

REPORT OF PROCEEDINGS BEFORE

SELECT COMMITTEE ON THE CROSS-CITY TUNNEL

At Sydney on Wednesday 7 December 2005

The Committee met at 1.00 p.m.

PRESENT

Reverend the Hon. Fred Nile (Chair)

Legislative Council

The Hon. A. R. Fazio
The Hon. G. S. Pearce
Ms L. Rhiannon
The Hon. Dr Arthur Chesterfield-Evans

Legislative Assembly

Mr M. J. Brown
Mr A. J. Constance
Mr P. E. McLeay
Mr J. H. Turner

CHAIR: Welcome to the second public hearing of the Select Committee on the Cross-city Tunnel. Before we commence I would like to make some comments about the procedure for today's hearing. It is possible that some questions directed to Ministers today may involve issues that are considered commercial in confidence. If you are concerned that certain answers to questions are a matter of commercial in confidence you can request that part of your evidence be heard in camera, which is a confidential meeting of the Committee. The Committee normally accedes to this request, and would exclude the public and the media from the hearing. Transcripts of this evidence are confidential. I must advise that the Legislative Council may reverse a decision of the Committee. However, this is extremely rare.

Previously the Committee has resolved to authorise the media to broadcast sound and video excerpts of public proceedings. Copies of the guidelines governing broadcast of proceedings are available at the table by the door. In accordance with the Legislative Council's guidelines for the broadcast of proceedings, a member of the Committee and witnesses may be filmed or recorded. People in the public gallery should not be the primary focus of any filming or photographs. The primary focus should be on witnesses and members of the Committee asking questions. In reporting proceedings of this Committee the media must take responsibility for what they publish and what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the attendants or the Committee Clerks.

I also advise that under standing orders of the Legislative Council any documents presented to the Committee that have not yet been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a member of such Committee or by any other person. The Committee prefers to conduct its hearings in public. However, it may decide to ask you about certain evidence in private if there is a need to do so. If such a case arises I will ask the public and the media to leave the room for a short period. We are aware that people hold strong and divergent views concerning the cross-city tunnel. I wish to emphasise that although it is a public hearing, it is not an open forum for comment from the floor. Any person who makes interjections from the floor will be asked to leave the hearing room.

Only questions from the Committee and the evidence of the witnesses are recorded in the transcript. Uninvited interruptions are not recorded, and may make it more difficult for witnesses to express their views fully. I request everyone to turn off their mobile phones for the duration of the hearing.

KERRY ELIZABETH SCHOTT, Executive Director, Private Project and Asset Management, NSW Treasury, Governor Macquarie Tower, 1 Farrer Place, Sydney, affirmed and examined, and

DANIEL JOSEPH GRAHAM, Director, Private Project, NSW Treasury, Governor Macquarie Tower, 1 Farrer Place, Sydney, sworn and examined:

CHAIR: Dr Schott, in what capacity are you appearing before the Committee?

Dr SCHOTT: I am representing the New South Wales Treasury.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Dr SCHOTT: Yes.

CHAIR: Mr Graham, in what capacity are you appearing before the Committee?

Mr GRAHAM: Representing Treasury.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr GRAHAM: I am.

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Would either witness like to make an opening statement?

Dr SCHOTT: Yes. Chairman and honourable members of the Committee, Mr Graham and I would like to thank you for the opportunity to appear before you today. With your permission I would like to make two points before the Committee commences with its questions. I hope that the Committee will take these points into account in its deliberations. I would like to say at the outset that we are happy to take on notice any matters that the Committee is unable to cover in this hearing today. The first point relates to Treasury's responsibilities in relation to the cross-city tunnel project. Under section 20 of the Public Authorities (Financial Arrangements) Act 1987, usually referred to as the PAFA Act, the Treasurer has a statutory responsibility for the approval of arrangements defined as joint financing arrangements under section 5A of that Act. Treasury advises the Treasurer on these matters. The cross-city tunnel, along with all other toll road projects, are classified as joint financing arrangements.

For privately financed projects, government agencies and departments are required to comply with the Government's "Working with Government" guidelines for privately financed projects. Treasury is responsible for the administration of these guidelines. The guidelines set out a three-stage project consisting of an initial seeking of expressions of interest and short-listing stage followed by a request for detailed proposals. The final stage involves negotiations and execution of contracts with the preferred proponent. Throughout the various tendering phases Treasury is actively involved. Typically for these sorts of project, Treasury is a member of the project steering committee and is represented on the evaluation panel. On the cross-city tunnel project, Treasury was a member of the review panel overseeing the whole process and was represented on the group that assists financial aspects of the tender.

The second point I would like to make relates to the attributes of the cross-city tunnel itself and, in particular, I request the Committee to bear in mind two things. First, the project is still in ramp-up stage. It is too early to judge performance. I ask the Committee to note that past experience with other New South Wales toll roads, such as the Eastern Distributor, the M2 and the M5 clearly establish that in the ramp-up stage actual traffic invariably is below forecast, and it normally takes at least two years for a toll road to obtain its forecast traffic. This is borne out by international experience also, as indicated in a study of over 100 toll roads, bridges and tunnels by Standard and Poors rating services. This is cited in Standard and Poors 2006 global project finance yearbook. The Standard and Poors study indicates that during ramp-up of traffic after a toll road is opened, there is great variability about the difference between actual traffic and forecast traffic, as well as the length of time it takes to get through the ramp-up period.

On that basis, I would request the Committee to consider the proposition that just because actual traffic at the moment is below forecast traffic in the first few months of operation does not mean that a toll road project has failed. Second, notwithstanding various current opinions about this project, the fact remains that the project delivered a very successful engineering outcome in a more difficult than average construction environment. One cannot find too many projects that require tunnelling underneath a major city, with complex interfaces, for example, with existing structures and water pipes, and yet deliver construction before time and on budget.

The third point I would like to stress relates to the reasons that the Government proceeded with the project in the first place. The rationale for the project was coherent and thought out carefully. The cross-city tunnel was a missing strategic link in the road network. Major dedicated routes exist to link the north and south of Sydney without the need to go through the CBD. There was no dedicated route linking East Sydney with Western Sydney.

The main objectives of constructing the cross-city tunnel included, first, reduced traffic congestion and traffic travel time for east-west traffic; second, improved travel times and service reliability for buses in the city through reduced congestion and extended bus priority measures, including bus lanes on various sections of the west bound Western Distributor and on Chalmers, Elizabeth, Bridge and Liverpool streets; third, better access to and movements within the city for pedestrians, cyclists, taxis and delivery vehicles, with bicycle lanes on William and Park streets, Kings

Cross Road and Craighend street; fourth, safer and more pleasant street environments for pedestrians, residents and workers, with wider footpaths and tree plantings along William and Park streets.

The Hon. GREG PEARCE: How long is this statement?

Dr SCHOTT: About three seconds more—the removal of intrusive through traffic in the city and local streets and improved urban amenity; and fifth, better air quality in the city. Full cost benefit analysis was undertaken at each stage of the project. The final estimated benefit to cost ratio of the cross-city tunnel was 3:4. Final traffic modelling showed that travel times for east-west through the tunnel for traffic using the tunnel would be reduced by 20 minutes. In short, at the time the project was being developed there were no objections to the project's aims and objectives. Thank you.

CHAIR: I will just ask some general questions to start our hearing. What are the aims of the private projects and asset management branch of the NSW Treasury? Could you summarise that?

Dr SCHOTT: The division I have in Treasury basically has two principal goals. The first one is to improve asset management in the public sector. To that end we look after various policies around the procurement of capital goods and ICT. In the last two years we have been really driving to try and get better performance for on time and on budget things that the Government is funding. The reason for that in particular arose because we noticed that the privately financed projects that we do were invariably on time and on budget. The other part of my division, which Danny heads, runs the private financed projects, along with the agencies that are concerned in doing it.

CHAIR: Could you give a brief definition of what you regard as a public-private partnership?

Dr SCHOTT: It comes in many guises but, effectively, it is a project where the Government is working closely with the private sector and, on occasions, where the private sector is financing that project. It is a very old form of delivery. The water treatment plants around Sydney have all been done in this way and a number of other projects over at least a decade.

CHAIR: What involvement did you, and Treasury more generally, have in the development and implementation of the cross-city tunnel project?

