exhibition
8. Planning determination”

<http://www.rms.nsw.gov.au/projects/sydney-south/sydney-gateway/index.html>

RMS admit risks to Sydney Gateway project

Lend Lease did not achieve success with its unsolicited bid for the Sydney Gateway project. Perhaps the government realised that to announce a fresh toll would have been too costly politically. Or perhaps there were other problems including the cost of land that the bid may have envisaged being carried by the public. The unsolicited bid was only made public because of a media leak.

But there was a big pay-off when on June 13 2018, Lend Lease Samsung Bouygues Joint Venture (LSBJV) was awarded the huge contract for the M4/M5 project, which was amongst the projects that Christopher Swann worked on until he left the RMS.

Craig Laslett, CEO of Engineering and Services, Lendlease said:

“The M4-M5 Link is a critical project that will drive Sydney’s economic growth, deliver new jobs and training opportunities, and provide a vital link between growing communities in inner and western Sydney. This will mean quicker travel times for more people and easier movement of goods for businesses, making life easier for Sydneysiders.”

At least he didn’t mention the airport!

The NSW government currently still has not start date for the Sydney Gateway. But in the meantime, it is spending \$500 million of RMS public funds on improving appalling traffic congestion around Sydney Airport. This half a billion is not part of the WestConnex or Sydney Gateway projects.(Budget Estimates 2018)

See Note page mentioned on page 4 on the following page.

Note 1: (referred to on page 4)

I compiled this information from press releases and media reports from early 2013.

On January 16, 2013, NSW Dep Premier Stoner announces four infrastructure development partners selected to develop design and construction solutions for WestConnex

The Sydney Motorways Project Office (SMPO) will work with Leighton Contractors and Ferrovial Agroman & to develop key design aspects along Parramatta Road.” **Stoner said plans for Airport Access Link & Inner West Tunnel** would be developed by consortiums led by Thiess (sub of Leighton) & Baulderstone/Bouygues in coordination with SMPO.

Minister for Road Gay was quoted as saying ...firms would help ensure “robust business case is submitted to Government by mid 2013”

Earlier this year (2013) SMPO requested proposals from organisations pre-qualified on Government contract panels, seeking advisory services on traffic modelling, finance and economics, legal services and infrastructure development. Ernst & Young appointed to do economic modelling for WestConnex and Macquarie Bank to scope financing options,” Gay said.

Consortiums working on the Airport Access Link and Inner West Tunnel include AECOM, Aurecon, Bamser, Conybeare Morrison, GHD, Hyder, Halcrow, Pells Sullivan Meynink, SMEC, Turner & Townsend & Urbis.”

AECOM appointed to develop traffic modelling used for infrastructure development & toll revenue forecasts. Allens Linklaters will provide strategic legal advice for business case.

“The Project Office has been formed from experts from across the public and private sectors who will prepare a business case proving WestConnex is necessary, achievable and affordable,” he said

AFR reports; Macquarie Capital has been mandated to finance the project, tipped to cost \$10 billion-\$13 billion.; Ernst & Young for economic modelling while Allens Linklaters will do legal work.

Engineering firm AECOM has been asked to look into the crystal ball and come up with traffic modelling. It's a key part of overall project. with modelling to be used for infrastructure development and toll revenue forecasts.

PART TWO of Submission by Wendy Bacon

a) Submission to Senate Inquiry into the Operation of existing and proposed toll roads in Australia.

This submission is relevant to Term of Reference (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

I am including this submission because its contents are also relevant to this Inquiry. I was invited to give evidence before that Inquiry and parts of this submission were quoted in the report.

The submission raises issue relevant to 'due diligence' and management of 'conflicts of interest; that both been badly lacking with WestConnex. It raises questions about whether private profit driven interests have captured transport planning in NSW.

In this submission, I mention the Critical State Significant provisions that were introduced in 2012. These provisions remove from the public the right to test decisions about the merits of decision in the courts and place a very large amount of unaccountable power in the hands of the Minister. I would like to see the Committee call for the reports and advice containing the reasons for the Minister's declarations for each stage of the project.

I deal with failed tollways and the role of false modeling on page 8 and onwards. I continue to be amazed that AECOM (previously Maunsell could have been invited by the NSW government to provide advise and modeling for WestConnex in the context of the public knowledge of its role in the failed projects. AECOM have played a key role in preparing three major EIS for WestConnex and have other commercial contracts in WestConnex.

On page 11, I refer to Why WestConnex, a project by Luke Bacon, which presents information about the publicly available contracts for WestConnex. Due to poor accountability laws in NSW, contracts below \$150,000 are not published and contracts disappear altogether after they expire. This is a most unsatisfactory situation, which this committee should address. The Federal publishing procedures keep contracts public, as they should be. After the SMC was created, the information for *Why WestConnex* stopped flowing.

[\(https://whywestconnex.herokuapp.com/\)](https://whywestconnex.herokuapp.com/)

I refer to an article by respected academic and ex Premier of WA Carmen Lawrence. I highly recommend this article that deals with 'due diligence' and 'fit and proper' issues that she argues are not being properly dealt with in Australia.

On page 15, I deal with AECOM's failure in its EIS for Stage 2 to investigate post construction impacts of the Alexandria Landfill closure. As the Committee will read in other submissions, overwhelming odours over months caused huge distress in the community at St Peters, including by students in schools in the area. Since this submission was written, the EPA has now prosecuted CPB Contractors (renamed Leighton Contractors) but a year and four months later, no date for hearing has yet been set.

On page 19, I discuss secrecy and in particular the appointment of Denis Johnston to peer review the Westconnex Traffic Model. Mr. Johnston worked for AECOM on the Clem 7. He may well be a knowledgeable modeler but Planning's choice of him as a peer reviewer showed a lack of understanding of the importance of the appearance as well as actual practice of independence if confidence is to be maintained in the planning process.

On page 21, I deal with donations.

Submission to Senate Inquiry into Operations of existing and proposed toll roads in Australia from Wendy Bacon, journalist and researcher.

Terms of reference of the Inquiry are:

Operations of existing and proposed toll roads in Australia, including:

a) financial arrangements of existing and proposed private toll roads, and transparency, accountability and equity aspects of these arrangements;

b) interaction of commercial considerations of private toll road operators with federal and state transport and infrastructure policy; and

c) any other related matters.

My background is one of a journalist and researcher. This short submission aims to highlight some points based on nearly three years of researching and reporting on WestConnex and an earlier research interest in expressways and PPP projects while I was working at the University of Technology Sydney where I was the Professor of Journalism.

I have written a number of reports that touch on issues raised by this inquiry¹. I have also been involved with other community members in grassroots campaigning against the WestConnex which impacts on the Inner West of Sydney where I have lived for more than 30 years.

WestConnex is a system of more than 33 kilometres of tollways. It is part of a much larger system of planned tollways including North Shore tollways and a Southern tollway. Already Sydney has the most tollways in the world and its residents are the most tolled in the world.

I have been surprised and indeed shocked at the lack of transparency in the WestConnex planning and construction process and the extent to which the public interest seems to have been delegated to private interests with their own agendas and conflicting interests. This raises very serious questions about what mechanisms or processes are in place to protect the community in the face of this massive expansion of tollways.

It would be a mistake to only inquire into the impacts of finished tollways on the public, although that is not to suggest that there are not very serious equity impacts on communities who are part of the target market, lost opportunities for those who rely on sustainable modes of public transport and implications for the overall transport development. However the tollway lobby

¹ Some of my reports were published or republished on my blog <http://www.wendybacon.com/investigations/inside-westconnex/>

including construction, financial and engineering companies that service the tollway industry exercises an influence on key transport decision-making in ways that are hidden to the public. This influence continues from the time the tollways are proposed, through the planning and construction process to the time when tollways are operating. Key political decisions are made behind closed doors. The processes that follow these decisions become more like a routine series of steps rather than a genuine engagement with project proposals. Processes through which decisions are made lack accountability and transparency.

Recent WestConnex experience in Sydney leads me to agree with conclusions reached by Melbourne researchers John Odgers and Nicholas Low who analysed forecast time savings for Melbourne's CityLink project which did not eventuate. They concluded that, rather than being based on evidence, transport policy is driven by political momentum to build more roads. They wrote,

*" The evidence showed that not only were the time savings not achieved, but the reverse occurred. ...The failure to check the rationale supporting policy is a serious error. The repeated and knowing use of a claim without foundation is a lie. If there is to be an argument for investment in road infrastructure based on claims of economic benefit then a new method of making such evaluations is required. The unfortunate truth appears to be that infrastructure projects are politically driven and have little to do with rational calculation. They are built because political leaders decide that they shall be built. It was argued that transport policy in Australia is probably path dependent and tends to foreclose a range of alternative options which should be always under consideration. All new infrastructure, whether rail or road based, must be evaluated on equal terms."*²

There has been no independent evaluation 'on equal terms' of the arguments for WestConnex as opposed to investment in other modes of public transport. Although the NSW Department of Planning has required the Environmental Impact Statements for WestConnex to consider alternatives, the analysis of alternatives is at most several pages long in a document of thousands of pages. No serious attempt is made to provide evidence to support the rejection of alternatives. This is because as far as the EIS consultants are concerned, the project approval is a done deal. (See

² <http://www.wctrs.leeds.ac.uk/wp/wp-content/uploads/abstracts/lisbon/general/01403.pdf> Also, Urban Policy and Research Volume 30, 2012 - Issue 2 "Rethinking the Cost of Traffic Congestion, Lessons from Melbourne's City Link Toll Roads"

below where AECOM who was managing EIS for WestConnex Stage one M4 East and New M5 Stage2 was already promoting the project on its website.³⁾ Political decisions to build the WestConnex tollways have pre-empted and placed pressure on the planning process so that those responsible for scrutiny of environmental and construction impacts are all but disempowered. Public servants rush through processes that must precede approval, leading to a lack of serious independent engagement with claims made by those pushing the tollways. The consequence has been serious unforeseen impacts on residents after construction begins including uncontrolled odours and noise.

'Critical state significant infrastructure provisions' in the NSW Planning Act have been used in the WestConnex planning approval process. ⁴These provisions remove from citizens and Councils any possibility to present evidence at hearings and the legal right to legally test approval decisions on their merit. Although judicial review is theoretically possible, the conditions that must be met are extraordinarily restrictive. A project can be declared to be 'critical state infrastructure' on a simple decision by the NSW Minister for Planning that does not have to be substantiated with reasons or evidence. This undemocratic situation is contributing to widespread cynicism about the NSW Planning process.

Tollway and road construction lobby has an unhealthy influence over government transport decision-making. Decision-making from earliest planning to approval and construction process is neither accountable nor transparent.

Transurban controls 13 of 15 tollway concessions in Australia. When it publicly floated in 1996, after achieving the \$1.8 billion CityLink contract, Transurban just raised just over \$500 million. Twenty years later, and now in charge of 15 major toll roads in Melbourne, Sydney, Brisbane and in the US, it is worth 50 times more than in 1996.

On page 33 Transurban 'Investor relations' document, there is a map of Transurban's "next generation of development opportunities" that has been used in marketing to existing and potential investors.⁵ This map provides a glimpse of the company's ambitions in Sydney alone.

The company's staggering growth since 1996 has led industry analyst Credit Suisse to note that it now operates "without strong competition" in Sydney,

³ Evidence of that promotion was removed from the site after initially published a story that mentioned it, but is included in the version on my website. <http://www.wendybacon.com/2015/westconnex-eis-company-is-heavily-involved-in-pushing-motorway-forward/>

⁴ http://www.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/s115v.html

⁵ Transurban Snapshot <https://www.transurban.com/content/dam/investor-centre/toolkit/transurban-overview.pdf>

Melbourne and Brisbane. Its tolls revenue has surged 400 per cent in a decade to \$1.5 billion and is expected to rise a further 50 per cent to \$2.3 billion a year within two years.

The NSW government has indicated that it will sell the Sydney Motorway Corporation (SMC) that is responsible for financing, constructing and negotiating tolling concessions for WestConnex next year. This is well well before the tollways are scheduled for completion in 2023. Transurban is reported to be a likely bidder in a consortium with other players.⁶

Assuming this sale of SMC goes ahead, enormous power will be transferred to a private consortium, including during construction. This is a matter of great concern to potentially affected residents who are aware that other communities are already struggling to achieve compliance with planning approval conditions. There is a large amount of information available to demonstrate that the NSW Planning and EPA are already struggling to contain on going problems with SMC's main WestConnex contractors CPB (previously Leighton Contractors).⁷

Representatives of Transurban recently told the NSW Tolls Inquiry that the company has had 'discussions' with the NSW government about a number of future tollway developments. Presumably these discussions occur in private with no report to the public. In the interest of the integrity of the planning process, such discussions should surely be transparent. It would be worthwhile for the Committee to explore these discussions and how and where they take place to gain an understanding of the Transurban's relationship with government.⁸

Transurban claims not to be a monopoly because it does not set prices in the market. In fact it plays a very strong role in setting prices in negotiation with

⁶ O'Sullivan, M. 'Sale of entire WestConnex motorway project on table for government' May 27, 2017 <http://www.smh.com.au/nsw/sale-of-entire-westconnex-motorway-project-on-table-for-government-20170524-gwc2n2.html> ; Infrastructure suiters combine to bid for WestConnex <http://www.theaustralian.com.au/business/dataroom/infrastructure-suitors-combine-to-bid-for-westconnex/news-story/6f96c855e18d334aa42160c20155d642>

⁷ Knowles, Lorna "Fears asbestos-contaminated road base is being used on Sydney's WestConnex road project" <http://www.abc.net.au/news/2016-08-31/fears-asbestos-contaminated-road-base-used-on-westconnex/7802098>; Kraus, C. 'WestConnex the stink of controversy that fails to go away' <https://www.theguardian.com/australia-news/2017/jul/08/westconnex-the-stink-of-controversy-that-fails-to-go-away>;

⁸ INQUIRY INTO ROAD TOLLING, Transcript April 11, 2017 <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/9922/Transcript%20-%2011%20April%202017%20-%20CORRECTED.pdf>

the government. It is concerning that a single 'opaque' ⁹company should have been enabled by governments to gain such dominance over the major roads in our biggest cities. Transurban is now in a position to use extended or increased tolls on its existing concessions to fund other tollways including Northconnex, which it developed through an unsolicited proposal to the NSW government.

Clearly an understanding of Australia's tollway industry requires a deep knowledge of Transurban.

In 2016, two Fairfax reporters Ben Schneiders and Royce Millar published an in-depth article about Transurban. 'Transurban: The making of a monster' is essential reading for anyone seeking information on the operations of Transurban. ¹⁰ Schneiders and Millar also published a second story about the potential for Transurban to use its advantage in the tollway business to profit if a more general system of road charging could be introduced. ¹¹

Business journalist Michael West has examined Transurban's tax position between 2014 -2016. ¹² See also 'Transurban – the unstoppable money machine.' (2014) by journalist Michael Maiden.¹³

In 2014, West summarised the financial and tax position of Transurban this way,

Transurban Holdings Limited, the umbrella company which holds the lucrative toll-road assets in Sydney and Melbourne, notched up \$1 billion in toll revenues last year. The company was able to achieve this thanks to the way in which it structures its financial accounts and runs high debt levels. Some \$344 million was paid in interest on Transurban's massive \$6.8 billion in borrowings.

⁹ Word used by very experienced business journalist Michael West to describe the company structure.