Dr SCHOTT: We were involved in this project quite intimately, I think it is fair to say. I think Danny, who was closer to the day-to-day operations of it, is probably better to take that one.

Mr GRAHAM: Treasury had involvement from the start of the project around about 1998 when the Minister for Roads brought the project forward as a proposal for investment at that time. We were responsible for reviewing the economic appraisal of that particular submission. Subsequently, when the Government made a decision to procure the project via a BOOT-type arrangement or PPP arrangement, Treasury was involved in the review panel, which was looking at, firstly, the registration of interest phase of the project of short listing and the second phase being the review of the bids that came in from the short-listed proponents. Treasury had a role in the review panel and on the financial evaluation team of reviewing the bid models that came in.

CHAIR: Did the "Working with Government" guidelines exist when the Roads and Traffic Authority first called for proposals to construct the cross-city tunnel and during the subsequent contract negotiations with the successful tenderer?

Mr GRAHAM: Guidelines had existed since 1987 for privately financed projects. A version was reissued in 1995 following a major review of the Public Accounts Committee [PAC] where they made certain recommendations concerning the conduct of privately financed projects. The 1995 version of the guidelines incorporated recommendations of the PAC. The Working with Government guidelines was a major policy initiative introduced and promulgated in the year 2001. So there was an overlap in the conduct of the cross-city tunnel project between the 1995 guidance material and the 2001 Working with Government policy document.

CHAIR: Given that New South Wales Government debt is currently zero, do you believe that there is scope for large, publicly funded infrastructure projects in New South Wales?

Dr SCHOTT: I will answer that question in two pieces. The Government debt is not zero. The government sector is divided into two pieces: the general government sector, which is largely departments like Education and Health; and the other sector is public trading enterprises. Every year at the moment we are spending about \$8 billion on capital expenditure. Of that, close to \$3 billion—\$2.5 billion—is funded by debt. That is largely the result of borrowing by the utilities: the electricity and water companies. We do try to keep debt in the general government sector as low as we can. The reason we do that in Treasury is that the long-term outlook for expenditure demands is huge. You would be aware that the baby booming gap is about to reach the over-65 level, and that is going to put enormous demands on the government budget, particularly in health. But developments in medical technology have also put tremendous demands on our care of the disabled. For that reason we prefer not to borrow because paying back the interest in the general government sector will mean that we have less services delivered in a few years time, when the demands are really going to be extensive.

CHAIR: You have been involved with supervising former public-private partnership projects. Did you learn any lessons from those? If you did, how did they apply to the cross-city tunnel project?

Dr SCHOTT: Mr Chairman and the Committee, with all of our projects we, frankly, are always learning. It is a requirement under the working with government guidelines and our policy procedures that we do a review at the end of a period of time once the project is finished and up and running. We do take up lessons learned from those experiences.

CHAIR: What were the implications for the consortium of the traffic being lower than projected? Did Treasury review the viability of the successful project proposal, and what were the findings? Did your findings of potential traffic volume line up with those of the consortium?

Dr SCHOTT: As I mentioned earlier, in this ramp-up stage it is really too early to tell whether the project is going to reach the forecast levels or not. Frankly, the people who are running the tunnel and traffic forecasters are better at addressing that matter. The RTA does monitor the traffic levels on a day-to-day basis and Treasury is aware, broadly, of the way that the traffic is building up. Currently, we are just watching, along with everybody else.

Mr GRAHAM: In relation to the evaluation of bids, there were three short-listed bidders who put forward financial proposals based on their own traffic forecasts independently undertaken. In our analysis of the sensitivity of the bids to traffic flows we looked at both upside and downside traffic forecasts in a range of about 20 per cent. Under those scenarios all bids came out that they were robust. What was going to happen was that equity was going to be affected for a period of time but effectively, under the analysis that we have conducted, we felt that none of the companies were going to be totally distressed in terms of the longer-term traffic forecasts rather than the very short term that we have just been mentioning in terms of the ramp-up period.

Mr ANDREW CONSTANCE: This is a question for either of you. Did the State Government increase the amount of stamp duty payable on borrowings after the cross-city tunnel contract had been signed?

Dr SCHOTT: Not that I am aware. I will have to take that question on notice.

Mr ANDREW CONSTANCE: Was not section 226 of the Duties Act amended in mid-2003 in the State budget?

Mr GRAHAM: We will take that on notice because I have not got the notes in front of me. I was aware that there was an implication in regard to stamp duties but we will have to come back with that information.

Mr ANDREW CONSTANCE: Are you aware that that implication is about \$2.5 million?

Dr SCHOTT: We will have to take that question on notice because the taxing part of Treasury is not ours so we are really not familiar with it.

Mr ANDREW CONSTANCE: I will ask a number of other questions and, if you have to take them on notice, so be it, but I will be seeking answers to them. Did the consortium make representations to the RTA and Treasury that they should not have to pay that tax increase? I suspect you are not going to be able to answer that.

Mr Paul Mcleay: Point of order: If Dr Schott and Mr Graham are from the PPP section—

The Hon. GREG PEARCE: You have not heard her answer.

Mr PAUL MCLEAY: She has just indicated which section she is from and you said, "Well, you don't know so I will ask them anyway". That is not appropriate.

CHAIR: The witnesses can simply indicate that they do not have that information and take the questions on notice. Or we can call another Treasury official.

Mr PAUL MCLEAY: Why not ask questions that they can answer?

Mr ANDREW CONSTANCE: I have a number of other questions and I would appreciate it if I was not interrupted by members of the Government. I do not know whether you can play some games on your machines or something to that effect.

The Hon. AMANDA FAZIO: Very witty.

Mr ANDREW CONSTANCE: Are you aware that the Treasurer did meet with the consortium in relation to stamp duty relief?

Dr SCHOTT: I am aware of a meeting. The details of that meeting I will get back to you about.

The Hon. GREG PEARCE: Were you there?

Dr SCHOTT: I may have been there for some of the period.

The Hon. GREG PEARCE: Were you there?

Dr SCHOTT: I cannot recall. The reason I am having difficulty recalling, Mr Pearce, is that this is really not part of my bailiwick.

The Hon. GREG PEARCE: You might have met with the Treasurer and the consortium.

Dr SCHOTT: I meet with the Treasurer frequently.

The Hon. GREG PEARCE: And the consortium, to discuss this.

Dr SCHOTT: No, I am not sure about that.

Mr ANDREW CONSTANCE: So you would not be sure that the Treasurer told them that they did not have to pay the stamp duty?

Dr SCHOTT: No, I would not be sure of that but I will get back to you. I would say to you, though, that if there is a change in law or policy after a deal has been done and the deal was based on prior arrangements it would be quite normal for Treasury to address whether or not it should be altered—and proper, I would say.

Mr ANDREW CONSTANCE: But I would imagine that if section 226 of the Duties Act had been amended every business in this State would be affected potentially in one form or another. In relation to the Cross City Motorway consortium, they were seeking an exemption—which I gather was granted—to the tune of about \$2.5 million.

Dr SCHOTT: I will get back to you about that. I am really not sure.

Mr ANDREW CONSTANCE: I have some other questions in relation to Treasurer Egan's decision in terms of the methods in which that stamp duty relief of \$2.5 million was handled. It would seem that the Treasurer, rather than exercising his power to just grant an exemption—

CHAIR: Can you pose a question?

Mr ANDREW CONSTANCE: I will. The Treasurer preferred to assess the loan security duty by making it payable to the Office of State Revenue [OSR] and then Treasury or the RTA reimburses the amount that was paid. Are you aware of that?

Dr SCHOTT: Your details about this are better than the ones in my head. As I have mentioned, I will get back to you.

The Hon. GREG PEARCE: Does Mr Graham have any recollection of the treatment of the stamp duty?

Mr GRAHAM: Not that specific transaction. I note your policy position there. The policy position is normally that stamp duties are paid and may be reimbursed by the agency in relation, because it is a bit of a roundabout; it goes to the OSR.

Mr ANDREW CONSTANCE: I will ask a more general question. Would you regard that, therefore, as a loss in revenue to the taxpayer?

Dr SCHOTT: I think that is a hypothetical question. I would really prefer not to address it until I have had a look at the facts of what happened.

Mr ANDREW CONSTANCE: My question is: Do you agree that the taxpayers have foregone \$2.5 million in stamp duty revenue as a result of this deal with the cross-city motorway?

Dr SCHOTT: No, I cannot agree to that until I have had a look at the details of what happened.

CHAIR: The witnesses have not yet confirmed the facts.

Dr SCHOTT: I am not ducking the issue; I would just like to check and get back to you.

Mr ANDREW CONSTANCE: We might have to revisit that and have the relevant Treasury officials come back before the Committee.

The Hon. GREG PEARCE: Mr Graham, you said that you were not aware of that particular stamp duty exemption or relief that was provided to the cross-city tunnel of \$2.6 million. Are you aware of any other examples of similar arrangements being made?

Mr GRAHAM: I was just stating the principle that exemptions are not normally given. The payment is agreed to be made and an agency puts up a case to reimburse that particular payment if it is thought to be beneficial to the transaction. That goes across a large number of transactions, including State development type arrangements where they might be assisting industry and so forth. There is just a general provision that you do not exempt from the duty payment; you supplement the agency to assist in the payment of it if necessary.

Mr ANDREW CONSTANCE: Would it be formal practice for the Treasurer to grant an exemption to a consortium in this circumstance under your experience?

Mr GRAHAM: As I say, the normal circumstance would not be to grant an exemption. It would be to acknowledge that a payment has to be made—

Mr ANDREW CONSTANCE: Not to be granted an exemption, but in this case there has been an exemption granted of about \$2.5 million.

Mr GRAHAM: As I said, I cannot say that I am aware of that case.

Mr ANDREW CONSTANCE: Are you aware of any land tax concessions that have been granted through this project?

Mr GRAHAM: I am aware of the land tax provisions that were made on the cross-city tunnel. They were made on the basis that from the RTA and the Government side we were uncertain of precisely what the land tax obligations would be. So before all bidders put in their bids we went to the Valuer-General's office to seek a valuation for land that would be subject to land tax. We went to the OSR to get an opinion about the appropriate level of land tax to be applied. We assessed that and put that and said to the bidders that this would be our estimated level of land tax that would be payable on the transaction. That was undertaken because the bidders had to bid a particular value. They had to take the land tax responsibility. They could have bid a very big number and the number may not come out at what we said, so they have a gain on that. What we were trying to do was put the limit in there of what we thought was the appropriate level of land tax that would be attributable to the transaction, given the information we had, and we made that available to all three bidders and they priced it in their model accordingly.

Mr ANDREW CONSTANCE: How much is the New South Wales Treasury foregoing in land tax over the life of the project?

Mr GRAHAM: Until I see the final assessment I cannot answer that question. We put in an estimate that was provided to us by the Valuer-General and the OSR at the time, and we thought that was an appropriate level of land tax that would be paid by the consortium for the arrangement.

Mr ANDREW CONSTANCE: How was the \$170,000 land tax water sewerage and drainage rates cap devised?

Mr GRAHAM: As I said, through that mechanism. We had an assessment from the Valuer-General and the OSR, independently assessed by them, and we put that number as the basis of which the bidders had to assess their land tax obligations.

Mr ANDREW CONSTANCE: So here we have a project which will make millions of dollars and they have a cap of \$170,000 for the full life of the project for these concessions. That seems a bit generous.

Mr GRAHAM: That was on the basis of what we were assessing as being a realistic estimate of what would be payable by the company for the land that would be subject to land tax.

Mr ANDREW CONSTANCE: So there is a cost to government and therefore the people of New South Wales as a result?

Dr SCHOTT: I do not think that is correct. The estimate was certainly on the basis that there would not be.

CHAIR: When you estimate the land tax and it is a tunnel, do you calculate that on the basis of above ground buildings? How do you estimate the land tax?

Mr GRAHAM: The Valuer-General took specific approaches. There is, I understand—and I am not an expert in valuation of land under or over tunnels—a procedure that has been agreed for valuation of that. There were other parcels of land that were associated with the entry and exit to the tunnel which were identified, areas scoped and the Valuer-General placed a value on it using their normal approach and normal techniques. The OSR at the time assessed the land tax on the basis of the information provided by the Valuer-General's report. It was done independently of both Treasury and the RTA and we used that information and made it available to all bidders. What we were thinking was that is our best estimate at this point in time of what the land tax obligations would be for this particular project.

CHAIR: Can we request a copy of that document, what was supplied?

Mr GRAHAM: It has been supplied to the House but I will supply it separately.

Mr JOHN TURNER: Are you aware that there was a variation of \$35 million to the contract? We heard evidence yesterday from the tunnel operators that some work had to be done on the Anzac Bridge to facilitate easier access to the portals. The RTA did that work which I glean probably should have been paid for by the cross-city tunnel consortium but there was a trade-off. There was \$35 million worth of work which the RTA was obliged to do. It is a separate issue altogether. The consortium agreed to do that work on the basis of a 15¢ increase in the toll. Did your group look at that variation?

Dr SCHOTT: Yes, we did. All of the approval procedures and things of that nature were looked at by Treasury and we recommended to the Treasurer that that be approved.

Mr JOHN TURNER: I am a little disturbed about that transaction. On my figures—and I must admit that I only dashed them out before lunch—on the 31,000 vehicles that went through last Friday that works out at about \$4,650 a day. Over a 30-year period that is a nearly \$51 million return. If they go to the 90,000 vehicles, which is the optimum that they have talked about, over the 30-year period it is \$149 million. Do you have anything to say about a windfall of well over \$100 million on that basis to the company for carrying out work that was the liability of the RTA?

Dr SCHOTT: I do not accept that it was the liability—

Mr JOHN TURNER: That is without CPI weighting on it.

Dr SCHOTT: Yes. I do not necessarily accept that it was the liability of the RTA to do that work.

Mr JOHN TURNER: With due respect, both the RTA and the cross-city tunnel people said yesterday it was their liability.

Dr SCHOTT: The valuation that you have come up with does not take appropriate risk and discount for time value of money, I would suspect, which is why you are getting such large numbers.

The Hon. GREG PEARCE: Dr Schott, I remind you that when you received a submission from the RTA in relation to this matter it included a financial summary from Ernst and Young. That financial assessment showed that the additional revenue raised for the 15¢ increase in the toll to cover \$35 million of RTA's expenses was \$308,199,000. You received that as tag 3 to the letter from the RTA. Can you comment on that?

Dr SCHOTT: Mr Graham will take that one.

The Hon. GREG PEARCE: You received it, Dr Schott.

Dr SCHOTT: Yes, I may have.

Mr GRAHAM: We did assess the Ernst and Young report. That number is the total nominal dollars over the 30-year period associated with the transaction. There is a difference between what it would be in today's dollars and what the aggregate nominal dollars are. There is a factor of discounting time, value of money, et cetera.

The Hon. GREG PEARCE: What is the figure discounted? If you did the assessment, what is the figure?

Mr GRAHAM: The figure in the Ernest and Young report was about \$35 million in present day value.

The Hon. GREG PEARCE: The figure that they have quoted is—

Mr GRAHAM: There is difference between adding up every year's nominal dollars and saying, "Over 30 years that all totals \$300 million", and doing a present valuing at the appropriate

discount rate. That was the analysis that was being discussed as well. If we used this discount rate what does that number come out to? If we used a different discount rate what is the equivalent number in today's dollars? So yes, any one of those. If you add up 30 years of cash flows you will get a very large number. But in today's dollars it would be related to the money associated with the project.

The Hon. GREG PEARCE: What would it have cost the Roads and Traffic Authority [RTA] to fund the \$35 million, which was its responsibility anyway?

Mr GRAHAM: That would nominally have been assessed at the Government's average cost of capital for the transaction. So if they were going to borrow and pay it off over time—

Mr ANDREW CONSTANCE: So what is the difference?

Dr SCHOTT: I do not think there is any difference. If the RTA paid for it straightaway it would have been \$35 million. The fact that it was to be paid for by tolls spread over a 30-year period at 15¢ a toll was meant to equate to \$35 million in present value terms and, according to the Ernst and Young report, it did.

The Hon. GREG PEARCE: Except that it cost \$308 million.

Dr SCHOTT: You are not comparing two things that are the same when you make that comparison. You are just adding up dollars of the year and, as we know, with inflation and everything else, a dollar in 30 years time, regrettably, is not going to be worth a dollar now.