¹⁰ The Making of a Monster May 14, 2016. <http://www.theage.com.au/victoria/transurban-the-making-of-a-monster-20160512-gotjm9.html>

¹¹ Toll giant Transurban wants to charge for all roads <http://www.smh.com.au/national/investigations/toll-giant-transurban-wants-to-charge-for-all-roads-20160513-goup2i.html>

¹² Michael West stories can be found at <http://www.smh.com.au/business/transurban-pays-just-3-million-tax-despite-collecting-1-billion-in-tolls-20140805-100le8.html>; 2015: <http://www.smh.com.au/business/why-transurban-says-the-taxman-can-wait-20150811-giwl34.html> ; 2017: 2016 <https://www.michaelwest.com.au/ppp-plundering-takes-its-toll-on-love/>

¹³ <http://www.smh.com.au/business/transurban-an-unstoppable-money-machine-20140804-100evt.html?rand=1407268811955>

Interest payments are tax deductible and have the effect of bringing down profits from which tax is ultimately paid. Earnings (before interest, tax, depreciation and amortisation charges) came in at \$759 million. Actual income tax paid was just \$3 million, down from \$12 million last year.

The tax paid was less than Transurban chief executive Scott Charlton was paid – \$4.9 million.

Directors and top management were paid \$17 million last year and \$21 million the year before.

In 2015, he wrote,

Toll collection is a beautiful business to own. Unlike most companies, you collect your money before you provide your service..

But the Transurban model is a thing of particular beauty.

The motorway assets are solid predictable concessions from the state, so Transurban can gear them to billy-o.

Its long-term borrowings stood at \$11.5 billion at year's end, up sharply thanks to the \$7 billion acquisition of Queensland Motorways from funds-manager QIC.

Profits therefore are soaked up in interest and transaction costs (\$429 million for the latter last year).

Transurban executives argue, quite reasonably, that theirs is a bona fide corporate structure, which enables roads to be built and investors to get a return.

But because the government concessions extend for decades, tax will be paid, but many years down the track. Indeed, that's when the bulk of the capital (rather than the interest on the debt) will also be paid.

"At the back end" is the phrase.

Although Transurban's corporate structure is a dense, almost impenetrable thing, it doesn't include the sort of dubious related party loans and other payments redolent of foreign-owned corporations, which benefit their offshore associates at the expense of local taxpayers.

Despite all this, there is no escaping the fact that Transurban has only paid \$6 million in income tax in the past two years on \$2 billion in revenue.

It has forked out very little in ten years and is only ever on a promise to pay tax, at some time in the distant future.

So where do those tolls go? Basically, to the owners of the toll companies, some of whom aren't even in Australia for tax purposes.

(Apologies if that's shattered your "I'm funding better roads dream.")

So then we might ask, what are these owners doing with those funds?

Delayed gratification?

While taxpayers have to take a number, Transurban executives are in a different queue. Chief executive Scott Charlton picked up \$5.8 million in remuneration last year, up from \$4.9 million prior, despite the red ink at the bottom line.

Charlton and his chairman Lindsay Maxted (whose board fees were up from \$456,000 to \$481,000) certainly haven't been "back-ending" their pay.

There is a double standard here, especially since the structure of executive remuneration is typically struck on short-term incentives (one year) and long term bonuses (three to five years). These incentives drive the strategy for acquisitions like Queensland Motorways.

Transurban is also eyeing the prospective \$5.5 billion Western Distributor project in Melbourne and is perpetually scouting for deals offshore.

So the question has to be asked, will Transurban still be around in 30 years when it is time to pay tax? Or will it blow up in debt and acquisitions and never get around to it?

Continue acquisitions continually, and conveniently, defer tax.

In 2016, West focused on the Melbourne tollroads and wrote:

Clandestine arrangements between corporations and governments are a rising concern. With little in the way of disclosure, and therefore accountability, a government can now whack its infrastructure deals on the state credit card.

Build a road now and compel future motorists and taxpayers to pick up the tab, with interest.

Following the lead of NSW and its backroom deal with James Packer for the casino at Barangaroo, the Victorian government is now accepting unsolicited infrastructure proposals, too.

Its Western Distributor extension, due to be finalised with Transurban in March, is a case in point.

It's all shrouded in secrecy, but we know Transurban is the sole contender for this \$5.5 billion deal. It will cost a lot more than that, although the company rejects estimates by actuary Ian Bell that put the nominal value of the concession at \$20 to \$30 billion.

Whatever the case, Transurban has a track record of trumping state governments on deal terms, so unless there is enough transparency and debate Victoria will be put to shame again.

CityLink now charges \$8.48 in tolls, one-way.

It was \$4.24 in December 2000 soon after the tollway opened. Tolls are up by 100 per cent over 15 years while the CPI has risen just 48 per cent.

If tolls had increased by CPI, as is the case with most other tollways in Australia (including EastLink and the Queensland tollways recently bought by Transurban) the current CityLink one-way toll would be just \$6.28.

Projecting a 4.5 per cent annual price increase forward another 18 to 19 years gives you a one way maximum toll of about \$20 at the end of the current concession period and \$30 at the end of the 10- to 12-year concession extension.

A spokesman for Transurban said the 4.5 per cent escalator had been due to end last year, after 16 years, and revert to CPI. However, as part of negotiations for the \$1.3 billion Tullamarine widening, the government agreed to extend it until mid-next year.

As talks are now afoot for the Western Link, you can bet that 4.5 per cent base escalator will be on the negotiating table. The spectre of politicians wanting a quick deal – prodding their Treasury bureaucrats in talks with patient and crafty corporate types from the monopoly transport giant – is not a salutary one for motorists or taxpayers.

Transurban presents a picture of a very successful company that not only benefits its investors but also the broader public. But there are very serious questions about how a single company has been able to get into a position of exercising such power and making such extraordinary revenue out of key roads through deals that are secretive and lack transparent oversight mechanisms. Even if it is generating profits for the investors and creating mega salaries for top executives, independent experts have argued that rather than solving traffic congestion, they actually create it. If that is the case, then huge social, economic and environmental costs are transferred back to the public.

How private companies influenced NSW Transport planning and WestConnex decisions

In 2009, the privately funded tollway construction model was facing disaster. Three of four Australian tollways – Clem7, Lane Cove Tunnel and Cross City Link – had financially collapsed after traffic did not match the predictions of traffic modellers. In each case the traffic modelling had been done by AECOM, previously called Maunsell. (See below for information on cases against AECOM.) Arup, the forecaster for the BrisConnections tollway had been sued for misleading traffic projections in a case that was settled in 2015.

Independent experts, including University of Sydney researcher John Goldberg, had been warning for years that traffic forecasters “worked out what the investor was going to be happy with in terms of rates of return, and they worked back to a set of numbers which would produce that return for

investors. Such forecasts do not properly relate to the interaction of land use and transport, and it is not surprising that they are not fulfilled.”¹⁴

But the closely knit tollway industry – in which companies Macquarie, ABN Amro, Transurban and Leighton (with its subsidiaries Thiess and John Holland) were familiar names – was not deterred, and focussed instead on a new funding model in which most risk would be transferred to the public, rather than individual investors. As CEO of Leighton, Wal King warned governments would have to “stump up more”.¹⁵

After the election of a NSW LNP in March 2011, the roads lobby successfully promoted a new model to its ex-banker Treasurer and now Premier, Mike Baird.

In 2011 a new body, Infrastructure NSW (INSW) was established which 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 tollroads in the US.

On January 16 2013, the NSW Acting Premier Andrew Stoner selected several companies to be closely involved in helping design and justify the WestConnex tollway project. 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.

The key political decisions that locked in WestConnex had now been made.

In late 2014, the NSW Auditor General published a review of the preliminary business case for WestConnex. He concluded that he “was not able to form a

¹⁴ O’Sullivan, M. “The Toll Roads that turned into money pits.” SMH <http://www.smh.com.au/business/the-toll-roads-that-turn-into-money-pits-20100831-14flh.html#ixzz48p3o6CSx>

¹⁵ Ibid. <http://www.smh.com.au/business/the-toll-roads-that-turn-into-money-pits-20100831-14flh.html>

view on whether the project is a worthwhile and prudent investment ... for the NSW government".

Sydney Morning Herald reporter Jake Saulwick described the NSW Auditor General's report as 'scathing' when it was released in December 2014. He wrote, the "Auditor-General Grant Hehir's report highlights the lack of independent monitoring of the concept, business case and tendering for WestConnex, a series of projects that would form a 33 kilometre toll road through inner-Sydney."

He continued,

The auditor-general's report shows that, paradoxically, the biggest transport project in the state has not been subjected to the same level of oversight as other initiatives.

*Projects costing more than \$100 million are typically subject to multiple "gateway" reviews, in which independent authorities scrutinise decisions. But only one independent "gateway" review was ever organised for the WestConnex project, and this was of a preliminary and unfinished business case..... **One of the main criticisms made by the auditor-general is that the same people responsible for designing and delivering the project – Infrastructure NSW first and then the WestConnex Delivery Authority – have been responsible for reviewing the project.** The current governance arrangements blur responsibility and accountability for delivery, commissioning and assurance and thereby create a conflict.*¹⁶

By the time this NSW Auditor General's report came out, the first WestConnex contract had already been signed with a consortium including Leighton. At around the same time, the project was declared by the Minister for Planning to be one of 'critical state significance' which eliminated the need for any EIS hearing or the possibility of Councils or community groups being able to appeal on the merits against approvals of the different stages of WestConnex.

¹⁷

¹⁶ Saulwick, J. 'Damning report into westconnex motorway released by NSW Auditor General'
<http://www.illawarramercury.com.au/story/2773266/damning-report-into-westconnex-motorway-released-by-nsw-auditor-general/?cs=411>

¹⁷ http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/~/_media/64D6718B78B943DBA05E8BABEFF4FC93.ashx "The Minister may declare any SSI to be critical SSI if it is considered essential for the State for economic, environmental or social reasons. If SSI is declared critical, judicial review proceedings are more limited."

This was just the start of a stream of conflict of interests that continue to infuse the planning and construction process for the tollway network.

In 2015, Luke Bacon and I researched the contracts between NSW Roads and Maritime Services and the Westconnex Delivery Authority (WDA). It was not possible to fully research this issue because in NSW only contracts of \$150,000 or more are required to be published. Also contracts disappear of www.nsw.tenders.gov.au after completion. In this way the NSW system is less transparent than the Federal system of publishing contracts. Despite an application under the NSW GIPA Act, the WDA refused to supply smaller contracts.

Our analysis showed that AECOM, a company with a record of misleading traffic projections, had been contracted to manage the Environmental Impact Statement process for WDA & RMS while it was carrying out other commercial contracts for the project. At the time that AECOM was managing the EIS for the M4East, it was also promoting WestConnex project on its website. As is normal journalistic practice, I asked AECOM a series of questions during the preparation of the story but none were answered and I was simply referred back to WDA who also declined to answer them.

A website containing the results of this research can be found here:
<https://whywestconnex.herokuapp.com/>.

Although AECOM was being sued for misleading traffic projections for the Brisbane Clem 7 project and had already been involved in the initial planning of WestConnex, it had been contracted by the WDA to take responsibility for the EIS for the M4 East and the New M5 while also undertaking other commercial jobs for WestConnex. This is another example of the conflicts of interest that have pervaded the WestConnex planning and construction process.

We discussed this more fully in an article for *New Matilda*.¹⁸

As reported in this article, I asked Professor of Sustainability at Curtin University Peter Newman to comment on a hypothetical scenario in which a company responsible for environmental assessment processes was also responsible for preparing a proposal for other aspects of a major project. Newman was a board member of Infrastructure Australia at the time WestConnex was first proposed. He is also a member of a Scientific Advisory

¹⁸ Bacon, W and Bacon, L. WestConnex : Mike Baird's big tunnel of corporate love. June 4, 2015. <https://newmatilda.com/2015/06/04/westconnex-mike-bairds-tunnel-big-corporate-love/>

Committee with the United Nations Educational, Scientific and Cultural Organization (UNESCO).

He responded: "Goodness me. It's makes it sounds like they (a hypothetical company) are being used as part of the proponent's case if they are also doing the assessment. It really is pushing things...."

Professor Newman considers that WestConnex is a "highly politicised" project. He described the planning processes around WestConnex as, "very tight knit... (this scenario) doesn't surprise me because I was involved in the planning side. The planning was really very, very light – just a few ideas being thrown together without any serious detailed work being done, and all the detail that was done showed very poor cost-benefit ratio.

"They have completely subverted the normal planning processes and now they're subverting the consulting processes.

"It's corrupting the process, that is what you can say. It doesn't mean that it is corrupt in a legal sense, but it is close to the edge."

Since then AECOM has been hired to manage the EIS for the third stage of WestConnex while also being responsible for other commercial contracts on the same stage.

The full story of AECOM's role in earlier failed toll roads is unlikely ever to be told because two lawsuits against it have been settled for sums amounting to \$400 million ¹⁹ However an analysis of emails tendered in the Rivercity investors class action showed the close relationship between Leighton and AECOM in marketing the Clem 7 to investors and evidence that consultants' knew that full information was not being provided to large and smaller investors who ultimately lost their money. Much more evidence supporting this statement can be found in a further *New Matilda* article published on May 16, 2017. ²⁰

Leighton and AECOM have been extremely closely involved in the planning and construction of WestConnex.

¹⁹ Stacey, D. 'Aecom pays \$280m to settle road toll dispute' Sept. 2015
<http://www.theaustralian.com.au/business/aecom-pays-280m-to-settle-toll-road-dispute/news-story/c415c9c35483dd2a804ee42baf11bdb7>; D'Artagan Consulting 'Australian Toll Law suit successful'
<http://roadpricing.blogspot.com.au/2016/08/australian-toll-road-lawsuit-successful.html>

²⁰ Bacon, W. Tunnels and Tollroads : The insider emails that shine a whole new light on Westconnex
<https://newmatilda.com/2016/05/18/tunnel-collapse-the-insider-emails-that-show-westconnex-in-a-new-light/>

In reading the Federal Auditor General's report which raised questions about whether the Federal tax payer had been sufficiently protected its decisions relating to the Federal funding of WestConnex, I was surprised to see that AECOM had been chosen by the Federal Department of Infrastructure and Regional Development to provide advice on financial risk. If you were looking for independent advice on WestConnex it's hard to think of a less appropriate company. It was also surprising to see that a major legal firm that was advising WestConnex on contracts was also providing advice to the Federal department at the same time. (This is reported in more detail on my blog)²¹

A failure in due diligence

There is surely a problem with a planning system that invites companies that have actively misled investors in their traffic projections on one tollway project to play a prominent role in planning the biggest infrastructure project in Australia. It also raises questions about the due diligence or probity advice that is in place to protect the public interest in the allocation of contracts.

Both Leighton and AECOM have been huge winners from the billions that are being poured into WestConnex, at a time when Leighton Contractors were prominently publicly reported by Fairfax media to be under investigation for malpractice and corruption allegations on various occasions.²² Carmen Lawrence who was previously the Premier of Western Australia discussed in more detail the allegations against Leighton and AECOM in a piece for *The Guardian* and concluded that "in Canada, where there are strong debarment provisions, it is unlikely that any of these companies could secure government contracts; in Australia, it is business as usual, despite the evident risk to taxpayers. Surely we can do better."²³

Lawrence's article was written in the context of the Roe 8 project in Perth but she rightly also applied her arguments to WestConnex. Her article should ring

²¹ Why were WestConnex contractors chosen to provide independent advice on WestConnex loan? <http://www.wendybacon.com/2017/why-were-westconnex-contractors-chosen-to-provide-independent-advice-on-westconnex-loan/>

²² McKenzie, N. and Baker, R. 'Unaoil and Leighton: Dirty Deals and Double Crosses' <http://www.theage.com.au/interactive/2016/the-bribe-factory/day-2/leighton-feature.html>; 'ASIC Inquiry launched in CIMIC and Leighton Bribery Scandal' <http://www.smh.com.au/business/asic-inquiry-launched-into-cimic-and-leighton-bribery-scandal-20161110-gsmssp.html> and many more stories

²³ Lawrence, C. 'Corporate corruption and government's failure to act –who's running the country' <https://www.theguardian.com/commentisfree/2017/feb/02/corporate-corruption-and-government-failure-to-act-whos-running-this-country>

alarm bells for all those concerned about the protection of the Australian community. The Committee may be able to draw further on her expertise. Citizens might well ask what probity mechanisms were gone through before these companies were handed such power and economic resources?