The Hon. GREG PEARCE: What is the old expression, "Lies, lies and damn statistics"?

Dr SCHOTT: Those are present day value calculations.

The Hon. GREG PEARCE: I refer to the \$35 million expenditure and ask: Were you aware that the works were not strictly part of the original project?

Dr SCHOTT: They were, yes.

The Hon. GREG PEARCE: Yes, you were aware that they were not part of the original project?

Dr SCHOTT: We were aware that they were part of the traffic interconnections with the project.

The Hon. GREG PEARCE: And they were not part of the original project?

Dr SCHOTT: No.

The Hon. GREG PEARCE: Which is why we suggested that they were works for which the RTA is responsible for funding.

Dr SCHOTT: The original project was only for a very short tunnel. Projects of this nature are complicated and they change over time. It is not surprising that different things get added and, indeed, subtracted.

The Hon. GREG PEARCE: Were you given the RTA's legal advice in which it is stated:

In particular, payment to the RTA in so far as it relates to work not connected to the project, Anzac Bridge, will require Treasury's approval as a joint financing arrangement for financial accommodation and the increased exposure on the PAFA guarantee with respect to the MAE and ETA by the RTA and also the issue as to whether this arrangement may present any probity issues for the RTA to the extent that funds may be used for projects which are unrelated to the cross-city tunnel project.

Dr SCHOTT: Yes.

The Hon. GREG PEARCE: You are aware of that?

Dr SCHOTT: Yes and the Public Authorities (Financial Arrangements) Act [PAFA] approval was sought.

The Hon. GREG PEARCE: PAFA approval was sought not to amend the project; it was sought to provide this additional funding.

Dr SCHOTT: PAFA approval is not about project amendments; PAFA approval is about the financial arrangements behind it, and approval was given.

The Hon. GREG PEARCE: What was the basis of that approval?

Dr SCHOTT: The basis of that approval was that we were satisfied with the financial arrangements that were underpinning it and the risk profiles of that financial arrangement.

The Hon. GREG PEARCE: Why were you prepared to do it under that proposal instead of RTA simply paying for it? Why did the RTA not pay for it?

Dr SCHOTT: I think that is a question for the RTA. The position that Treasury had on these matters was that a budget was given to the RTA for all its activities. This project was to be privately financed and, if additional funds were needed, they were to come from the RTA budget and not from any other area of government.

The Hon. GREG PEARCE: But they did not come from the RTA budget; they came from an extra toll that cost \$308 million.

Dr SCHOTT: It was the RTA's decision, and properly, how to spend and manage its affairs. It made that decision.

The Hon. GREG PEARCE: You were happy to go along with it raising extra funds through an extra toll of \$308 million?

Dr SCHOTT: We were happy to give the PAFA approval that was required for that to occur, yes.

CHAIR: The RTA was also under orders from the Government not to incur any cost to the RTA either. So the RTA had to devise a system of passing those costs on to the consortium.

Dr SCHOTT: There is a bit of confusion about the no net cost to government position. Treasury's position, which has been set out in writing in a number of documents, was that for this project there should be net cost to government, which meant that there should be no cost to other areas of government. But if the RTA wished to put additional money into the project it was to come from within its own budget. At no time was the RTA advised not to do that. So it was an RTA decision whether it took money from its budget for this project or, indeed, from some other project that it was working on.

CHAIR: That is why that amount of \$98,000,000 was to be paid by the consortium.

Dr SCHOTT: At the front of the project?

CHAIR: Yes, and not by the RTA. So the RTA was passing all the costs on to the consortium.

Dr SCHOTT: It was trying to do as much of that as possible so as not to disturb the rest of its road program, which is no great surprise really.

Ms LEE RHIANNON: Whose idea was it to require the developers of the tunnel to pay the State Government nearly \$107 million, about one-seventh of the total cost of the project, and give them the right to undertake the project? Was it the roads Minister at the time, the Treasurer, or did it come out of Treasury?

Dr SCHOTT: It came out of the tender process. There were three bidders and the three bidders bid a number of variables in their bids, including what they were going to build, what the toll would be, and what they were prepared to pay for associated costs at the front of the project.

Ms LEE RHIANNON: You said it came out of the tender process. So are you saying that it came from the private sector?

Dr SCHOTT: Yes.

Ms LEE RHIANNON: So it was something that was included in one of the tender bids, which was then adopted for the final project, or was it in the Cross City Motorway's tender?

Mr GRAHAM: In the tender documents that went to the three bidders the development costs and business consideration fees were identified as potential areas that were available if there was excess revenue over cost in the concession. All bidders had the opportunity to bid on either the development costs or the business consideration fee. One bidder bid on both. Two other bidders did not bid an up-front contribution. The up-front contribution comes about because it is not a precise equation between costs and revenues. So, effectively, the degree to which a bidder is going to take revenue risk over the cost is going to indicate that there is a surplus of funds or a deficit of funds, depending on their consideration of both traffic and toll revenues, et cetera.

Ms LEE RHIANNON: You seem to be saying that it was something that was offered to the tenderers rather than coming from the tenderers?

Mr GRAHAM: It was in the bid documents as the basis for them to—

Ms LEE RHIANNON: And the bid document comes out of the Government?

Mr GRAHAM: It comes out of the RTA.

Ms LEE RHIANNON: That statement is different from Dr Schott's statement.

Dr SCHOTT: No, I said it came in the tender process.

Ms LEE RHIANNON: I then said it came from the private sector and you said yes to that suggestion.

Dr SCHOTT: Yes, in their response to the tender process. They did not have to bid that, but they chose to.

Ms LEE RHIANNON: Where did the idea come from? Is that the first time this has happened? Previous highway projects have not had this.

Mr GRAHAM: The issue that was being confronted was that the RTA did a large amount of development work in getting the project to market.

Ms LEE RHIANNON: The question was: Has it happened before?

Mr GRAHAM: No. In previous toll road tenders, we have actually had, in most cases, the reverse where there has been a contribution required to actually make the project work. And, yes, this was the first outcome that we had where there was a clear indication that the private sector thought there was more revenue to be gained over the costs.

Ms LEE RHIANNON: So do you see this development as something that is making it difficult to establish a coherent public-private partnership [PPP] process, or is it something that you now see positively and you will incorporate in future projects?

Mr GRAHAM: Well, I see it this way: It is very difficult to write the equation for a toll road model. You have to fix some parameters. On the cross-city tunnel, we fixed the starting toll, the

escalation, and what we wanted in terms of works. For the traffic flow, we had indicated in the environmental impact statement [EIS] what we thought the traffic might be. The bidders then bid the traffic volume against the tolling formula against the costs they are going to incur. Whether or not their equation is positive or negative is really a function of their bid team. We can then take any surplus up front, down the stream or by lowering tolls. So it depends on who potentially could share in the benefits of the excess revenue over costs.

But the first thing is that we do not know precisely whether there will be excess revenue over costs. We do our own modelling on our own parameters which indicate maybe there is or maybe there is not, but that is the basis on which the tender process goes forward. The basis of allocating any surplus is an issue then that needs to be addressed in terms of where does the surplus need to go, if the Government wants to use it in particular ways.

Ms LEE RHIANNON: We will move on to the public sector comparator [PSC]. Who was responsible for undertaking the PSC for this project?

Mr GRAHAM: The PSC was a joint development between the RTA and Treasury, primarily because this was the first time we had actually approached it using a commercial policy framework. What we were doing there was developing a fully project financed model as though it was a Government delivered project through a government corporation, so we worked with RTA. Treasury worked on the finance attributes—the debt equity structures, the rates of return expected, et cetera—and the RTA worked on the technical aspects—the engineering construction costs, the ongoing operations and maintenance costs—and we used the RTA's estimate of traffic flow for the toll revenue equation.

Ms LEE RHIANNON: And what was the RTA's estimate of traffic flow?

Mr GRAHAM: Their estimate of traffic flow was a starting level in 2006 I think of around about 50,000.

Ms LEE RHIANNON: It started at 50,000?

Mr GRAHAM: Yes. It was reported in the EIS documents.

Dr SCHOTT: No. To be clear, it starts at nought and then built up over a period of time.

Ms LEE RHIANNON: That was going to be my next question.

Dr SCHOTT: No, no-one is expecting it to start at 50,000 in the beginning.

Ms LEE RHIANNON: So when does 50,000 come?

Mr GRAHAM: The first year was 2006. That was the estimate.

Ms LEE RHIANNON: So when you say that with the PSC you expected after one year that there would be 50,000 to come—

Mr GRAHAM: Yes.

Dr SCHOTT: Including Sir John Young Crescent.

Mr GRAHAM: Yes, including Sir John Young Crescent.

Dr SCHOTT: Which is about a third. It is an important point because it is about a third of the traffic.

Ms LEE RHIANNON: Yes.

Mr GRAHAM: And that was growing by a small amount over time. Those figures were in the EIS.

Ms LEE RHIANNON: So you get 50,000 in a couple of years?

Mr GRAHAM: In 2006. That was our forecast.

Dr SCHOTT: Twelve months or 13 months.

Ms LEE RHIANNON: Within one year we have gone from nought to 50,000.

Dr SCHOTT: Yes.

Ms LEE RHIANNON: What is your final figure? We hear 93,000 from the Cross City Motorway Consortium [CCM]. What was your final figure?

Dr SCHOTT: Fifty thousand, built up at about one per cent a year, from memory.

Ms LEE RHIANNON: I cannot work that out, but after 30 years, what would that be?

Dr SCHOTT: Maybe it is up in the order of 85,000 or something like that.

Mr GRAHAM: In 2006 in the main tunnel, we forecast 69,000, and on Sir John Young Crescent, 17,000.

Ms LEE RHIANNON: Was this material published—made available to the public?

Mr GRAHAM: Yes. The traffic flows were in the EIS.

Ms LEE RHIANNON: No, the PSC.

Mr GRAHAM: Not before the bids were in.

Ms LEE RHIANNON: But has it been published?

Mr GRAHAM: Yes, it is in the contract summary.

Ms LEE RHIANNON: What? The whole PSC?

Mr GRAHAM: The summarisation of the PSC.

Ms LEE RHIANNON: Has the whole PSC been made available to the public?

Mr GRAHAM: Yes. It has been made available to the House. It is part of the documents tabled.

Dr SCHOTT: As part of the contract summary which has been out and about for some time, there is huge detail about the PSC in that.

Ms LEE RHIANNON: But I am just trying to ascertain what was made available to the public. Before you tabled it here, the full document had not been out there for the public.

Mr GRAHAM: No. A summarisation of the PSC was contained in the contract summary

Ms LEE RHIANNON: I mean, that is the usual process, is it not, that the PSC is kept secret?

Dr SCHOTT: No. The usual process is that the PSC is included in the contract summary when that is released.

Ms LEE RHIANNON: But the entire summary, you can never get your hands on the full document. I am just trying to work out what the justification is for not releasing the full document.

Dr SCHOTT: Can I just clear up something about the summary? The contract summary is actually about 30 pages long and it is a very detailed summary. It really does provide all the information I think that people are likely to require. The reason for the summary was not to hide documents but rather to make them user friendly, if I can put it like that, because these contracts are trolley loads of stuff, as you know. It is very hard to find your way through it.

Ms LEE RHIANNON: I appreciate that that is now, and I will even say that it is an advance. But having the actual original material is obviously important.

Dr SCHOTT: Yes.

Ms LEE RHIANNON: So I go back to my question. Why is that not made available—even if it can be said that it can be sighted at the State Library, or that a copy is available on request? Are you open to moving to that stage, considering there is so much controversy surrounding these projects?

Dr SCHOTT: After the projects are completed, we would be willing to consider that but we cannot do it while it is —

Ms LEE RHIANNON: But that is in 30 years time.

Dr SCHOTT: No, when the contract is executed. We cannot release that while we are in the middle of negotiations because it would be a bit like releasing what your reserve price on your house was.

Ms LEE RHIANNON: So you are saying that you would release it after that final stage?

Dr SCHOTT: We would consider that, yes.

Ms LEE RHIANNON: You will consider it.

Dr SCHOTT: I do not want to jump the gun here because I am aware that there is a report on a review of motorways that is due out shortly.

Ms LEE RHIANNON: Okay. We will come back to that one. Yesterday when Mr Egan spoke to us, he in fact said that the real funding of the project is in the order of about \$860 million, which a number of people were surprised at because the figure we constantly hear is \$680 million. I was just wondering if you could elaborate on that—what the difference is, and what the total amount for the project is?

Mr GRAHAM: There is a combination. There are the design and construction costs, the business consideration fee of \$100 million that you were talking about, there are the proponent's project development costs and their transaction and financing costs that go in on top of their straight costs of building the project. So there are numbers out there which relate to how much it costs to build it as opposed to how much it is actually going to cost—what has to be financed in terms of debt and equity. What has to be financed in terms of debt and equity includes interest during construction so that goes in there, which is quite a sizeable component. Depending on the point in time that you ask, "What is the cost?", normally we would say, "What does the project cost in terms of capital costs?" It might be that it is design and construction costs. If we are taking it through to, "What did the project cost when it first opened?", then you have capitalised interest and you have all the development costs that need to be recovered and you have got the design and construction costs that have to be funded, and that gets funded by their debt and equity in the long term.

CHAIR: We have to move on to the Government's questions.

Ms LEE RHIANNON: Could I just ask for a question to be taken on notice? Considering that the \$860 million figure has been given as the price, can you take it on notice and give us a break down on how it is arrived at?

Mr GRAHAM: Yes.

Mr MATT BROWN: Did Treasury have a role in the M2 contract negotiations? Could you describe that role and outline how Treasury guidelines on privately financed projects have changed, if they have changed since the M2 project?

Mr GRAHAM: Treasury had a role in the M2. It was not as active a role as in the cross-city tunnel. The M2 contract was done some years ago now. The M2 contract was done under the old guidance material. There were still references to committees of Cabinet for which Treasury would be providing advice and review information. Treasury reviewed the economic appraisal and financial appraisals coming in. At that stage we were not involved in the negotiating team and the evaluation team.

That was the RTA's territory at that stage. In relation to the evolution of the guidance material, particularly the contract summary provisions in the recommendations of the PAC, Treasury has taken a stronger role in terms of the Government's involvement in the project delivery stage by getting involved in the evaluations and reviews. Equally, learning from both the M2 and Eastern Distributor roads, one of the biggest issues confronting those two projects was the environmental approval process. Coming out of those two projects we insisted that environmental approval conditions be obtained before bids are submitted. That was the case in the cross-city-tunnel. The development approval conditions were available to all bidders and were priced into their bids, so we were not going to face a situation where, after you have the preferred proponent bids in, you get the final development approval conditions.

Mr MATT BROWN: On the contract summaries and the Public Accounts Committee reports, there has been a lot of discussion about public disclosure of documents and I understand a couple of Public Account Committee reports have outlined that summaries tend to impart more information to the public than large wads of documents. What is Treasury's experience in that regard?

Dr SCHOTT: Our experience is that contract summaries are helpful for people because they take you to the guts of the contract without having to plough through literally hundreds of pages of quite technical matters and legalese. It was certainly never our intention to use the contract summary to not divulge information. If there is some sense that perhaps we should also be letting loose the whole contract, for whatever reason, we would be happy to consider that after the contract is executed, and excluding commercial in confidence matters, of which there are not necessarily very many.

Mr GRAHAM: The contract summary we produce for privately financed projects is a more comprehensive summary of the project. It will take you from the start to the finish of the project. That was our intention—describe the full process that was followed, not just the final contract. If you read the contract summary, you will see it talks about the evolution of the project, the different stages of approval and what happened in those stages, and the summary of the contract finally entered into. Our objective was to make it more amenable to people to understand how the project had evolved, how we got the decisions, and the contract that was available.

Another aspect was that the PAC said it wanted the contract summary certified by the Auditor-General, which is the case. The Auditor-General certifies that it is a true and fair reflection of the full contracts and lists all the contract documents that he has reviewed in relation to the contract summary. Secondly, it was to be tabled in Parliament and, thirdly, it was to be made available to the public through public notices and, in this day and age, on web sites. We have taken on board all those recommendations from the PAC. Clearly people are now considering another step in the process in relation to contract summaries and how disclosure should take place. As Dr Schott said, Professor David Richmond is reviewing this under a mandate given to him by the Premier.