Twelve thousand submissions were submitted to the NSW Department of Planning in opposition to AECOM's Westconnex New M5 EIS. Thousands of these objected to the apparent conflict of interest between AECOM's on-going commercial interests in engineering WestConnex contracts and its preparation of EIS documents. The respondent RMS filed a response to these submission prepared by AECOM. Needless to say there was no engagement with the conflict of issues raised. This further fuelled the impression that gaining approval for WestConnex was merely a matter of going through politically driven processes rather a requirement for genuine engagement with public concern.

City of Sydney hired independent experts to prepare hundreds of pages of criticism of the AECOM EIS report. In response to the AECOM's prepared Response to Submissions report, City of Sydney noted, "

The submissions report does not alleviate the City's concerns about these core issues, but continues to heighten them. We restate our position from our EIS submission that the inadequacy of the New M5 EIS is so profound that the City of Sydney does not believe it can be used as the basis for a Ministerial determination as to whether the project should be approved.

There are significant governance and probity concerns with the project.

This point was further developed in the substance of the City of Sydney's response,

"Despite a lengthy response to the City's submission (over 100 pages), the Submissions Report generally fails to either respond to the actual issues raised in the City's submission or to provide any evidence to support the responder's position. This lack of response to the issue or lack of evidence may be due to the fact that the Response to Submissions Report was delivered within five weeks of the exhibition closing date. This is an extraordinarily fast turnaround to respond to 12,866 submissions on the project."

These serious concerns led Councillors, Council staff, consultants as well as community members and groups to conclude that **the political driven**

decision to construct the WestConnex tollway system had corrupted and compromised the planning process.

The situation further deteriorates after approval is given each stage of WestConnex. Currently, a constant stream of complaints and potential breaches of conditions are reported to WestConnex, the NSW EPA and the NSW Planning Department. Take for example, the ongoing severe odours that emanate from the New M5 construction site. An examination of the EIS documentation reveals that these issues were never satisfactorily dealt with in the rushed planning process. Indeed, there was no detailed examination at all before approval was given of the problems of using a contaminated landfill site during the construction phase.²⁴

AECOM was paid nearly \$1,000,000 to prepare a landfill closure plan but that stopped short of considering the construction phase that was supposed to be considered post approval. Emerging problems with the contaminated site has led the NSW EPA to vary the licence it granted WestConnex and require further steps to mitigate the impacts of the construction but as of the time of writing, these have proved ineffective. EPA officers have told residents who have laid complaints that they are seeking legal advice to see what further can be done to stop activities that are causing serious distress including health problems to those living near the landfill. (Personal Communication with author). This is just one example of the inadequacy of the planning and EIS process in providing protection for the community.

In my view, this compromised process is a direct result of politically driven deadlines and consultants who see their role as justifying rather than independently assessing the process. It is therefore highly relevant to Terms of Reference a) b) and c). I can provide far more information about the contamination examples and many more examples of the compromised and rushed planning process if requested.

In the case of the M4 East and the New M5, the contract for construction was awarded before the EIS process. In the case of Stage 3 linking the M4 East and the New M5, it so far appears that this will not be the case. But the whole planning process is being rushed to meet the NSW government's schedule 51% or more of SMC. Once the SMC is privatised, residents are

²⁴ Knaus, C. WestConnex: the stink of controversy that fails to go away <https://www.theguardian.com/australia-news/2017/jul/08/westconnex-the-stink-of-controversy-that-fails-to-go-away>; Saulwick, J. 'Mud flies as WestConnex landfill stoush escalates' <http://www.smh.com.au/nsw/landfill-site-stoush-could-blow-out-westconnex-cost-20160124-gmcuq3.html>; Bacon, W and Peter, C. WestConnex's Asbestos Problem <https://newmatilda.com/2015/10/02/westconnexs-asbestos-problem/>

understandably concerned that it will be even harder to hold the consortium constructing and operating WestConnex tollways accountable in the future.

In 2010, an RMS Review of the M7 Motorway, Cross City Tunnel and Lane Cove Tunnel made two relevant recommendations.²⁵ These were:

- The development of a framework for public interest evaluation of motorway proposals will assist in selecting an appropriate procurement model for future motorway projects.
- Integration with the surrounding road network and incident management planning should commence early in developing a motorway project.

Neither of these policy recommendations appeared to have been successfully pursued by the NSW government since its election in 2011.

Protecting the Public Interest

When Transurban representatives appeared recently at the NSW Tolls Inquiry, they were asked by Committee member John Graham MLC how the public interest was protected in the development and operation of tollways.²⁶ Andrew Head, Group General Manager, NSW Business, Transurban referred to the role of “probity advisors”. Probity advisors are corporate firms that specialise in ensuring the probity of their clients operation, they are not tasked with protecting the public interest.

Concerns about the protection of the public interest in the context of tollways are further raised by the contracting out of probity functions to private consultants rather than a body or person that has the function of independent oversight on behalf of the community.

²⁵ <http://www.rms.nsw.gov.au/documents/projects/sydney-north/lane-cove-tunnel/m7-motorway-cct-lct-post-implementation-review-report.pdf>

²⁶ Evidence of Mr Head begins at page 2

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/9922/Transcript%20-%2011%20April%202017%20-%20CORRECTED.pdf>

Labor MLC John Graham in response to Mr Head from Transurban on April 11 2017: “one of the issues with the process you are describing is that many of the people around that table are agencies involved in the process and they will appropriately take the view that there is no-one independent who will take a step back and assess is this a good deal for the public.” ..Also “But there is also no-one at the table who can say this is a good deal for the public. We are really relying on the word of the government—governments of either persuasion; this is not a partisan point—or the word of Transurban or whatever company is involved; we are not clear on how much profit is being produced; there is no-one independent who takes a step back and says, “We’ve looked at the deal, we’ve looked at the details, this is a good deal for the public”.

It is not even clear that public servants employed by the RMS are involved in the interface and negotiations between RMS and SMC or in managing the SMC tenders. For example E3 Advisory reports on its website that it is responsible for “key interfaces” between RMS and WestConnex (SMC). (<http://www.e3advisory.com/case-studies/westconnex>.)

Even staff who wear WDA or SMC badges or uniforms at ‘community feedback’ events turn out to be on short term secondment from large engineering or other firms that are involved in other aspects of the closely connected tollway and roads industry.

All of these factors add to the impression that private interests have taken over the planning process and there is no one or body tasked with protecting the public interest and impacted communities.

Integration between toll road and other roadwork planning

There is also many examples that could be given of how the planning of WestConnex has not be integrated with the rest of the road network. For example, the approval for WestConnex included a widening of Euston Rd in Alexandria which will result in more than 50,000 cars entering an already congested area of Inner Sydney. This end of WestConnex included an absurd proposal for a six-lane road to be built within 2 metres of residents’ homes. Residents were told that this could not be changed. Only after further publicity and protest did RMS agree that there would be a review of the decision.²⁷

When residents ask Westconnex and RMS/AECOM traffic planners how the extra traffic will be dealt with during the EIS process, they were told that this was “outside the parameters of the project.” WestConnex staff even acknowledged that roads would already be beyond 100% capacity at the time when the Stage 2 New M5 was built. After the rushed planning process was over and the Minister had granted approval, RMS announced further road widening that will do little more than remove even more trees, take roads closer to more homes and shift the bottleneck. Although these RMS works flow from the soon to be privatised WestConnex, they have not been included in its \$16.8 million budget.

Similarly when WestConnex recently released maps of a potential route for the Stage3 M4 M5, they referred to ‘King Street Gateway’, which is also part of the supposed solution to extra traffic that will pour into the area from the WestConnex Interchange at St Peters. When the community asked

²⁷ Highway to put health and young lives at risk
<http://www.dailytelegraph.com.au/newslocal/news/highway-to-put-health-and-young-lives-at-risk/news-story/45d77b3d0df7f69b9c66afa1cc03568c>

WestConnex for more details, they were told that this 'King Street Gateway' that would supposedly steer traffic away from King Street was not part of WestConnex and therefore no more information was available. (Personal communication with author and the Save Newtown community group.)

The geographical scope of the EIS traffic studies abruptly stop very close to the end of the actual WestConnex project area. There has been no overall assessment of the impact on local roads. The cost of dealing with this problem has been transferred to local Councils. This year the Administrator of the Inner West Council issued a media release stating that "for months we've been asking that Roads and Maritime Services provide traffic data that will allow us to carry out a study into the local traffic impacts of each Stage of WestConnex. They have not provided it so we will gather the information ourselves." This has forced the Council to spend \$500,000 doing its own study.²⁸

Inequity in the tolling process

Others will have dealt with this issue in more detail in their submissions.

In the case of the Westconnex, there is a plan to reimpose tolls on the widened M4 to fund other parts of the network. The government plans to sell this concession along with all other parts of the project next year. Tolls exacted on those using the widened M4 could be paid back over several years but instead they will be imposed for decades to recoup the funds for other less profitable parts of the network.

Given the poor state of public transport and the entrenched car dependency of large areas of Sydney including Western Sydney, it is little wonder that it is little wonder that thousands of residents have signed petitions against these tolls. This is not "user pays". This is an inequitable means by which some residents and truck drivers will end up funding unprofitable tollways for other residents in other areas. Meanwhile these other residents suffer the social and health costs of car dependency.

It is also unacceptable that the NSW government has indicated that tolls will potentially be raised 4 per cent a year or CPI, whichever is higher. Already other tolls are rising higher than the CPI and are adding to cost of living pressures on some Sydney residents. The impact of this needs to be included

²⁸ Council investing \$500,000 to Analyse WestConnex
<http://www.innerwest.nsw.gov.au/news-hot-topics/media/media-releases/council-investing-500-000-to-analyse-westconnex>

in cost benefit analyses as more money spent on tolls may mean money not spent on education, health or quality of life expenses.

Unacceptable secrecy

Traffic forecasting on which tollway proposals rest are notoriously uncertain. From that point of view, it is a matter of concern that SMC or RMS have never been prepared to share with other experts and consultants the WestConnex traffic model. This would have enabled some independent assessment of the time savings and traffic calculations on which proposals are based.

WestConnex and NSW Planning claim to have used peer reviewers but these reports have also not been made public. As I previously reported in New Matilda, one of these peer reviewers was involved in the AECOM assessed Clem 7 project.

Denis Johnston worked for AECOM including on Clem 7 until 2008 when he set up as an independent consultant. In early 2013, he was invited to advise and be an “independent” peer reviewer of the WestConnex Traffic Model.

He received two contracts amounting to \$130,000 to review the traffic model in 2013 alone. When New Matilda rang him, he said, “I can’t speak to you. I am engaged in a role with the government to advise on this matter so I will have to terminate this call.”

It is not possible to report how much he has subsequently been paid because the rest of his contracts are not publicly available.

In 2011 Denis Johnston made [a submission](#) ²⁹to the Department of Infrastructure in which he defended the profession of traffic forecasting in Australia, which he described as “a very small number of people in a small number of companies”. He acknowledged that lawsuits resulting from false predictions would be a “drag on [a company’s]share price and create a risk to its ability to borrow or obtain insurance” but argued it would be “naive in the extreme” to penalise forecasters as this would result in “all forecasting companies exiting the field”.

He advocated more government support for forecasters and independent review, although he did not say whether this should be made public.

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https://infrastructure.gov.au/infrastructure/public_consultations/patronage_forecasting_submissions/files/johnston_services.pdf

Johnston also acknowledged that “downside” risks had not previously been made “clear enough to ‘Mum and Dad’ investors – and even to small institutional investors. They generally don’t have access to the full traffic report – just a summary included as a ‘Product Disclosure Document’ in the prospectus – where there is limited scope to review all possible forecast risks and outcomes.”

He argued, however, that the failed projects had been taken over by other private companies and added to overall public infrastructure. He assumed, “toll road projects were presumably identified by State Governments as being in the public interest prior to a decision to proceed to being delivered”. He did not discuss the active role that the tollway lobby plays in pushing government transport planning towards ever more road projects, and the future tolls that the public would be paying to tollway owners, especially Transurban.

It would seem that with the transfer of the risk of funding tollways transferred from the private sector to the public, secrecy and limited release of information now also applies to the public.

It may also be that Johnston is one of the few available traffic forecasting experts available to do peer reviews but his choice as a reviewer for WestConnex seems questionable, especially when the peer reviews are not made public.

Secret contracts

Since the SMC was turned into a private organisation, no WestConnex contracts have been published. The publication of public contracts is a time-honoured and basic accountability measure. It is extraordinary that there is such a lack of accountability for Australia’s biggest infrastructure project.

The CEO of SMC Dennis Cliché recently appeared at the NSW Tolls Inquiry. He was asked a number of basic questions about WestConnex assertions, a number of which he took on notice. Answers (or non answers) to those questions have now been received and are published here.

(<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryOther/Transcript/10778/Answers%20to%20questions%20on%20notice%20-%20Sydney%20Motorway%20Corporation.pdf>)

SMC refuses to reveal its basic expectations of toll revenue and other matters on the basis that this is “commercially in confidence” information. Given that we are talking about a system of transport that is expected to be used by so many Sydney residents and businesses, it is disturbing that these basic calculations are not available.

The updated SMC business case which was finally released late in 2015 carried so many redactions that it was difficult to evaluate its claims. However the City of Sydney commissioned an assessment that indicated that the lack of transparency about financial claims hid many gaps and problems.

http://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0008/251891/Report-SGS-Westconnex-Business-Case-Final-Report-160204.pdf

This City of Sydney report demonstrates why there should be more transparency and independent scrutiny of toll road proponent claims.

This resistance to the release of information happens on every level of the project. When resident of St Peters filmed a demolition company removing asbestos without protection, I requested the names of the companies contracted to do the demolition from SMC. This information was refused on the basis that it was "commercial in confidence." Residents are served bland and delayed responses to their complaints. (This statement is based on personal knowledge and communication with the author. More information could be supplied on request.)

Political Donations

When he appeared at the NSW Tolls Inquiry, Transurban's Mr Head claimed that the bipartisan support for tollroads is evidence of their benefit. Rather than being evidence that tollroads are beneficial, this raises questions about how this bipartisan support has been achieved when the merits of tollways are questioned by transport planning experts. In this context I draw the Committee's attention to the road lobby's political donations. Senator Lee Rhiannon completed a report on these in 2016. http://lee-rhiannon.greensmps.org.au/sites/default/files/160627_donations_roadway_wc_0.pdf

I quote from the report:

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.

Independent transport planners reject the arguments for a massive expansion of tollways in Sydney. Their critique has not been the focus of this submission.

This submission outlines some of the available material on which it can be concluded that the WestConnex project lacks transparency and is insufficiently accountable. Thousands of residents are already suffering the impacts of that and millions more potential users will if it continues.

Transurban is already in a position when it exercises too much economic power over car users in Australia's major cities. It is also insufficiently accountable and transparent both in its own operations and in its dealings with government and consumers.

More material is available to back up the arguments in this submission.

If considered of assistance, I would be available to attend a hearing of the Committee.

Since NSW donation reform in 2009 less money, there have been less donations from construction companies and what has flowed has tended to end up with Federal or other state parties. The report includes an analysis of donations around the early stages of WestConnex funding and planning in 2013.

Donations are not the only way that companies buy influence. For example Fairfax's investigative team reported in February 2015 that,

"Former NSW premier Barry O'Farrell was bought a \$1195 Mont Blanc luxury pen by a company in the bidding for major construction contracts in Sydney – according to its records – but the outgoing politician says he has no memory of receiving the gift and it has never been declared on the parliamentary register of interest as required by law..... The latest gift was revealed in the expense accounts of construction giant Thiess, which recorded the gift of a Mont Blanc Solitaire ball point pen to Mr O'Farrell.

The revelations about the O'Farrell gift come after Fairfax Media revealed on Monday how Thiess chief executive Bruce Munro is wanted by Indian police for questioning over an alleged fraud against one of the company's former Indian business partner.

A legal source said an internal Thiess review of political gifts, sponsorship and other expenditure had identified the luxury pen as a gift for Mr O'Farrell. The date of its purchase is unknown, but the legal source said the internal review identified other Thiess gifts and sponsorships covering the 2012 and 2013 calendar years."³⁰

Theiss was previously a subsidiary of Leighton and is now like Leighton Contractors (now CPD Contractors) a subsidiary of CIMIC, which is owned by the Spanish conglomerate Grupo ACS. The article referred to above was one of a considerable number of Fairfax Media stories about allegations of corruption at Leighton Contractors. (Some of these are summarised in the Guardian piece by Carmen Lawrence mentioned above.)

Of course, none of this is evidence of corruption in the case of any particular tollroad or road project but few would doubt that the high level of donations over a long period was designed to buy political influence over transport decision making.

Conclusion

³⁰ <http://www.smh.com.au/nsw/former-nsw-premier-barry-ofarrell-cant-remember-being-given-mont-blanc-pen-20150216-13gdh1.html>

Part Two

b) Air Quality

The Committee will have received a lot of submissions expressing concerns about Air quality.

The concerns are met with consistent reassurance from NSW RMS and its air quality expert. However the public is increasingly aware of the dangers of air pollution and that there are no safe levels of PM 2.5.

The EIS acknowledged that there could be impacts on PM 10 levels during construction but stated that these could be adequately mitigated. This is just one example of 'push back' on concerned stakeholders relies on bland assurances that often turn out to be unreliable

St Peters

The situation in which the air can be monitored at a school for more than three years without the results being distributed in an accessible form to the community is completely unacceptable in a democratic society

WestConnex has had a huge impact on the quality of life in St Peters and this has impacted on numbers at the school. This has caused an anxiety amongst some parents that an otherwise good school could be closed.

Parents at the school Ngaire Worboys and Peter Ross secured a commitment in writing from SMC community engagement staff that the results would be supplied to the school but that has never eventuated.

In my role as a journalist, I contacted the Education Department who were adamant that they had absolutely no role in relation to the Pacific Environment Air Quality Data. I am surprised that the Education Department would not secure an agreement for access to the data in return for allowing Westconnex to establish a monitor on the school grounds for what will be a period of more than a decade. Surely the Department owes a duty of care to use all available information to protect the safety of children.

Monthly reports that could have been made public were withheld for many months. They are published in a manner than means few members of the public would ever find them. Even if they did find them, there is no progressive reporting or analysis of results that enables the community to make sense of the results.

After I located them, Luke Bacon and I collated the results so that we could make meaningful comparisons. Open data specialists, Luke Bacon and Henare Degan and I produced *'Dangerous pollution at St Peters School – why didn't anyone tell the parents.'* One graph is missing in this print out and is on the page following the article. Subsequently I reported "WestConnex pollutes primary school".

Education | Environment | Law & Justice | Transport

№ 33 in [Inside Westconnex](#)

Dangerous pollution at St Peters School—why didn't anyone tell the parents?

By Wendy Bacon, 7 June 2018

By Wendy Bacon, Luke Bacon and Henare Degan

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An air quality monitor at St Peters public school in Sydney's Inner West has recorded the highest average levels of PM 10 of any Sydney monitoring site during the first three months of this year.

The monitor also recorded the highest average level PM 2.5 levels from January to December 2017 with a level of 9.6 u/gm³, which was slightly above Chullora in Western Sydney and well above any other site monitored by the NSW Office of Environment and Heritage in 2017. The national annual limit is 8 u/gm³. Between April and June 2017, the average PM 2.5 levels were above any others in Sydney.

However, although the St Peters community has constantly complained about the impact of dust and odours on their health, they have been kept in the dark. WestConnex commissioned the reports as part of the Environmental Impact Statement (EIS) process. NSW Roads and Maritime Services (RMS), the NSW Environment Protection Authority, the NSW Planning Department and the NSW Health Department should have been able to easily access the data. But if they have, none of them have ever passed them onto the community, even when specific public health concerns have been raised.

Asked to confirm that he had not been able to obtain the results, the St Peters School principal Neil Lavitt followed Department protocol by referring me to the Education Department media unit. The NSW Education Department refused to state whether or not it was aware of the results, simply stating:

As the air-monitoring facility is owned by WestConnex, please direct your enquiry to them on: info@westconnex.com.au or 1800 660 248

When we asked why the ownership of the monitor prevented the Education Department from answering the questions, the spokesman was adamant that nothing more would be said.



The air quality monitor was installed by Westconnex consultants Pacific Environment at St Peters school in July 2015. (Last year, multinational Pacific Environment was taken over by an even bigger global consultancy [ERM](#)).

The monitor's original purpose was to record air quality data for the WestConnex Stage 2 New M5 EIS. It was also used for the Stage 3 M4/M5 EIS. It's situated on the far south-west corner of the spacious St Peters Public School grounds. Nearly three years

later, school parents have not even been able to find out if the monitor is still operating.

Back in early 2015, when the WestConnex Delivery Authority (later turned into the private corporation Sydney Motorway Corporation) wanted to install the monitor, the school community was very concerned about the health impacts of WestConnex. In March 2015, the P & C sent a list of questions to WestConnex community engagement manager, Louise Bonny. Some of these focused on how the school community could obtain the data recorded by the monitor. Ms Bonny replied:

WDA intends to make the calibrated data recorded by the air quality monitoring station publicly available....The calibrated data can be sent to St Peters Public School for distribution to parents and interested stakeholders.

She promised that WestConnex would work with air quality specialists to prepare a suitable format for presenting the data to the public.

The School P and C were not satisfied with the answers so it wrote a further letter. P & C Committee member Peter Ross wrote:

As you can imagine, we are very concerned about the impact of the proposed project on the health, safety and well being of our children, staff, parents and citizens, and others who use the School's facilities. We are aware that high concentrations of nitrous dioxide and other noxious gases released from tunnels, as well as the release of particular matter including ultrafine particulates, which possess significant toxicity, have been linked to a range of health problems including asthma, cancer, allergies (especially in children), eczema, hay fever, and strokes in adults.

He asked, "Does "intends" mean "will"? At what intervals will the data be made available?

In July, WestConnex's Louise Bonny responded:

Yes, WestConnex Delivery Authority *will* make the calibrated data recorded by the air quality monitoring stations publicly available. This data will be made available on a monthly basis....WDA will send the calibrated data to the school and to the P&C.

The parents also expressed great concern that there would be no monitoring of asbestos, given the amount that was to be removed from the landfill and in buildings that were to be demolished. Later parents were appalled to discover that the asbestos was being removed before the project had been approved and without any monitoring at the School.

The St Peters parents that we have spoken to believe that the results were never sent through and the school principal also does not have them.

Now three years later, this report confirms what many residents feared was the truth. Those living near the monitor and students who play on the oval will have been exposed on occasions to dangerous levels of pollution. Even more worrying, Westconnex told the school that they were placing the monitor well away from the major roads. The school buildings and a nearby preschool are much nearer to the WestConnex construction sites and major roads. For months, construction work using heavy diesel equipment has taken place within metres of homes in St Peters, including over 24 hour periods. It is highly likely that levels nearer the roads works have been higher than those near the air monitor.

As we reported in our [first story](#), PM10 and PM2.5 include particles, which when breathed in are small enough to penetrate the chest and upper back region of the respiratory system. The negative health effects of PM are well documented and occur over both short-term (hours and days) and long-term (months, years). PM can aggravate asthma and respiratory symptoms. Finer PM 2.5 particles and ultrafine particles (which are not monitored) are more clearly associated with higher risk of death from heart disease and lung cancer. People who are already ill or elderly and very young children are particularly vulnerable. There is no known safe level of exposure.

Where can you find the St Peters monitoring reports?

If you have the time, you can find some early New M5 St Peters reports by using a basic web search. Today if you search 'WestConnex and Air quality' you will find [this page](#). Most of the material at the top of the page is promotional and makes optimistic assertions, that have been contested by independent experts. If you scroll down to the bottom of the page, you will find the EIS Air quality monthly reports. The St Peters

data is inside the New M5 and M4/M5 monthly PDF reports. An internet archive search shows that the reports have not been published monthly and that most of the 2017 reports weren't published on the page until March this year.

The monitoring reports are not secret but nor are they accessible to the community as promised by WestConnex. They do not include detailed information, like tables with daily pollution levels, although these would be simple to compile with WestConnex's complete data.

Once you open all the monthly PDFs, you can search through them and compile all the data to see monthly results in context. The community should not be forced to track this data down and do this time-consuming analysis themselves.

There are also obvious errors in some of the reports, for example a table that shows different results than the corresponding chart for the period.

We've been through the reports. Here's a summary of what we found.

PM 10 monthly averages peaked earlier this year

The NSW Office of Environment and Heritage monitors particulate matter at a range of sites across Sydney.

For this chart, we selected the top five PM 10 results for OEHL monitoring from January to March this year and compared them with the WestConnex St Peters results. As you can see the levels at St Peter are substantially higher than others.

Comparing PM10 in Sydney: St Peters Public School most polluted

Values are particulate pollution, PM 10, ($\mu\text{g}/\text{m}^3$) monthly average (from 24 hour average values). St Peters Public School is compared to the top 5 sites for monthly PM 10 in Sydney, according to the NSW Office of Environment & Heritage. There is a violation of The National Environment Protection (Ambient Air Quality) Measure when PM 10 measures over $50 \mu\text{g}/\text{m}^3$ on average for a day, or 25 for a year. Below are the monthly averages for the first three months of 2018.

St Peters Public School

January				31.2
February			28.2	
March				30.9

Liverpool

January			24.4	
February			24.4	
March			25.9	

Parramatta North

January			23.4	
February			23.2	
March			23.8	

Prospect

January			22.4	
February			22.4	
March			24.6	

Randwick

January			22	
February			22.3	
March			24.3	

Chullora

January			21.8	
February			22.4	
March			23.9	

St Peters Public School data source: <https://www.westconnex.com.au/air-quality>, Other sites from <http://www.environment.nsw.gov.au/AQMS/search.htm>

Chart: Luke Bacon • Source: WestConnex, and NSW Office of Environment & Heritage • [Get the data](#) • [Created with Datawrapper](#)

PM 10 rises as construction get underway

Communities are understandably worried when there is a threat of increased pollution from construction, traffic and pollution stacks, all of which threatened St Peters. The community fought hard to stop the New M5. They engaged intensely with the EIS process including the issue of [air quality](#). Sydney Motorway Corporation has no air quality experts. Instead they use the RMS Air Quality specialists, who constantly reassured concerned residents that their fears were baseless.

In late 2015, a massive amount of dirt was moved around the site and tons of asbestos was removed. Before residents started making complaints, some trucks were [not covered properly or enough water used on the site](#).



St Peters resident Ngairé Warboys protesting before construction started. Photo: Chris Nash

The New M5 was approved in [April 2016](#).

In the final months of 2016, demolition of houses and industrial buildings began in earnest. Only metres from St Peters School, houses were crushed, leaving others facing directly onto major roadworks. This is when the situation began to rapidly deteriorate. The pressure on some residents was relentless. Some have been driven to breaking point by endless noise. Houses have literally shaken, until pictures fell off the wall. Plumbing has been damaged and floors cracked. Compared to these physical impacts, air quality is a hidden issue. But on bad days, dust is everywhere. Over quite a large area, residents reported increased asthma, bronchitis, high blood pressure, and conjunctivitis.

The community was concerned that PM levels were rising but had no reports to prove it.

We charted the PM 10 levels to create this graph, which as you can see shows that the PM 10 levels rose in late 2015, then climbed from late 2016, reaching a peak this year. The construction will continue for many months yet, and years if Stage 3 goes ahead. The monitor of course only reflects air quality 200 metres from the massive construction sites. It could be higher or lower in other locations.

PM 10 Pollution Rising at St Peters Public School

25 Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) is the maximum allowed 12 month average for [particulate pollution PM 10](#) by our [National Environment Protection \(Ambient Air Quality\) Measure](#).

According to WestConnex, PM 10 averaged **27.44** $\mu\text{g}/\text{m}^3$ in the 12 months to May 31, 2018 at St Peters Public School.

Intensive WestConnex work in St Peters began in late 2016.

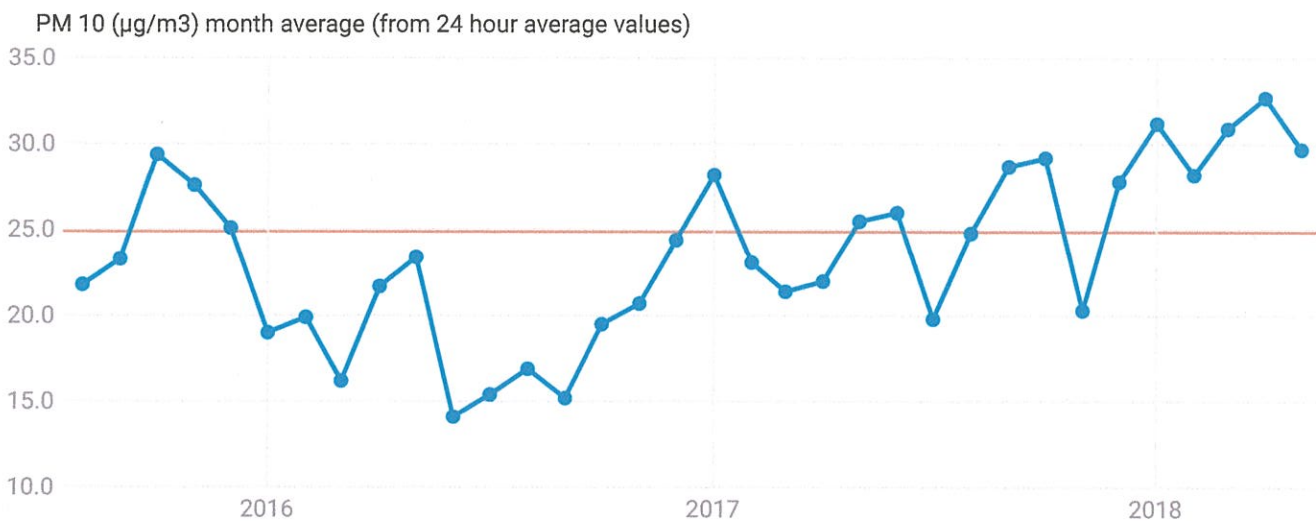


Chart: Luke Bacon • Source: [westconnex.com.au](#) • Created with [Datawrapper](#)

Residents appeal to Inner West Council

Westconnex Action Group founder Pauline Lockie, whose home was one of those demolished, was elected to Inner West Council (IWC) as an Independent Councillor last year. In April this year, she successfully moved a motion for Council to report on the effectiveness of current air and noise monitoring and the capacity of Council to do some monitoring itself. Three St Peters residents appealed to the Council for more support, including a parent at the school Ngaire Worboys who said:

I live about 25 metres from the road widening that is going on at the moment. It's like living in a construction zone. And the thing with complaints to the Sydney Motorway Corporation, they don't take them seriously at all. People are just tired of complaining. They feel demoralised with they ring them (WestConnex) up. What Anne (another resident) said about the contemporary construction phase is that it has already been 2 years and we look set to have another five - possibly. It's definitely not temporary.

My son goes to a local public school and I have concerns - health and safety concerns. I know that the Principal has contacted the SMC with concerns and they have simply fobbed him off..... and that needs to be looked at. Also we have an air pollution monitoring on the site of the school and we were promised access to that data and we cannot access that data. The community is suffering and we need some help and we need the Council to advocate strongly for us. I don't know It's a bit of a David and Goliath Situation but really I mean, the residents are really suffering and we need help. Please. Thank you.