The Hon. AMANDA FAZIO: I want to clarify some issues that were raised, particularly in Opposition questions. It was implied that the stamp duty or tax levied on the Cross City Tunnel Consortium was not high enough. Would that not have led to people paying an increased toll?

Mr ANDREW CONSTANCE: On a point of order. These questions about stamp duty have been taken on notice and, consequently, I do not think they can be answered.

Mr MATT BROWN: To that point of order, we have every right to ask that question. Just because the Opposition wants to phrase a question in a particular way and it is taken on notice does not mean we cannot ask a question on a similar subject.

CHAIR: It is up to the witnesses whether they want to answer.

The Hon. GREG PEARCE: Do you now accept that your earlier point of order was a nonsense?

Mr PAUL McLEAY: We accept that your questions were a nonsense.

CHAIR: The questions are now on the record and it is up to the witnesses whether they want to answer or take them on notice.

The Hon. AMANDA FAZIO: If the Opposition was calling for higher taxes to be paid by the consortium, would that not have led to an increase in the toll paid by motorists?

Dr SCHOTT: Given the question asked by Mr Constance, I would rather address yours with his, if you do not mind. By and large, if the tax costs of a project go up and we are collecting money, then yes, the tolls would go up.

Mr PAUL McLEAY: In relation to Treasury and TCorp, and Treasury's involvement in each stage of the process, can you confirm, or do you hold the view, that Treasury has the skills to negotiate with these tough private sector negotiators?

Dr SCHOTT: Yes, Treasury has a very skilled group that Danny leads that handles these projects and has done so for many years. That group helps agencies with their privately financed projects and it puts particular effort into those agencies that are inexperienced in complex projects of this kind. The RTA is one of our better agencies at project management and, despite this matter at the moment, Australia, and New South Wales in particular, has a global reputation of excellence in this field.

Mr MATT BROWN: I agree that New South Wales is a world leader in public-private partnerships and has been for the last 15 years while developing its skills. There is still a degree of public scepticism about PPPs.

The Hon. GREG PEARCE: It is because your Government is such a failure in managing them.

Mr MATT BROWN: I would like to ask the question. Perhaps Opposition members would like to respect the dignity of this committee and its process. Are PPPs just a fancy financing arrangement, which effectively delivers control of public assets to the private sector with little or no benefit to the public?

Dr SCHOTT: We have a very clear policy guideline that says, firstly, decide that you want to do this project and you need it for the service delivery of the Government and its strategic aims. We then address whether to fund it ourselves on budget or whether we wish to have it privately financed, either on or off budget. The only reason that we go down the PFP route is that we get better value for money. The whole point of the public sector comparator is to effectively work out what we think it would cost if we did it ourselves, the quality of the project and the social and economic benefits it would bring, and compare that with the project being offered by the private sector. Unless the private sector beats the public sector comparator, we do it in-house. If the private sector beats us, we let the tender.

Mr MATT BROWN: We heard some evidence yesterday that the Government can borrow more cheaply than the private sector. Can you comment on that and how it inter-relates with the comparator?

Dr SCHOTT: The Government can borrow more cheaply in aggregate but the Government's cost of borrowing for a particular project is pretty much the same as the private sector's cost when you

allow for the risk. The risk in these sorts of projects is largely the traffic risk, as we are all seeing. The risk of having the cars going through the tunnel would be no better or worse whether it was us or the private sector. So public finance is not cheaper when you take the project risk into account.

Mr MATT BROWN: The viability of the cross-city tunnel is also a concern. Earlier the Committee heard your view on volumes or forecasts. What is Treasury's view, is it relaxed concern in the short-to-medium term of this contract?

Dr SCHOTT: Our view is that it is too early to tell, as I mentioned earlier. At the moment, that is our position. We are just watching the ramp-up period with interest. I take you all back to the Eastern Distributor, which I presume the RTA would have gone through as an example yesterday. It also had a very difficult ramp-up period.

The Hon. GREG PEARCE: Mr Graham said earlier—

CHAIR: Let her finish.

The Hon. GREG PEARCE: It was based on an analysis and was comfortable within 20 per cent. That is what Mr Graham said earlier. I am just helping Mr Brown with his question.

CHAIR: You are not here to answer questions.

The Hon. GREG PEARCE: Earlier Mr Graham said that they were comfortable within 20 per cent.

CHAIR: Mr Pearce, it is whether Mr Brown is comfortable.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you understand the base financial model?

Dr SCHOTT: I think so. He would not have given me the detail of it without having it in front of him.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Did you choose the auditors for the base financial model? Or did the consortium choose them and give you the report?

Mr GRAHAM: What we required from all bidders was a base case financial model. The audit we required was a technical audit to say that the model actually was working correctly, that there were no mistakes, like mathematical errors and so forth. It was not an audit as to whether the model had correct assumptions. The assumptions were still the bidders' requirement. What we wanted to make sure was that technically the model was working to the level and degree of accuracy that the bidders were saying; that there were no spreadsheet errors and so forth. The type of audit we required was really a technical audit of the spreadsheet.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It was not in a sense the concept you have to understand, the auditor merely does the mathematics?

Mr GRAHAM: Correct.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You were happy that you understood the concepts, and that they were valid?

Mr GRAHAM: Correct. We understood the structure of their models, the factors they were putting in. We outlined that in the bid documents as to request basically what kind of information we were expecting to see in their bid models, which was quite disaggregated. That was the first time that we received a bid model as disaggregated as what we had asked for on the cross-city tunnel. Previously they were quite aggregated models. We could not pick out the individual cross line items and we could not see potentially where the margins were being made and so forth. So we structured our request for the detailed proposal to ensure we could see in a transparent way the full makeup of their bid.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Does that mean that each MAE is costed? In other words, if you close a lane how much more money they will make and how that will affect traffic flows?

Mr GRAHAM: The MAE is an adverse affect that comes about because of something we may not wish to do. The bid model can be used as a basis for assessing what might be the compensation level. I am sure that bidders would say that would go back to their bid model as an assessment of compensation before triggering of an MAE event under the contract. However, there could be two views as to the material affect that may be caused by non-compliance with certain conditions in the contract. MAE is not just a standard that has occurred; it has to be a cause and affect type relationship, something has to happen, it has to be attributable under the contract, and there has to be a period of time to establish that there was an affect of that particular event.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you open a lane in William Street or built a light rail to the University of New South Wales, you would be able to negotiate that MAE. They might sue and you would negotiate what that was costing them in terms of vehicle traffic?

Mr GRAHAM: The presumption about a particular action of the Government causing an MAE event on them really is not just saying that we are going to build something. You have to actually do it. It has to be a demonstrated affect and then an assessment of the affect that that has on the business. The longer the business is running the more track record you have got as to what you would be measuring against, which may not be the base case financial model.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably you would have to do that before you reopened the lane. You would negotiate if you thought it was a known MAE, would you not?

Mr GRAHAM: If it was a known MAE you would give notice that you were going to do it. Whether they countered with a claim is a risk the company would take. Clearly if we were going to undertake an event that was clearly prescribed in the contract, and we were going to breach our contractual obligations, obviously we would have to do an assessment of the risks and benefits of doing that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So the Government has given up the ability to control its own streets?

Mr GRAHAM: No, it has not. It says that if we do it there is a price to pay.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do not know what it is?

Mr GRAHAM: Not at this point in time.

CHAIR: Earlier the Committee discussed the PSC. Would you provide the whole PSC to the Committee, even though it was put in the documents to the House?

Mr GRAHAM: The RTA holds the most up-to-date version. I will get a copy from the RTA and forward it to the Committee.

The Hon. GREG PEARCE: The stamp duty that Mr Constance was asking about is not the stamp duty at the time of the contract. It was an exemption that was granted after the contract.

Mr GRAHAM: I think I understand what you are referring to. There was a change in legislation at some time.

CHAIR: You will take that on notice and forward your answer.

Mr GRAHAM: Yes.

The Hon. GREG PEARCE: That is in addition to the land tax and rate concessions given to the cross-city tunnel.

CHAIR: I thank you for appearing before the Committee and providing information. We may need another Treasury official who has been more involved with those areas. Mr Pierce is known to be the secretary of Treasury. Do you recommend anyone as the officer within the department to answer those questions?

Dr SCHOTT: Probably me and Mr Pierce. He is away today, but I am sure he will be available next time you want him.