The Noise and Air report found that air monitoring was too expensive. It made no reference, let alone answered, the concerns of the three St Peters residents. The report didn't state whether they had looked for the St Peters reports.

A week ago, we emailed the IWC media officer and asked her to pass onto the Council's WestConnex Unit a series of questions. We explained that the first question was urgent. After receiving no answers, we emailed the officer to enquire about when the answers would be ready. Yesterday, we drew her attention to the urgency of the question and said that we intended to publish. She sent staff a follow-up email. I received no answer to this simple question:

Has the Inner West Council ever been supplied with monthly reports that contain the monitoring for St Peters School? If not, has the Inner West Council even requested them? If yes, does the Inner West Council pass them onto the School, the P& C, Councillors or the local community? Has the IWC Council had any discussions with the school about the results?

It may seem unfair to raise the lack of action by the IWC. But it's even more unfair to expect the community to not only find information but process it as well. In the desperate David and Goliath situation described by Ngaire Worboys, the Council has a far better chance of getting information than residents.

Odours and high PM 2.5

The old toxic Alexandria Landfill was not properly closed when the construction phase began. For months last year, stinking gases were emitted from the massive site. After endless complaints and media reports, the NSW Environment Protection Authority (EPA) took action in the Land and Environment Court against CPB Contractors Pty Ltd for [allegedly causing offensive odours](#) from the WestConnex St Peters M5 Interchange site on four occasions in April, May and June, 2017.

According to the air quality reports, in the months of April to June 2017, the PM 2.5 at St Peters School averaged 14.2 u/gm³, 14.1 u/gm³ and 17.2 u/gm³. These levels were high and substantially higher than any OEH site. This finding raises concerns about what toxic substances, which form part of PM 2.5 but are not being separately monitored, were present in the air during this period.

High levels of PM 10 at St Peters School linked to construction.

One of the major flaws in the New M5 EIS process was the finding that construction impacts did not need to be quantified because they would only be 'temporary'. This reasoning was applied again during the Stage 3 M4 M5 process, although construction impacts will go on up to 7 years in some areas. The NSW EPA was critical of this response but NSW Planning approved it. The idea that the construction impacts are temporary is absurd. But the EIS Air quality case depends on no account being taken of construction dust. For this reason, RMS and Sydney Motorway Corporation have a very big stake in asserting that elevated levels of pollution are not due to construction.

It is true that pollution levels do strongly reflect broader background levels and high levels in Sydney often reflect hazard reduction and bushfires. But If polluted air from bushfires is added to already high levels of pollution generated by road work sites raised and the emissions of heavy diesel machinery, levels may peak even higher. This issue needs to be examined by experts.

At the M4 East Air Quality Consultative Committee in March, community and Council representatives raised concerns about construction dust. According to the minutes, an SMC or RMS representative told the Committee members that construction dust is unlikely to contain PM 10. In fact construction dust is [often associated](#) with PM 10.

But if you read the St Peters air quality reports, you find evidence that WestConnex is fully aware that this is not the case.

On January 15 and 16th this year, the PM 10 levels reached an extremely high average of 80 u/gm3 at St Peters public school. These levels were significantly higher than at any other site and so it was "suggested to be a highly localised Particulate Matter event specific to the site." Although the hourly data is not available (as it is for OEH sites), the event appeared to last for 48 hours.

In March 2018 Pacific Environment (now ERM) acknowledged that a national exceedance (50 u/gms3) of PM 10 at St Peters School could only be explained by a localised event "potentially due to construction activities." And there the evidence was left hanging. What were these events? Did anyone at ERM (Pacific Environment) contact WestConnex or the NSW EPA to recommend an investigation?

Could these admissions be one reason why WestConnex and RMS have been slow to release the reports?

Conclusion

In April 2018, the WestConnex Action Group spokesperson Rhea Liebmann wrote to the Minister for Health Brad Hazzard, the Minister for Environment Gabrielle Upton and the Minister for Planning Anthony Roberts expressing concern about elevated levels of PM 2.5 at Haberfield Public School and asking for an investigation into air quality problems revealed by the monitoring. The letter also referred to residents at St Peters experiencing breathing difficulties, worsened asthma. sore eyes and allergic

reactions. So far, only the Minister for Health has replied and he referred the matter to the Minister for WestConnex Stuart Ayres. Last month, we raised these same concerns with the Minister for WestConnex and he referred them back to the Sydney Motorway Corporation. The Department of Education also refers any questions back to Sydney Motorway Corporation.

WestConnex has a team of community engagement managers, one of whom describes his responsibilities as "navigating a politically sensitive environment." St Peters school community was such a "politically sensitive environment' in 2015. Did SMC ever intend to show the St Peters residents the air quality results? We will never know.


Responsible Ministers in NSW are deflecting responsibility for public health to the private and unaccountable Sydney Motorway Corporation, which is currently on sale to the highest bidder of three consortia. SMC rides roughshod over people's health and safety and should not be doing its own air monitoring. There is a clear conflict of interest in this arrangement.

This is a perpetual motion machine where the buck never stops long enough to hold anyone accountable. Meanwhile, students and residents suffer the health impacts. Will anybody acknowledge a duty of care in this situation?

Wendy Bacon is a member of WestCONnex Action Group

Tags: [ERM](#), [Neil Lavitt](#), [Ngaire Warboys](#), [Office of Environment and Heritage](#), [Pacific Environment Services](#), [St Peters](#), [St Peters School](#), [WestConnex Air Quality](#)

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More from [Inside Westconnex](#)

An investigation into Westconnex, a 33 kilometre motorway that the NSW LNP government wants to build in Sydney.

22 August 2018

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St Peters residents Ngaire Worboys and Janet Dandy-Ward campaigning against WestConnex in 2016. Photo supplied by Wendy Bacon

WestCONnex pollutes primary school

Posted June 20, 2018 by Lanie Tindale (<http://www.altmedia.net.au/author/lanie-tindale>) & filed under Inner West Independent (<http://www.altmedia.net.au/category/inner-west-independent>).

By Wendy Bacon

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By Wendy Bacon

An air quality consultant company reported to the NSW Planning Department that WestConnex M4/M5 construction would have no 'significant effect' on air quality at the same time as its own monitoring reports found that unusually high levels of fine particulate matter (PM) at St Peters school were likely to be caused by local construction activities. The only major construction activities happening in the area at the time were large scale WestConnex New M5 works.

The company is Pacific Environment, which has been paid more than \$8 million by the Sydney Motorway Corporation to prepare air quality reports for the Environmental Impact Statements (EIS) for all stages of WestConnex. As previously reported by City Hub, Pacific Environment was also commissioned by the Advisory Committee on Tunnel Air Quality (ACTAQ) to independently evaluate the model it was using to assess WestConnex impacts on air quality, although it was also responsible for the EIS reports.

Pacific Environment set up a monitor at St Peters School in August 2015 to gather background data on air quality for the New M5 and the M4/M5 tunnels, which join near St Peters Public School and local St Peters community preschool. Both schools are close to the massive St Peters Interchange and two proposed ventilation stacks.

Since major construction began in late 2016, residents have constantly complained about dust, odours and noise. Residents fear this will continue since Stage 3, which involves five more years of construction, has been approved by the Minister for Planning Anthony Roberts. NSW Planning recommended approval, despite the NSW Environmental Protection Authority expressing concern about inadequate assessment of its impacts.

The 2017 EIS monthly monitoring reports were not published on the WestConnex website until April this year, despite the Sydney Motorway Corporation that owns WestConnex, giving a written assurance to the school's P and C representative Dr Peter Ross in 2015 that reports would be sent to the school. In 2015, the School wrote to the Department of Education reminding it of its 'duty of care' to provide a 'healthy environment for students and asking for assistance for the school in dealing with the massive EIS. No assistance was offered. As far as parents know, the school never received the reports.

The reports show that between April and June last year the PM 2.5 averaged 15.3 u/gm3, which was substantially higher than recorded at any NSW Office of Environment and Heritage (OEH) monitor. The highest OEH averages for the three months were at Chullora with 9.6 u/gm3 and Liverpool with 9.5 u/gm3. The national annual limit is 8 u/gm3, which was exceeded last year at the St Peters School monitor.

In May 2017, the Pacific Environment monthly report noted that the high levels of PM 2.5 "could potentially be attributed to a significant increase in construction work in the area." On one day, the average PM 2.5 exceeded national daily average limit, which is 25 u/gm3. Other Sydney monitors did not reflect these high levels.

For the first three months of this year, the St Peters School monitor also had the highest average levels of PM 10 u/gm3 of any monitor in Sydney, including 6 monitors along the route of the M4 East.

Extensive scientific research has shown that there are no safe levels of PM 2.5, which is associated with increased risk of lung and heart disease and is particularly dangerous for young children. Larger PM 10 is also associated with severe respiratory illnesses and is known to be contained in road construction dust.

The School Principal Mr Neil Lavitt has told parents that he was not sent the air monitoring reports. The Education Department refused to allow Mr Levitt to talk to City Hub. A department spokesman stated: As the air-monitoring facility is owned by WestConnex, please direct your enquiry to them on: info@westconnex.com.au or 1800 660 248." It takes two weeks or more to get answers from WestConnex.

St Peters Preschool Director Laurel Walker told City Hub she hadn't received any results and hadn't asked for them because they "have not been front of mind." She was meeting with WestConnex on Wednesday afternoon. When asked if the Preschool had received a grant from WestConnex she declined to talk further.

City Hub spoke to Ms Walker shortly after the Premier Gladys Berejiklian, the Treasurer Dominic Perrotet and the Minister for Early Childhood Education Susan Mitchell paid the school a visit to promote the preschool subsidy for 3 year olds, which was part of the NSW Budget this week. As they left the preschool, a P and C member tried unsuccessfully to talk to them about the air quality issues but they rapidly disappeared into waiting cars.

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 Intechange 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's 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 is linked to respiratory illness, asthma and very severe conjunctivitis.

Westconnex Action Group spokesperson Janet Dandy Ward, who has been campaigning against WestConnex since 2014 told City Hub, "I'm amazed that the Premier would front up to St Peters today when she has refused to answer thousands of submissions and letters stating our concerns about health impacts. We all know from experience how horrific the construction impacts have been and warn other communities to ignore Sydney Motorway Corporation and NSW Roads and Maritime Services false assurances about air quality. Our community's health should rate above the next tollway." She called for a halt to work and an immediate investigation into the impacts of WestConnex construction on community health.

Scores more schools and child care centres will be near constructions sites if WestConnex Stage 3, the F6, the Western Harbour Tunnel and the Beaches Link go ahead. Rozelle School will only be 50 metres from a proposed construction site.

City Hub attempted unsuccessfully to speak to Pacific Environment.

Wendy Bacon is a supporter of the WestConnex Action Group and a past Professor of Journalism at the University of Technology, Sydney.

An earlier version of this story incorrectly stated that the Minister for Education Rob Stokes visited the preschool. It was in fact the Minister for Early Childhood Education who was at the school.

Tags: ST PETERS ([HTTP://WWW.ALTMEDIA.NET.AU/TAG/ST-PETERS](http://www.altmedia.net.au/tag/st-peters))

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Air quality along the M4 East

The governance of air quality measurement and impacts is relevant to ToR c) and j).

Conditions of approval for the M4 East mandated that six air quality monitors should record air quality data for one year before operation of the M4 East tunnel. There was also a requirement An Air quality Community Consultative Committee to be set up including three members from communities at both the eastern and western ends of the project.

It's dismaying that the air quality monitoring exercise was placed under the control of SMC contractors CPB Contractors (previously Leighton Contractors). Ecotech has been commissioned to conduct the monitoring for at least three years at considerable public expense. This exercise should be an independent one including air quality experts who could assist the community in gaining access to and interpreting the data. As the situation currently stands, there is only one air quality expert - RMS's air quality expert Andrew Mattes.

These air monitors will contribute data towards an understanding of air quality along the project route However even if they were to show some improvement in air quality along the route, how would anyone know after two years if the improvement was due to the end of construction, other changes in traffic, other factors or the effective removal of emissions? This is especially so because those responsible for the project demonstrate little interest in analysing the current monitoring results.

How can these monitoring operations allay community concerns about the stacks and air quality when there are no monitors at all on the south side of Parramatta Rd and none west of the Homebush stack, near which thousands of people are living in high-rise apartments that could be impacted by emissions from the stack?

The decision-making process for the location of the monitors was rushed and consultation, almost meaningless. Even the selection of Community representatives seems to have been inadequate and biased. For more on this please see the series on air quality my blog (wendybacon.com) and submissions by **Rasmus Torkel** and the **Haberfield Association**.

I will be publishing more reports and seeking independent expert advice. However I think it is reasonable for the community to be concerned that:

- *After nine months of monitoring, the Powell's Creek Strathfield monitor has recorded levels that exceed annual averages for both PM 10 and PM 2.5. There have been 12 daily exceedances of national air quality standards.*
- *After nine months of monitoring, the Haberfield School monitor is recording approximately an average of 11 u/gm3 and the nearby Ramsay Street*

monitor more than 12 u/gm3. The Ramsay Street monitor has recorded more 12 exceedances of national air quality standards.

- *Claims by WestConnex and government officials and MPs that there is no difference between the results for the Office of Environment and Office of Heritage and Ecotech monitors need to be carefully tested. Similar claims in the WestConnex EIS monitoring results are not always correct.*

In an article for City Hub, Chris Nash and I raised concerns about conflicts of interest in the choice of consultants. The Chief Scientist disagreed. In a response she acknowledged the conflict but argued it was managed. (see stories overleaf).

So often with this project, conflict of interest concerns are pushed aside. Surely it would be better to avoid them in the first place.

I am concerned critics of the project have been pushed aside. I am aware that engineer Noel Childs has concerns about the use of longitudinal ventilation in long tunnels. Those concerns were expressed during the New M5 EIS process but appear not to have been heeded.

NSW EPA's advice ignored Even the NSW EPA argued that the impacts of Stage 3 had not been sufficiently assessed. On what basis did NSW Planning consider that the regulator's advice should not be heeded, especially as the impacts of Stage 1 and 2 were serious and ongoing? You can't blame the community for reaching the conclusion that any independent assessment was overwhelmed by prior political decisions.

In a letter to NSW Planning in February this year, EPA Metropolitan Regional Director Ms. Giselle Howard acknowledged that RMS had addressed some concerns raised by the EPA in its earlier rejection of the EIS, but went on to explain that the agency "reiterates its previous advice that all impacts be "assessed in detail during the Environmental Impact Assessment rather than under post-approval management plans"

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WestConnex conflicts of interest

By Wendy Bacon, 24 January 2018

Report by Wendy Bacon and Chris Nash.

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An apparent conflict of interest has arisen in the choice of the company Pacific Environment to do research for a committee, chaired by the NSW Chief Scientist and required to provide independent advice to the NSW Planning department for its assessment of the WestConnex Environmental Impact Statement.

The committee is the Advisory Committee on Tunnel Air Quality (ACTAQ), which has the dual roles of researching air quality in tunnels and providing independent advice to the Planning Department on EIS air quality assessment for large road projects such as Westconnex.

Pacific Environment is contracted by the Sydney Motorway Corporation (SMC) to provide the assessment of air quality impacts of all WestConnex tunnels for its EIS. The choice of a company that has a large commercial stake in Westconnex to assist in the supposedly independent ACTAQ research is an apparent conflict of interest.

The independence of the Chief Scientist's office in its approach to WestConnex is already a sensitive issue. This became clear when SMC CEO Dennis Cliche told an infrastructure conference last November that the Chief Scientist's submission to NSW Planning had been 'extremely complimentary' in its assessment of WestConnex ventilation stacks.

The Chief Scientist, Professor Mary O'Kane, rejected his comments as "false and misleading, calling into question her integrity and independence", and said they could undermine 'community confidence in the integrity of her office'. Mr Cliche

withdrew and apologised for his remarks.