(The witnesses withdrew)

(Short adjournment)

SIMON ARTHUR YARWOOD SMITH, Deputy Director General, Department of Environment and Conservation, 59-61 Goulburn Street, and

ELIZABETH CORBYN, Director General, Department of Environment and Conservation, 59-61 Goulburn Street, affirmed and examined:

SAM HADDAD, Director General, Department of Planning, Bridge Street, Sydney, and

JOE WOODWARD, Executive Director Operations, Department of Environment and Conservation, 59 Goulburn Street, sworn and examined:

CHAIR: In what capacity does each of you appear before the Committee?

Mr SMITH: As the Deputy Director General of the Department of Environment and Conservation.

Ms CORBYN: As Director General of the Department of Environment and Conservation.

Mr HADDAD: As Director General of the Department of Planning.

Mr WOODWARD: As Executive Director of Operations in the Department of Environment and Conservation.

CHAIR: Is each of you familiar with the Committee's terms of reference?

Mr SMITH: Yes, I am, briefly.

Ms CORBYN: Yes, I am.

Mr HADDAD: Yes, I am.

Mr WOODWARD: I am.

CHAIR: If any of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and Committee will consider your request. Do you wish to make a brief opening statement?

Ms CORBYN: Yes, I do. The Department of Environment and Conservation incorporates the Environment Protection Authority, often known as the EPA, which had an environmental regulatory role in relation to the construction of the cross-city tunnel. I understand that the terms of reference for the parliamentary Committee focus particularly on the role of agencies in negotiating the contract with the cross-city tunnel consortium, so I thought it was relevant for me to start by indicating that the Department of Environment and Conservation had no involvement in contract negotiations relating to the cross-city tunnel. The Department of Environment and Conservation's main role as a regulator is twofold: First, advising the Department of Planning on air quality, noise and water quality issues, on the environmental assessments and on the conditions of consent. Second, issuing the environment protection licence for the construction of the cross-city tunnel.

The legislative powers for licensing only cover construction; not operations, so we had a role in regulating the environmental impacts of the construction process. Primarily this covers dust, noise, water runoff, waste and spoil management. As I mentioned, we had no involvement in contract negotiations. Our role is to identify the environmental outcomes as appropriate and the air quality standards that need to apply. We do not make decisions about the design or the technology that is used in achieving outcomes, but we do assess whether we think the proposal can meet the outcomes specified. In relation to community liaison, we liaise with community through meetings and through consideration of submissions in the environmental impact statements, and our environment protection licences are publicly available through public registers.

Of course, there are many environmental issues that we have dealt with, but the main one of concern during the approval stage was air quality. I wanted to just give a few comments on that. How key strategies to improve Sydney's air quality are set out in Action for Air, which is a 25-year in quality management plan. That involves working towards cleaner vehicles and fuel programs, which are important from any quality prospective, and also regulating industrial emissions and controlling multiple sources, such as wood heaters, but we do consider carefully the contributions that new proposals like a cross-city tunnel might have on air quality because of their obvious relationships with motoring vehicle emissions.

We did spend a significant amount of time working on the ambient and other air quality standards that would apply to the cross-city tunnel—they are applied through the development consent—and on modelling, monitoring and reporting programs that would be required. Generally, ambient air quality impacts from road tunnels and associated stacks are very small compared with industrial sources, but they do cause community concern and it is important that the standards are clear and that they are credible. The cross-city tunnel has stringent but necessary air quality standards at both stack and in-tunnel; and the ambient standards are derived from national standards, which are regularly reviewed. We also work with New South Wales Health, which has the lead on advising on in-tunnel standards.

There also is an active public reporting process on air quality, which we have been involved in, including information from monitoring stations. There are four ambient monitoring stations that provide real-time data to the local community on local ambient air. So the Department of Environment and Conservation [DEC] provides technical advice on monitoring and reporting to the Department of Planning. That is just a brief overview of our role and we are happy to answer questions later.

Mr HADDAD: I will just make a brief statement on behalf of the Department of Planning. We are pleased to assist the Committee. Just in terms of clarifying the role of the Department of Planning, we administer the Environmental Planning and Assessment Act and our role is essentially in terms of the environmental impact assessments of the cross-city tunnel and its myriad infrastructure and development projects; and in advising the Minister for Planning in relation to the granting of approval. With the cross-city tunnel, as with other projects, we do not nor did we deal with the contract negotiations at any stage but we deal with the RTA's performance directly. The consent approval is issued to the RTA and the obligation to comply with conditions of approval is with the RTA.

If I may briefly outline the process of the assessment and the approval process of the cross-city tunnel project. The statutory process of assessment started with the issuing of the director-general's requirements for the project. The director-general's requirements identify the broader issues that the proponent ought to cover, and we issued those requirements in June 1999. We issued them to the RTA and we issued them subsequent to discussions with other specialist government agencies. We incorporated their requirements into the consolidated director-general's requirements.

The RTA prepared an environmental impact statement and exhibited the environmental impact statement, and consistent with the law that applied at the time the RTA exhibited an environmental impact statement and received submissions, and examined the submissions and reported on those submissions publicly, and that is where the actual development application process started. That is when the proposal is submitted to the department. The department undertook an assessment and issued director-general requirements with conditions with the director-general's assessment report. That report was put on, and is still on, the web site and was made publicly available.

The then Minister for Planning approved the project after consultation with the proponent Minister, which was the Minister for Roads at the time. There is a statutory requirement for both Ministers to consult before issuing the final approval. That is basically an outline of the assessment process. If I may just cover two key factors for the Committee's consideration which guided the thinking and the intention and the outcomes of the final assessment process. Essentially, in undertaking the assessment of the cross-city tunnel we have based our assessment on two factors. Firstly, that the primary objective of the cross-city tunnel is to improve the environmental quality of public space within central Sydney, improve the ease of access and reliability of travel and improve

the reliability and efficiency of travel between areas east and west of central Sydney. I am just putting that into context because that was the core objective on which the whole assessment had been undertaken.

Within that context we have a statutory obligation to consider the environmental, social and economic implications of the proposal in terms of the impact on amenity and on the environment, including both regional and local traffic management issues, but within that context. We go through an extensive public consultation process during the stage of the assessment and we have a statutory obligation to take into account the submissions. I would be more than happy to answer questions.

CHAIR: The RTA's submission to this inquiry says the Department of Planning had, "strategic input into the planning of the cross-city tunnel project." Can you detail for the Committee what that strategic input entailed?

Mr HADDAD: I think this is reference to what we had in our director-general requirements when we issued them to the proponents. We ask them to take into account strategic planning documents available at the time, including the transport strategy, I think the policy documentation that was available at the time, the strategy on air quality and others. That was basically a requirement on them to consider placing the document into that strategic context. Having said that, the statutory obligation really are the practices to consider the projects submitted as projects rather than the strategy that is behind the project. That is, the assessment has to consider the implications of the project and the project only, all elements of the project, and then give advice to the Government that this project should or should not proceed, and if the recommendation is for it to proceed what recommendations should be attached to it.

CHAIR: I think, Ms Corbyn, you said earlier you had no involvement in the negotiations for the contract. What involvement if any did either of your departments have in the negotiation of the contract with the cross-city tunnel consortium, including the first amendment deed?

Ms CORBYN: In contract negotiations, the department has no role in dealing with contracts. So, we would have had advice provided to the Department of Planning about the environmental standards setting that would be used in the development consent process, but we have no role in negotiating contracts.

CHAIR: Is it the same with the Department of Planning?

Mr HADDAD: As I said, we had no role and we do not have any role in negotiating contracts. Our main dealings were with the proponents, the RTA, and only the RTA, and other government agencies of course. We relied on technical advice provided to us from a specialist government agency such as the EPA, the Department of Health and others.

CHAIR: If you had no direct involvement, did you in any way support the RTA in its negotiations for preparation of the project?

Ms CORBYN: Generally, our involvement is through a licensing process and we specify the licence conditions that would apply for the construction of the cross-city tunnel. I understand we licensed Baulderstone Hornibrook in relation to the construction. Our discussions with the RTA would have been about the conditions of consent and the approval and how those might relate to the licensed conditions that we issued.

CHAIR: The road user benefit cost analysis is required as part of the environment impact statement. Can you explain the road user benefit cost analysis and what it takes into consideration?