Pacific Environment has ridden to the top of Australia's air quality assessment industry on the back of its contracts with SMC to assess air quality for three WestConnex tunnels. It was subsequently commissioned by ACTAQ to carry out a study evaluating the use of its GRAL air quality assessment model, which it is using to assess air quality for all WestConnex projects. GRAL is a model that was developed in Europe but had not previously been used in Australia. After review by a UK-based expert, Pacific Environment's study was published on the Chief Scientist's website in October last year.

Since 2014, NSW Roads and Maritime Services Department (RMS) has paid Pacific Environment more than \$7 million for its assessment and monitoring of air quality for WestConnex. Its last contract for \$546,000 for one year's air monitoring was published on the NSW tender database in October last year. This does not include a big contract for WestConnex Stage 3, which is not publicly available. Councils, the EPA and the Health Department along with thousands of community groups and citizens have been critical of the Westconnex air quality assessment.

City Hub became aware of Pacific Environment's study for the ACTAQ last week. Surprised that the Chief Scientist's Committee would commission the very company using the model for its WestConnex EIS to evaluate the model, City Hub contacted the Chief Scientist's office. We were told that the Committee's secretariat is based in RMS.

In response to questions, RMS media supplied the names of the people on the Committee which includes Professor Mary O'Kane, RMS CEO Ken Kanofski, NSW Chief Health Officer Dr Kerry Chant and an independent expert Dr Ian Longley, who is based at National Institute of Water and Atmospheric Research in New Zealand. The Environment Protection Agency, which has been critical of the WestConnex EIS, has only observer status.

City Hub submitted a series of questions to the Chief Scientist including: Did she consider that the choice of Pacific Environment to do the research could be perceived as a conflict of interest, given Pacific Environment has been responsible for conducting the air quality EIS for the M4 East, the New M5 and the M4/M5 link? If not, why not? And who paid Pacific Environment for the research that has been done for the committee? What amount was the company paid for this study?

Professor O’Kane herself has resigned as Chief Scientist, and is moving to her new position as Chair of the NSW Planning Assessment Commission. She was congratulated by the Minister for Planning Anthony Roberts on her performance as Chief Scientist and welcomed to her new role at the Commission, which has approved a record number of State Significant property development projects over the last three years. The State Significance classification is highly controversial because it weakens environmental protections.

A spokesperson for the Office of the Chief Scientist did not directly address the conflict of interest questions but sent a long response explaining that the ACTAQ is resourced out of RMS and does research at the request of the Minister for Roads. (At the time the Pacific Environment study was commissioned, this was the former Minister for Roads Duncan Gay.)

The spokesperson explained that when the ACTAQ decides to do the research, it sets up a steering committee to manage the project. The spokesperson did not explain why Pacific Environment was chosen but acknowledged that “conflicts of interest are important” and the ACTAQ works to prevent and manage them, including by engaging independent expert reviewers and by publishing raw data on the web. Both of these steps occurred in the case of the Pacific Environment GRAL study.

Dr Longley is both an independent expert who evaluates the EIS for the Chief Scientist and was also on the steering committee for the Pacific Environment ACTAQ study. Dr Longley told City Hub that he had no role in selecting Pacific Environment. He does not think there was a conflict of interest because the Pacific Environment’s role was to “describe and demonstrate how the model works, how it can be set up. It is left to the reader to draw conclusions about whether the model should be used or not and how it should be used. Because of potential conflict of interests, that was why it was set up that way and they (Pacific Environment) stuck to that scope.”

It is true that the study only made recommendations for ways in which GRAL could be used in future road projects. But the line between that and recommending its use is a fine one. No one explained why Pacific Environment rather than a company not involved in WestConnex was chosen to do the research.

The close relationship between the ACTAQ and the RMS will reinforce community scepticism about the integrity of the approval processes for Westconnex and other tunnels.

Dr Longley, who also reviews the EIS for the Chief Scientist, declined to comment on whether he is paid by the Chief Scientist's Committee or RMS which submits the EIS on behalf of the Sydney Motorway Corporation.

The issue of the lack of independence in the work of the ACTAQ is simply the most recent in a series of conflicts of interest in relation to Westconnex. Others include the contract with AECOM to manage the Westconnex EIS process although it had other commercial contracts in Westconnex; ARUP's role in assisting the Department of Planning to evaluate the New M5 although it had contracts with Westconnex; and the Federal Department of Infrastructure's choice of major law firm Allen Linklaters and AECOM to advise it on a \$2 billion concessional loan to Westconnex, although both companies were heavily involved in working for the Westconnex project.

[This article was first published by Alt Media](#)

Tags: [Advisory Committee On Tunnel Air Quality](#), [Anthony Roberts](#), [Dr Ian Longley](#), [Dr Kerry Chant](#), [Health Department](#), [Ken Kanofski](#), [Mary O'Kane](#), [Pacific Environment](#), [RMS](#), [Sydney Motorway Corporation](#), [Westconnex](#)

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An investigation into Westconnex, a 33 kilometre motorway that the NSW LNP government wants to build in Sydney.

22 August 2018

Haberfield dust storm – not just a 'regional event'



Photo by David Watson

NSW Chief Scientist Writes to City Hub

Posted January 31, 2018 by Alec Smart (<http://www.altmedia.net.au/author/alec-smart>) & filed under Featured Inner West Independent (<http://www.altmedia.net.au/category/inner-west-independent/featured-inner-west-independent>), Inner West Independent (<http://www.altmedia.net.au/category/inner-west-independent>).

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Letter from Mary O'Kane, NSW Chief Scientist & Engineer

I was concerned to read your article *WestConn conflicts of Interest*, dated 24 January 2018, suggesting that the Advisory Committee on Tunnel Air Quality (ACTAQ) did not deal with conflicts of interest in commissioning the 'Optimisation of the application of GRAL in the Australian context' study and report.

The ACTAQ takes its role ("to provide advice to the NSW Government based on national and international practice and experience with motorway tunnels...") very seriously, and is careful in its management of conflicts. The full terms of reference for ACTAQ are available on the Chief Scientist & Engineer website www.chiefscientist.nsw.gov.au/reports/advisorv-committee-on-tunnel-air-quality (<http://www.chiefscientist.nsw.gov.au/reports/advisorv-committee-on-tunnel-air-quality>).

The GRAL suite of software is an advanced package of freely available meteorological and air quality dispersion modelling software, which has been used in Australia for the first time for a project of its type by the WestConnex proponents' air quality consultants, and used in the WestConnex Environmental Impact Statements (EISs). During the assessment of the WestConnex M4 East and New M5 EISs, the ACTAQ report, requested by the Department of Planning on the two EISs had raised issues about the evaluation of the GRAL model in the EISs. The NSW Health comments on these EISs had also raised the question of the lack of validation of GRAL in the Australian context. (See Department of Planning website majorprojects.planning.nsw.gov.au).

While these EIS reports were responded to by the proponent, ACTAQ believed that more information was needed about the use of GRAL in Australian situations, given that it had never been used for projects of this nature in Australia before. Therefore, ACTAQ decided to commission a study that looked further at the GRAL model — how it compared with other models, how it compared with measured data, and what configurations should be used in the Australian context. Furthermore, ACTAQ wanted to make this study available with open data and in line with open government principles by getting information out and into the public domain, which aids transparency and in itself aids reducing conflict of interest. The goal was to have a report developed with clear recommendations about configuration and the application of GRAL to complex urban road networks in Australia.

ACTAQ decided that using Pacific Environment was the best course of action, even though they had been the consultancy that developed the EISs. They were the only consultancy that had extensive experience with the GRAL model on projects of this kind in Australasia, and would have considerable level of knowledge that could be imparted more widely. ACTAQ agreed that any potential or perceived conflicts of interest could be managed through appropriate governance measures that would also ensure a high quality study.

These measures included:

- *Appointing a steering group to provide guidance and oversight including independent experts such as Dr Mark Hibberd from CSIRO and Dr Ian Longley from NIWA in New Zealand who had been an author of ACTAQ's EIS submissions that made comments on the GRAL evaluation.

- *Engagement of a technical peer reviewer with expertise in air pollution statistics, whose review is available on the Chief Scientist & Engineer's website.

- *Making the final report and all data collected as part of the study available on the Chief Scientist & Engineer's website, with data able to be analysed by others.

What we have now is a study that, while paying careful attention to managing conflict of interest, enabled a significant level of knowledge transfer from Pacific Environment to open disclosure. The GRAL study provides considerable shared learnings now available through the report, and potential upskilling of the broader community on configuring the model. This includes information and raw data that other consultancies now have available should they choose to use the GRAL model, and wish to configure it for Australian conditions.

It is important also to note that this GRAL study report has not been used for direct decision making but does provide an important input into model development for those tunnels and road networks using GRAL.

The systems we have set up for the ACTAQ are working well, with processes facilitating independent experts from around the world reviewing material, providing advice and then this advice being responded to or acted on to improve air quality assessments for NSW tunnels further. However, we are always looking at new ways to enhance and refine our processes.

Questions about air quality of course are always welcome as we work to provide good advice to government, and people becoming deeply informed about these issues is encouraged. We suggest that those wishing to learn more visit the websites to find the relevant reports.

Yours sincerely

Mary O'Kane, NSW Chief Scientist & Engineer

Response to Chief Scientist by Wendy Bacon and Chris Nash (authors of the article)

There are two issues relevant to conflict of interest issues raised in our story.

The first issue is that the Advisory Committee on Tunnel Air Quality (ACTAQ) is managed and resourced out of the RMS which is the proponent and major promoter of the controversial WestConnex tunnels. While the four person Committee is chaired by Chief Scientist Professor Mary O'Kane, it includes the RMS CEO Ken Kanofski. Surprisingly the NSW Environmental Protection Authority (EPA) has only observer status. The RMS's influence, which is a matter of public interest, has not been made transparent either on the Chief Scientist's website or on the RMS website and is not well understood in the community.

Professor McKane and Dr Ian Longley, an expert member of the Committee who is based in NZ, both agree that the choice of Pacific Environment (PE), a company that has ongoing commercial interests in using the GRAL model for Westconnex, does raise perceptions of a conflict of interest. Nevertheless ACTAQ chose PE as the best company to do the research. Our story acknowledged that the Committee's governance arrangements to manage the conflict of interests included a research steering committee, the use of an international expert to review the study and the publication of the results. However, while Professor McKane mentions two of the people on the steering committee she does not mention that three of its eight members are RMS staff, one of whom has actively promoted the safety of air quality impacts at various EIS information sessions run by the Sydney Motorway Corporation before the research or its steering committee was convened.

In her response Professor McKane suggests that NSW EPA and NSW Health concerns about the lack of validation of the model in Australian conditions partly drove the decision to do a study to further illuminate the model's use in Australian conditions. It remains a matter of concern that a model was used for the approval of WestConnex Stage One M4 East and Stage Two M5 East that had never been used in Australia before and for which the NSW EPA was not equipped to thoroughly evaluate the results.

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Concern about high rise developments around unfiltered ventilation stacks

Very limited assessment was done on the air quality impacts for residents living around high rise buildings within 500 metres of the ventilation stacks.

Both the New M5 and the M4 East instruments of approval contain clauses designed to protect these residents.

M4 East Instrument of Approval E 29

Local and Sub-Regional Air Quality 829 The Proponent must assist the relevant council(s) in developing an air quality assessment process for inclusion in a Development Control Plan or other appropriate planning instrument, in considering planning and building approvals for new development in areas adjacent to the ventilation outlets which would be within a potential three-dimensional zone of affectation (buffer volume). This process must include procedures for identifying the width and height of buildings that are likely to be either affected by the plume from the ventilation outlet or affect the dispersion of the plume from the ventilation outlet through building wake effects. A part of this process, the Proponent must provide data detailing the results of modelling of pollution concentrations at various heights and distances from the ventilation outlets. The Proponent must meet all reasonable costs for the development of this process and any necessary amendments to the planning instrument(s) required to implement the process

It is now only about five months until the M4 East opens. There are many people living in high rise buildings near the Western stack and some in multi story buildings in Ashfield and St Peters.

There needs to be a thorough investigation into RMS's actions following up from this condition.

According to the last information I received from the Inner West Council, no draft Development Controls had been received.

I attended a meeting of Strathfield Council where this matter was raised by Councillor MaryAnne Duggan. It was clear that no one in the room including the General Manger and the Mayor were aware of this condition.

Meanwhile approvals for buildings near the stack continue to be given in the Strathfield area.

The same applies to the Arncliffe area in relation to the New M5.

This is a very serious matter.

I will report further on this matter.

Part Two

c)

More on conflicts of interest and the jobs merry-go-round

This has great relevance to Term of Reference C.

In May 2016 I published a story relating issues involved in WestConnex with those that had arisen in failed toll road projects.

Some of the material detailed communications around traffic modeling of those involved in WestConnex traffic modeling. The material was given in evidence in court proceedings that have since been settled.

Conflicts of interest raised and ignored

Thousands of public submissions to the M4 East EIS objected to the apparent conflict of interest between AECOM's on-going commercial interests in engineering WestConnex contracts and its preparation of EIS documents, which, by definition, have to be impartial.

As I had earlier reported last year, long before AECOM completed the EIS for the M4 East, it endorsed WestConnex on its website claiming: "WestConnex will assist in making Sydney a more liveable city by reconnecting communities, enhancing centres and significantly improving the urban domain along Parramatta Road" and that it will "provide welcome relief from congestion on the M4 and Parramatta Road..." That material, and all other mention of WestConnex, has since disappeared from AECOM's website. (I have copies of it.)

These concerns were ignored in the Response to Submissions and AECOM was again appointed to do the EIS for Stages 2 and 3.

In Part one of this submission I raised concerns about players in this saga whom move between roles that may involve conflicts of interest.

In the article that is included, I draw attention of the Committee to this sections, which I have updated. This information shows that far from been distant from the tollway disasters, some of those involved in WestConnex were intimately involved in the earlier tollroads.

Stuart Dalziel, who sent the original Clem7 email about the lack of information going to Brisbane City Council, stayed at AECOM and rose through the ranks. By the time AECOM got involved in WestConnex, he was a director of the Transport Advisory section of the company. He was Transport Manager on the WestConnex M4 East Environmental Impact Statement (EIS) project. He has posted an endorsement of his WestConnex EIS work by the RMS on his Linked In profile.

I attempted to interview and put questions to Dalziel but at the time of publication had not received a response.

Jay Stricker

AECOM's EIS for the M4 East was signed off by **Jay Stricker** who is now an AECOM Transportation Director after a long career at the NSW Roads and Traffic Authority, now called Roads and Maritime Services.

RMS is the government client for the WestConnex project. During his time at the RTA, Stricker was quoted in the media defending the old M5, which even the NSW government claims was poorly designed.

When the NSW government announced that AECOM was the traffic modeller for WestConnex, it rang bells for Greens MLC Mehreen Faruqi, who is also an engineer.

The *Australian Financial Review* [reported her concerns about AECOM's role in Clem7](#). The government responded that AECOM's work would be subject to independent review. In fact, these reviews, along with the WestConnex traffic model, have never been released publicly, a matter that has been often criticised by independent traffic experts.

Although billions of dollars of public money is being poured into the project, WestConnex claims it is "commercially in confidence".

Denis Johnson

One of those independent traffic "peer reviewers" is none other than AECOM's Clem7 traffic modeller, **Denis Johnston**. He remained at AECOM until 2008 when he set up as an independent consultant. In early 2013, he was invited to advise and be an "independent" peer reviewer of the WestConnex Traffic Model.

He received two contracts amounting to \$130,000 to review the traffic model in 2013 alone. When I rang him, he said, "I can't speak to you. I am engaged in a role with the government to advise on this matter so I will have to terminate this call."

It is not possible to report how much he has subsequently been paid because the rest of his contracts are not publicly available since the Sydney Motorway Corporation was set up.

Michael Batchelor rose through the ranks of AECOM, and became Australia and NZ CEO in 2012. After AECOM was already involved in WestConnex, he left the company in May 2014 to establish a new firm, **Nimbus Consulting Pty Ltd**, which was paid **\$445,000** between January and July 2015 to provide an "interface between industry and the government". (See this contract on Why WestConnex <https://whywestconnex.herokuapp.com/>).

In 2016, Batchelor's [LinkedIn profile](#) states that he was "responsible for establishing the RMS interface team and overseeing organisation changes through new project governance; negotiation of project deeds, land acquisition, project approvals, tolling services, existing asset transfer, engineering standards, deed administration, network integration and RMS program and budgets." All of which must mean he was closely involved in the relations between AECOM, Leightons the contractor, RMS and the Sydney Motorway Corporation.

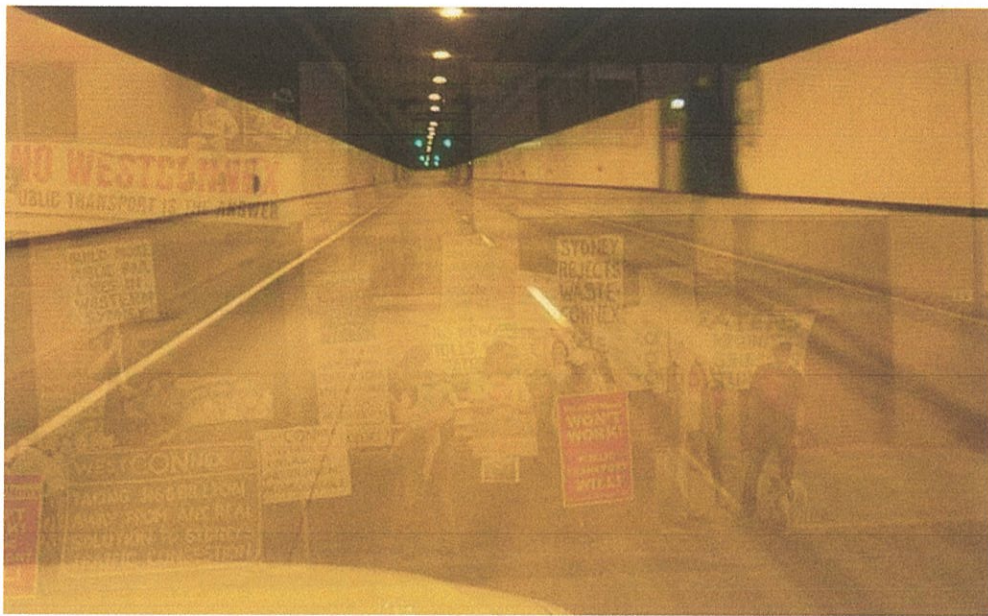
When I contacted him in 2016, Batchelor sent a message to say that as a “humble consultant to RMS”, he was not authorised to speak on behalf of WDA and suggested we contact WestConnex.

Today, Nimbus Consulting is closely involved with RMS and Transport NSW. For the last four years its portfolio has included:

advice and executive services to RMS Motorways Project Development, TfNSW New Intercity Fleet Maintenance Facility procurement, RMS Network Sydney project management advice, Sydney Metro over station development management, establishment of Easing Sydney's Congestion Program Management Office, establishment of RMS WestConnex Interface Program Management Office

No inference is intended that Batchelor, Dalziel, or Johnston are in any way involved in any improper conduct. Indeed this is business as usual in NSW. But questions do need to be asked about whether the normalised pattern of executives moving in and out of public and private roles sufficiently protect the public interest.

HOME > BUSINESS & CONSUMERISM



Tunnels And Toll-Roads: The Insider Emails That Shine A Whole New Light On WestConnex

By Wendy Bacon on May 18, 2016

Business & Consumerism

New Matilda's ongoing investigation into Leighton Contractors and AECOM – two key players in NSW's controversial WestConnex project – reveals a history of email warnings of disastrous traffic projections and failed tollway solutions. New Matilda contributing editor Wendy Bacon reports.

Last week, Sydney Motorway Corporation began sweeping away scores of homes, trees and open space across the inner western suburbs of Haberfield, Concord, and Homebush to make way for construction sites for the M4 East stage of its controversial 33-kilometre system of WestConnex tollways.

It intends to destroy more hectares of Sydney Park and St Peters in a couple of months, after already compulsorily acquiring hundreds of homes and businesses.

The NSW Baird government has handed responsibility for each stage of WestConnex to a consortium of companies. But two names stand out among the corporate crowd: Leighton Contractors (now officially called CIMIC but known as Leightons) and AECOM (previously Maunsell).

Leightons has been awarded the largest share in all three of the Baird Government's WestConnex construction tenders, worth more than \$8 billion. But not before the NSW Government made a mockery

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of the process created to ensure environmental checks and balances – the NSW Department of Planning assessed and approved an Environmental Impact Statement (EIS) *after* the contracts were awarded.

The EIS, which included crucial traffic projections for Stages One and Two of the project, was produced by global engineering company AECOM.

The economic justification for the entire project – not to mention the traffic congestion, air quality and noise predictions – rests on the accuracy of AECOM's predictions.

As New Matilda [reported last year](#), AECOM was not only responsible for the EIS, but also has deep commercial interests in the development of the WestConnex project. By October last year, it had been awarded more than [\\$33 million worth of engineering contracts](#) including for the Stage Three tunnel linking the M4 East and New M5 tollways, for which there is as yet no EIS.

Since WestConnex was transferred to the publicly-owned private company the Sydney Motorway Corporation, its contracts have not been published.

Leightons and AECOM have connections in the tollway business going back to 2006. The story of AECOM's association and the corporate disaster that followed their involvement in the North-South Bypass Tunnel (NSBT) in Brisbane, which became known as the Clem7 tollway, is infamous, and shines a spotlight on their current involvement in WestConnex.

Fairfax Media recently published evidence that Leighton Offshore, which is owned by a company based in the Cayman Islands tax haven, paid more than \$20 million in bribes to Unaoil to assist the company secure Iraqi government contracts worth approximately \$2 billion. Leightons has denied these claims.

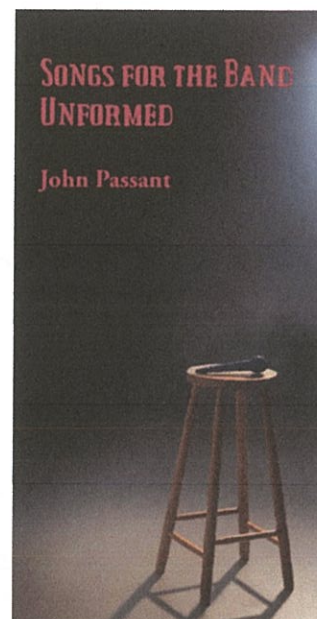
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Last weekend, *The Australian* reported information that a Rizzani-Leighton consortium had been delaying payments to contractors on its WestConnex M4 Widening project, possibly in an attempt to improve capital working figures, resulting in significant short-term improvements in cash generation and reported gearing positions.

Financial strains and hidden liabilities of its ultimate owner, Spanish construction company Grupo ACS, are other reasons posited for non-payment of over \$1 million of outstanding contractor invoices.



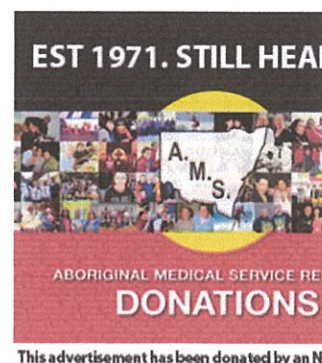
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NSW Premier Mike Baird. (IMAGE: Beau Giles, Flickr)

The Sydney Motorway Corporation responded by stating that they had a signed statutory declaration by Rizzani-Leighton stating that sub-contractor payments were up-to-date.

The evidence revealed in this story, plus evidence contained in these other media reports, raises questions about due diligence being exercised over the choice of WestConnex contractors, and the extent to which private interests have been allowed to influence Federal and State transport planning.

The evidence also supports concerns raised by independent experts who have criticised AECOM's WestConnex traffic modelling.

Planning the Clem7

Back in 2005, the tollway business relied on wooing private investors rather than governments. Leightons and its partner investment bank, ABN Amro set up a special purpose company, Rivercity Motorway (RCM) to plan, build, own and operate the proposed Clem7 in Brisbane.

AECOM's subsidiary, Maunsell, was paid \$2.7 million to provide the traffic modelling needed to persuade investors that there would be enough toll revenue to deliver healthy profits.

In 2009, Maunsell changed its name to AECOM, the name we will use in this story. In accepting the forecasting contract, AECOM agreed to use its best professional judgement in its traffic projections.

The Clem7 traffic projections turned out to be wildly off the mark. AECOM had forecast that more than 60,000 vehicles a day could be using Clem7 within a month of opening, and 90,000 after six months.

Five months after opening, the tunnel was used by 27,000 vehicles a day, despite the toll for cars being cut to \$2 from the projected charge of \$4.28.

Unsurprisingly, The Clem7 went bankrupt in February 2011.

In May 2012, law firm Maurice Blackburn lodged a \$150 million claim against AECOM in the Federal Court on behalf of about 700 RCM investors. Maurice Blackburn special counsel Richard Ryan [told the ABC](#) that the lawsuit centred on a gap between the traffic volume assessed by AECOM Australia, and the patronage actually achieved.

The lawsuit claimed patronage on the Clem7 was less than a quarter of the original forecasts provided by AECOM.

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“Our clients claim that AECOM provided unreasonable assumptions that had the effect of making the tunnel project look viable when it was a dud,” he said.

Last year AECOM paid out \$280 million to settle a parallel class action arising out of the Clem7 fiasco. At that time an AECOM spokesman said the firm had decided to “no longer provide traffic and revenue forecasting for toll road operators or owners in Australia... although it remained committed to expanding its Australian business, primarily engineering and design consultation for the mining and construction sectors”.

That's small comfort to those negatively affected by the first two stages of WestConnex, for which the justification has relied heavily on AECOM's environmental and traffic studies.

Meanwhile the Maurice Blackburn lawsuit, which has explosive ramifications for WestConnex, continues in the Federal Court. In this second case, AECOM has cross-claimed against Leighton Contractors, the ABN Amro bank, and other players in the Clem7 project. This strategy, which is designed to limit its liability by spreading the cost of a potential settlement over a number of parties, was unsuccessful in the first case.

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New Matilda has been following the Maurice Blackburn case since last year. Earlier this year, a number of intriguing emails which form part of the evidence in the case were distributed to a courtroom crowded with nearly 30 lawyers, representing different parties in the class action suit.

The emails present a startling fresh insight into the relationship between the players in the Clem7 project, and how the investors came to be kept in the dark on traffic projections.

The Clem7 emails

The email communication began on November 25, 2005 when RCM was preparing presentations on Clem7 for the Brisbane City Council. Stuart Dalziel, an AECOM Transport planner, sent a message promising that the traffic models that were attached would be verified “at a later date”.

His message was copied to AECOM Principal Transport Planner, Alan Broadbent and sent to Leightons' General Manager for Infrastructure Investment, Peter Hicks. At the time, Hicks was on the Board of River City Motorway.

Hicks had spent years working at NSW Transport before he moved to Leightons, where he worked for 20 years until his departure in December 2014, just around the time the NSW government announced that Leightons had been selected as the lead partner in the first of three WestConnex construction contracts.



(IMAGE: David McKelvey, Flickr)

Hicks promptly responded that he only needed figures for the “base case” not the “low case” (the “low case” predicted lower traffic motorway volumes, although even these predictions later turned out to be far above actual figures).

His message to the AECOM traffic modellers was that their full traffic report would be appended to the Brisbane City Council report, and that “hopefully your ‘later date’ is today for verification!”

Clearly Hicks was wasting no time.

On the same day, Broadbent appeared worried when he confirmed to three other AECOM traffic modellers that Hicks’s email showed that he was pushing the ‘base case’ flows (i.e. the higher estimates) as “the [AECOM] forecasts”.

Later in the day, Broadbent sent another email in which he added, “However the danger is that we have no control over the final RFP (Request for Proposals) document, indeed we may not even see the final product and that Peter will include only base case traffic flows and these will become the [AECOM] best case forecasts.”

He said he believed that Hicks should be told that the ‘low’ represents the most realistic scenario and that ‘base case’ is founded on more aggressive assumptions – and that both should be provided.

In April 2006, the Brisbane City Council awarded the Clem7 tender to the RCM consortium. Six months later the email correspondence continued. By then, two of ABN Amro’s bankers were working on the finalising the Product Disclosure Statement (PDS) that would be used in its presentations for investors.

AECOM’s Alan Broadbent was worried. On May 5, he emailed Hicks and the ABN Amro team to tell them he had noticed that:

“there is a discrepancy between the copy of the presentation attached to the earlier emails (below) and the hard copy provided by [name of ABN Amro Banker] yesterday. The original contained a graph showing both low and base cases, whereas the hard copy depicted only the base case. It is important that we demonstrate in the presentation that [AECOM] have produced two set of forecasts. The PDS will say so, so we must disclose that at the presentation.”

One of the ABN Amro bankers responded the next morning, making it clear that he did not see the ‘low case’ as relevant to investors:

“Re Investor Presentation

Hi Alan

The equity investors return is generated relative to the base case – the low case is not relevant to them. If the base case is not achieved their return falls. All the sensitivities are calculated against the base case traffic. Whether the low case is described in the PDS or not, the presentation only must not be inconsistent with it. A description of the low case will only serve to confuse the investors without giving them any information about what traffic needs to be achieved for them to get them to get their return 12.25 IRR. This is all that concerns them."

On May 9, AECOM Principal Traffic Modeller, Denis Johnston then in London, emailed AECOM Managing Director of Public Private Partnerships Ashley Yelds, in the United States to tell him:

"Ashley- the presentation copy has only the base case scenario shown _ Slide 33 – and it excludes ramp-up effect. Misleading and deceptive conduct? – Denis Johnston"

The following day, Broadbent forwarded the ABN Amro banker's email to his AECOM colleagues and commented, "This is from the devious guy."

A few days later, the presentation took place. Broadbent shared his notes and observations with Denis Johnston, and his AECOM colleagues:

"First of all my concerns (the final round of the 'death by a thousand cuts')

- 1. Base case only was presented as the [AECOM] forecast – no reference for low (or Bank at all). No reference to base case as an aggressive equity forecast and Peter glossed glibly over the aggressive assumptions – e.g. population and employment capacity issues (All of which are fully documented in the traffic report but are not explicitly mentioned in the PDS).*
- 2. I'm concerned about the traffic forecasts going to market and that investors are being asked to rely on the 'base' case traffic numbers.*
- 3. Concerned that the base case number will go public.*
- 4. Peter [Hicks] became increasingly gung-ho during the course of the week and wouldn't let me answer questions.*

Broadbent then spelled out more detailed concerns about what potential investors were told about network assumptions. He attached a note that provides "our (AECOM's story) on the various issues." This material has not yet been tendered in evidence in the Maurice Blackburn court case.

Hicks has not given evidence in the court case and his interpretation of events may well differ from those of AECOM staff.

AECOM completed its final traffic report by early June and despite their concerns, the AECOM executives supplied a letter for the PDS that was lodged with the Australian and Securities Investments Commission in June 2006.

The letter did not include the more conservative 'low case' traffic estimates. This is one of the bases on which they are being sued under the Corporations Act for making "misleading or deceptive statement" and "omitting information" which would be "materially adverse" from the point of view of a "reasonable person" acquiring a financial product.

In August 2006 and relying on the PDS, the Hopkins Family Superannuation Fund bought 40,000 units. Along with hundreds of other investors, Hopkins is now suing AECOM.

New Directions For AECOM

It is clear from these emails that the Clem7 job was a negative experience from AECOM's perspective. As an ambitious, expanding company, it was hunting for strategies that would enable it to prosper.

From a traffic modelling point of view, problems were created by the revenue predictions of the sponsor companies, who had a commercial stake in their bid being successful, after which risks could be transferred to ordinary investors, or 'dumb equity' as it is sometimes known.

On July 7, 2006 Denis Johnston, then based in London, emailed a team of people at AECOM, including senior manager Michael Batchelor with a “few retrospective observations on the NSBT” project.

He was troubled by the tollway model because the “sponsors are driving our T & R (Traffic and Revenue) people to the very edge on every possible factor that contributes to the revenue forecast – knowing that they can later cast the forecast as “done by the experts” and pass the risk onto dumb equity at the end.”

Johnston had seen the assumptions behind AECOM forecasts “pushed to the most favourable position for the revenue – still in the plausible range”.



Johnston's views expressed in this email were never disclosed to investors and form an important part of the case against AECOM.

He went on, “I am not saying that we can't resist the pressure and insist on more conservative assumptions, but the Sponsor is not driven by a proper assessment of risk – and is therefore not really interested in the longer term consequences – because he is really only taking bid stage risk (i.e. the risk of losing his bid costs).

Leightons, Johnston explained, were convinced of the risk transfer model... “and the ABN-AMRO connection has worked well for them. There is no question that the T & R service has high value and was perceived that way by the sponsors because it is a major part of the NSBT bid cost. Staying with Leighton team will mean more of the same – so far not all that bad for business!!”

Johnston was looking both to create more value out of the current model and also to “create value by changing that model”. His aim was to create “better global bidding strategies”.

Options included charging higher fees at the bid stage (which would allow a peer review process) – “although we are at the top of the league table in Australia, there are competitors globally.”

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One reason he gave for changing the model is that “State and Federal governments must be sick of ‘Wal King wins no matter what’ outcomes” (Wal King was the Managing Director of Leighton Contractors until 2010, after which he was reported to be [staying on as a consultant](#). His remuneration in 2009 was \$12.6 million).

Options considered by Johnston included getting into a “lead advisor position with a no-contractor team” which would mean “we can charge out more value for ourselves because the other team members are basically bankers and lawyers”.

AECOM lawyer Malcolm Haack responded that Batchelor's ideas "should be investigated. The benefits could be significant – greater revenue for the services performed and becoming a more professional player in the market". He advised seeking a merchant banker's advice.

Batchelor also responded positively that it was "right to approach future projects on a more commercial basis."

AECOM was on the lookout for more BOOT (a form of project financing in which a private company receives a concession from the private or public sector to finance, design, construct, and operate a facility). Batchelor observed that the "process of negotiating the NSBT contract changes and the PDS (Product Disclosure Statement) was not satisfactory" but wondered if Leightons would continue to use AECOM now it was "prepared to flex its muscle".

He suggested a hold on BOOT negotiations while advice was sought: "This might be to redefine the negotiations with Leightons at a corporate level (Hicks?) for a package of products."

Construction of the Clem7 was underway by 2006. Meanwhile, over in the US, AECOM became involved in four BOOT tollroads connected to Australian company Macquarie Bank, which is also involved in WestConnex. These projects also ended up in court.

Finance company Syncora agreed in December 2006 to provide Macquarie with insurance on the basis of what it later [claimed in the New York Supreme Court](#) were "fraudulent misrepresentations of the objectivity of [AECOM's] traffic and revenue forecasts".

In a [judgment published on July 1, 2013](#), New York Supreme Court Judge Melvin Schweitzer found that there was evidence an undisclosed scheme of "success fees" from Macquarie to AECOM incentivised it to boost up traffic forecasts.

According to Judge Schweitzer's judgment, "These under-the-table success fees amounted to additional millions of dollars per transaction, and were paid in connection with the American Roads transaction as well as many others. None of this was disclosed to Syncora which was instead led to believe that [AECOM] was an objective adviser on whom it could, and did, rely."

Schweitzer refused a motion by Macquarie to dismiss the case, finding that there was a case that "the undisclosed conflict of interest under which [AECOM] operated, in addition to secret success fees that [AECOM] was paid... do amount to a material misrepresentation or omission of fact."

Macquarie acknowledged they that they paid "success fees" to AECOM but said that they did not disclose them because Syncora never asked about the basis of AECOM's compensation arrangements, so Macquarie could not be accused of any misrepresentation on this score.

In August 2013, this [litigation was settled](#) when Syncora took over the Macquarie interests, and agreed to drop the litigation.

Clem7 opens and collapses

The Clem7 opened in March 2010 but by February 2011, RCM was bankrupt. The tunnel cost \$2.2 billion to build, but was sold for only \$618 million in 2013.

The privately funded tollway construction model was facing disaster. Three of four Australian tollways – Clem7, Lane Cove Tunnel and Cross City Link – had financially collapsed after being assessed by AECOM traffic modellers. Arup, the forecaster for the BrisConnections tollway had also been [sued in a case](#) that was settled last year.

Independent experts, including University of Sydney researcher John Goldberg, had been [warning for years](#) that traffic forecasters "worked out what the investor was going to be happy with in terms of rates of return, and they worked back to a set of numbers which would produce that return for investors. Such forecasts do not properly relate to the interaction of land use and transport, and it is not surprising that they are not fulfilled."

But the closely knit tollway industry – in which companies Macquarie, ABN Amro, Transurban and Leightons (with its subsidiaries Thiess and John Holland) were familiar names – was not deterred, and focussed instead on a new funding model in which most risk would be transferred to the public, rather than individual investors.



The Clem 7 tunnel opens in early 2010, with Brisbane residents invited on a walk through. (IMAGE: David McKelvey, Flickr)

As CEO of Leightons, Wal King warned governments would have to “stump up more”.

After the election of a NSW LNP government broke the long period of Labor rule in March 2011, the roads lobby successfully sold a new model to its ex-banker Treasurer and now Premier, Mike Baird.

In 2011 a new body, Infrastructure NSW (INSW) was established which was heavily weighted with private infrastructure interests, including ex LNP Premier Nick Greiner. By August 2012, WestConnex became its top priority.

By October, WestConnex was announced by the NSW government as a key recommendation of INSW, 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. On January 16 2013, the NSW Acting Premier Andrew Stoner selected several companies to be closely involved in helping design and justify the WestConnex project.

Leightons, and its subsidiary Thiess 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.

Two days later, the then Federal Minister for Infrastructure and Transport Anthony Albanese set aside \$25 million “to advance planning for WestConnex”. The funding had been foreshadowed in the 2012 Federal budget and was used to set up the Sydney Motorways Project Office.

The companies chosen to plan the project had a huge stake in it going ahead. Needless to say, they found it was a great idea. They were now ideally positioned for further involvement.

Leightons, politics and corruption

Meanwhile, evidence had been trickling out about Leightons’ corrupt activities outside Australia since 2011, when the company issued a media release stating that it had referred to the Australian Federal Police

a "possible breach" of its code of ethics related to payments made by its subsidiary Leighton Offshore.

While the public would hardly be aware of such a release, you could expect governments to be following such developments. From 2012, Fairfax Media investigations resulted in an [avalanche of media reports](#) about corruption at Leightons.

In 2013, the first WestConnex Business Case was developed by Roads and Maritime Services staff and advisers from private consulting, finance and construction firms, including Ernst & Young, Macquarie Bank, AECOM, Leighton Contractors and Ferrovial Agroman. This business case was later [severely criticised](#) by the NSW Auditor General.

Leightons had long built its influence over federal and state governments by using a combination of paid lobbyists and big donations to Labor, Liberal and National parties, including for private meetings with politicians.

A Democracy for Sale search shows that since 2005, Leightons and its subsidiaries Thiess and John Holland have made political donations worth more than \$1.6 million, including \$918,243 to federal and state Labor branches and nearly \$800,000 to Liberal and National Party federal and state branches.

Last year, Fairfax reported that an internal audit had revealed that [Thiess had given then Premier Barry O'Farrell a pen](#) worth more than \$1,000. He could not remember the gift.



Former NSW Premier, Barry O'Farrell.

Former federal Infrastructure Minister Anthony Albanese's decision to fund the planning office was criticised by Greens Senator Lee Rhiannon in a Senate speech in February 2013, in which she raised the question of [tollway company political donations](#).

"The ears of politicians have been successfully bent by the likes of the motorway construction companies... companies like John Holland, Leighton, Thiess and Macquarie Bank have given big donations to the major parties. The public do not know if deals are done behind closed doors, but there is the perception that MPs are favouring private road building businesses at the expense of public transport."

Pushed by then Opposition leader and tollroad fan Tony Abbott, Labor earmarked \$1.8 billion for WestConnex in its 2013 budget but made federal funding conditional on adding no tolls to pre-existing roads and a preferred route going straight into Sydney's CBD.

After the Abbott government was elected, it went ahead with the \$1.5 billion grant. New Matilda confirmed that by late April 2016, only \$750 million of that grant had been paid.

Recently, Senator Rhiannon has called for Liberal, National and Labor parties to pay over to charity the amounts donated by Leightons during the period covered by evidence of corrupt offshore activities.

Albanese has been critical of the planning process that led to the WestConnex approvals that are now having such a disastrous impact on his electorate of Grayndler. Labor has also supported the Greens' call for an inquiry and Federal audit of WestConnex, but has not joined the Greens and community groups in their call for a halt to further funds being handed over to WestConnex until an independent inquiry is held.

The ALP still supports its own preferred version of the project, which would see different routes for the M4 East and New M5 and no M4/M5 connecting tunnel. All experts say this would lead to unparalleled traffic congestion throughout the inner west.

Where are Clem7 players in 2016?

Ten years on, after more takeovers and mergers AECOM is an even bigger global company. It has successfully pursued a strategy of becoming more directly involved in the engineering and construction of major projects. Only 9 per cent of AECOM's business is in the Pacific region, but that business depends heavily on government contracts.

Despite their divergent interests in the Clem7 Rivercity Motorway legal action, AECOM continued to be involved in joint business ventures with Leighton Contractors, including an unsuccessful bid for the Melbourne East West Link, a project which was cancelled after a massive community campaign forced the Victorian ALP to withdraw its support for the project.

Thousands of public submissions objected to the apparent conflict of interest between AECOM's on-going commercial interests in engineering WestConnex contracts and its preparation of EIS documents, which, by definition, have to be impartial.

As New Matilda reported last year, long before AECOM completed the EIS for the M4 East, it endorsed WestConnex on its website claiming: "WestConnex will assist in making Sydney a more liveable city by reconnecting communities, enhancing centres and significantly improving the urban domain along Parramatta Road" and that it will "provide welcome relief from congestion on the M4 and Parramatta Road..."

That material, and all other mention of WestConnex, has since disappeared from AECOM's website.

Stuart Dalziel, who sent the original Clem7 email about the lack of information going to Brisbane City Council, stayed at AECOM and rose through the ranks. By the time AECOM got involved in WestConnex, he was a director of the Transport Advisory section of the company. He was Transport Manager on the WestConnex M4 East Environmental Impact Statement (EIS) project. He has posted an endorsement of his WestConnex EIS work by the RMS on his Linked In profile.

New Matilda attempted to interview and put questions to Dalziel but at the time of publication had not received a response.

AECOM's EIS for the M4 East was signed off by **Jay Stricker** who is now an AECOM Transportation Director after a long career at the NSW Roads and Traffic Authority, now called Roads and Maritime Services.

RMS is the government client for the WestConnex project. During her time at the RTA, Stricker was quoted in the media defending the old M5, which even the NSW government claims was poorly designed.

When the NSW government announced that AECOM was the traffic modeller for WestConnex, it rang bells for Greens MLC Mehreen Faruqi, who is also an engineer.

The *Australian Financial Review* [reported her concerns about AECOM's role in Clem7](#). The government responded that AECOM's work would be subject to independent review. In fact, these reviews, along with the WestConnex traffic model, have never been released publicly, a matter that has been often criticised by independent traffic experts.

Although billions of dollars of public money is being poured into the project, WestConnex claims it is "commercially in confidence".



Greens politician, Mehreen Faruqi.

New Matilda can reveal that one of those independent traffic "peer reviewers" is none other than AECOM's Clem7 traffic modeller, **Denis Johnston**. He remained at AECOM until 2008 when he set up as an independent consultant. In early 2013, he was invited to advise and be an "independent" peer reviewer of the WestConnex Traffic Model.

He received two contracts amounting to \$130,000 to review the traffic model in 2013 alone. When New Matilda rang him recently, he said, "I can't speak to you. I am engaged in a role with the government to advise on this matter so I will have to terminate this call."

It is not possible to report how much he has subsequently been paid because the rest of his contracts are not publicly available.

In 2011 Denis Johnston made [a submission](#) to the Department of Infrastructure in which he defended the profession of traffic forecasting in Australia, which he described as "a very small number of people in a small number of companies". He acknowledged that lawsuits resulting from false predictions would be a "drag on [a company's] share price and create a risk to its ability to borrow or obtain insurance" but argued it would be "naïve in the extreme" to penalise forecasters as this would result in "all forecasting companies exiting the field".

He advocated more government support for forecasters and independent review, although he did not say whether this should be made public.

Johnston also acknowledged that "downside" risks had not been made "clear enough to 'Mum and Dad' investors – and even to small institutional investors. They generally don't have access to the full traffic report – just a summary included as a 'Product Disclosure Document' in the prospectus – where there is limited scope to review all possible forecast risks and outcomes."

He argued, however, that the failed projects had been taken over by other private companies and added to overall public infrastructure. He assumed, "toll road projects were presumably identified by State Governments as being in the public interest prior to a decision to proceed to being delivered". He did not discuss the active role that the tollway lobby plays in pushing government transport planning towards ever more road projects, and the future tolls that the [public would be paying to tollway owners, especially Transurban](#). Transurban has [ended up owning nearly all Australian tollroads](#), including some failed ones that it bought very cheaply.

Michael Batchelor rose through the ranks of AECOM, and became Australia and NZ CEO in 2012. After AECOM was already involved in WestConnex, he left the company in May 2014 to establish a new firm, Nimbus Consulting Pty Ltd, which was paid **\$445,000** between January and July 2015 to provide an “interface between industry and the government”.

His [LinkedIn profile](#) states that he was “responsible for establishing the RMS interface team and overseeing organisation changes through new project governance; negotiation of project deeds, land acquisition, project approvals, tolling services, existing asset transfer, engineering standards, deed administration, network integration and RMS program and budgets.” All of which must mean he was closely involved in the relations between AECOM, Leightons the contractor, RMS and the Sydney Motorway Corporation.

When contacted by New Matilda last year, Batchelor sent a message to say that as a “humble consultant to RMS”, he was not authorised to speak on behalf of WDA and suggested we contact WestConnex.

Peter Hicks will be involved as a witness in the Clem7 court case. He left Leighton in December 2014, just as it succeeded in winning its first three big WestConnex contracts for the M4 Widening. By then Leighton Contractors (now known as CIMIC) had been taken over by the Spanish giant ACS Grupo. Hicks is now CEO of CP2 which manages “infrastructure investments made on behalf of global institutional clients ensuring that any opportunities for extra value are managed”.

There is no inference from New Matilda that Batchelor, Dalziel, Johnston or Hicks are in any way involved in any corrupt conduct.

Companies Clean-Up As Public Takes Risk On WestConnex

The Clem 7 and other disasters have not stopped Leighton and AECOM continuing to make money out of toll roads. But now there is little risk for them as contracts are paid as projects are delivered.

Financial predictions for WestConnex are already turning out to be wrong – the project cost has blown out from \$10 billion to \$17 billion, with more limbs being added each time a new WestConnex stage is announced.



An anti-WestConnex protestor is removed from an action by police.

This means that users of the toll road will be paying ever-increasing tolls for decades to come. SGS Consultants ([who were hired by the City of Sydney](#)) and other independent experts have already found that WestConnex's Updated Business Case and AECOM's M4 East EIS are deeply flawed.