Mr HADDAD: If possible could I get more background information on it?

CHAIR: The road user benefit cost analysis is required as part of the EIS—

Mr HADDAD: That is part of our EIS. The EIS requirement is to consider the implications to the road users and to the community of the proposal itself. It is the proposed use of the tunnel, the

traffic and other traffic management measures. That was part of the EIS itself. These factors are exposed and assessed.

CHAIR: So you supervise that yourself?

Mr HADDAD: The work is done by the proponents and I cannot recall exactly to what extent our assessments dealt with it but I am happy to take that on notice.

CHAIR: How were the traffic alterations that were supported in the planning approval determined? How was that decision made?

Mr HADDAD: As I was trying to say, the assessment of the project was done on the basis of relating it to its justification. Its justification was basically to optimise, to maximise, the clearing of the surface roads. That was essentially the fundamental justification for the project. So, it was not only the tunnel but it was all the associated traffic management measures around the tunnel. Some of those traffic management measures relate directly to the tunnel, and others relate to other traffic management.

The assessment was done in the context of trying to balance those different traffic management requirements in order to meet the justification of the project itself. In a broad sense, that was the approach that was used then. The actual conditions we have come up with, to the best of my recollection, do not alter, essentially or fundamentally, any of the traffic management measures. But, as I recollect, we did look at what was proposed, and essentially it was again a judgment in terms of the needs and the fundamental objectives of the project, which were basically to provide a traffic service capacity that was as free as possible.

CHAIR: There has been a lot of discussion about the level of consultation involved. Do you feel it is reasonable to allow a period of only one month for the community, with its limited expertise and resources, to consider and comment on a major infrastructure proposal. Do you think it should be a longer period?

Mr HADDAD: It depends on the project. With some projects, a longer period is appropriate, and with others perhaps not. But more important is the work that is done during the preparation of the EIS documentation. In this case, we had requirements as part of the director-general's requirements for the RTA to consult with the community, and the advice I have is that they did consult with the community and they reported on the outcome of their consultation as part of the EIS. But, yes, sometimes a one-month period may not be appropriate, and extensions are given in many cases.

CHAIR: You agreed to certain road closures and other traffic arrangements. But if they are now altered, would any of these alterations constitute a breach of the planning approval, and what would this mean?

Mr HADDAD: Any alterations would need to be looked at in terms of whether they are significant variations to the approved project. If they are, then there are provisions for modifications to be considered and, if justified, approval granted to those modifications. As to whether alterations will constitute substantial modifications to the approved project, I would have to see exactly what those modifications are. But there are provisions under the planning legislation for the Minister to consider modifications and to make decisions accordingly.

CHAIR: Are you considering any alterations at the moment?

Mr HADDAD: No, I am not. We do not have any proposals to modify the project at the moment.

CHAIR: There are no instructions to your department from the Minister?

Mr HADDAD: No proposals have been submitted to us at all.

The Hon. GREG PEARCE: At the time of the supplementary EIS the condition relating to carbon monoxide emissions was changed. Can you give us the background to that?

Mr HADDAD: I think it is a World Health Organisation standard which relates to a causal factor relationship in terms of carbon monoxide of, I think, 87 parts per million for an exposure period of 15 minutes. That was the standard applied to the M5 tunnel, and I think it was the standard applied to the original proposal, from memory. When we assessed the longer proposal, obviously we had to rethink some of the internal exposure. I am not sure whether we can call it a different standard, but obviously if we want to safeguard recipients for a longer period of time there is a separate equivalent exposure time, and hence a standard of 50 parts per million for an exposure period of 30 minutes.

We received advice from Department of Health and, to be honest, in light of experience with the M5 tunnel, we thought it prudent to also consider imposing the second standard as well. I think there is a bit of confusion as to whether we have requested how to deal with that standard. The options, both technical, and operational and managerial, were, to the best of my recollection, left to the RTA. The RTA could have said, "We can meet that standard by operating the tunnel in one way or another, but that is how the proposal stands in terms of improving and strengthening the ventilation systems." We thought that was a prudent outcome in terms of not only internal air quality but also external any quality.

Mr WOODWARD: The carbon monoxide standard was advised by the Department of Health, not the Department of Environment and Conservation. But I know that the World Health Organization has standards for carbon monoxide that are for 15 minutes and 30 minutes. When the M5 East was originally proposed, it was thought appropriate—and advice was provided by the Department of Health—that the 15-minute standard was the only one that needed to apply because it was thought that vehicles would go through the tunnel within the 15-minute period. As Sam indicated, based on experience with tunnels, and particularly the M5 East, it was realised that there can be periods when traffic may stay longer in the tunnel, and the Department of Health therefore advised that it was appropriate to apply both the 15-minute standard, which is 87 parts per million, and the 30-minute standard, which is 50 parts per million, to the Cross City Tunnel.

The Hon. GREG PEARCE: How long is the M5 East tunnel?

Mr HADDAD: It is about five kilometres.

The Hon. GREG PEARCE: And the cross-city tunnel is about 2.1 kilometres?

Mr HADDAD: Yes.

The Hon. GREG PEARCE: For the M5 East tunnel we have the standard of 87 parts per million at 15 minutes, which is problematic: everyone who has been through, and caught in, the M5 East tunnel knows that that standard has proved to be less than optimum. The change is the 30-minute standard, which is 50 parts per million, which is what we have introduced into the cross-city tunnel?

Mr WOODWARD: That is correct.

The Hon. GREG PEARCE: Were they happy with that proposal? Did you have some reason to think that traffic would become clogged in the tunnel?

Mr WOODWARD: We were not involved in those negotiations; it was the Department of Health. There was an additional change, in that in the M5 East tunnel the limits applied to any individual monitor along the tunnel—and there are several monitors along the tunnel for both the M5 East and the cross-city tunnel—whereas it was made quite clear in the planning approval for the cross-city tunnel that the exposure limit relates to the time people are actually driving through the tunnel and therefore their actual exposure over that period, not just a single monitor's reading. People may drive past a single monitor, but it may be a lower level further down the tunnel.

The Hon. GREG PEARCE: The RTA, as you said, was then responsible for how that standard was to be met.

Mr WOODWARD: Yes.

The Hon. GREG PEARCE: One of the RTA's summary documents, dated about mid-2002, says: "The solution adopted was to construct a 25-metre square ventilation shaft for the length of the tunnel." When Mr Samson gave evidence yesterday he said that basically an extra tunnel had to be built. Is that your understanding of the solution?

Mr HADDAD: I am not sure that I would describe it as an extra tunnel. It is an extra—

The Hon. GREG PEARCE: He certainly did.

Mr HADDAD: It is an extra ventilation shaft, in a sense, and it is strictly for the ventilation system.

The Hon. GREG PEARCE: Some 25 metres squared would be a bit bigger than this room, would it not?

Mr SMITH: No, 25 metres squared is five metres by five metres. The design of those things is about optimising the cost. If you have a very narrow tube you have to use a very big vent to force the air through, or if you have a larger tunnel then you have less pressure required. It is an engineering issue to decide what is the most cost-effective way to provide adequate ventilation, and I would expect that the operators of the tunnel wanted to have clean air for the customers, essentially. They would seek to construct it in the most cost-effective way.

Ms CORBYN: And I think the ventilation shafts also are not just for air quality—CO. They provide other avenues for dealing with safety and other sorts of issues as well. It is a whole engineering package.

The Hon. GREG PEARCE: That normally might be the case, but in this case it was imposed after the original tender. The RTA and the cross-city tunnel consortium agreed with the extra cost of \$37 million for a whole new extra tunnel to comply with the carbon monoxide change.

CHAIR: Do you want to pose that as a question?

Mr HADDAD: Is that the question, sorry?

CHAIR: Mr Haddad is nodding.

Mr HADDAD: Yes.

The Hon. GREG PEARCE: What was the approval process for that extra vent, shaft, or whatever you call it?

Mr HADDAD: The approval process was essentially part of the assessment and approval of the modification itself. The modification was the subject of DG requirements and the EIS was prepared, put on exhibition and their submissions received. There were submissions from the Department of Health, discussions with the RTA and the Department of Health and I think input from others as to whether the updated standard is more appropriate in the circumstances and then the standard was agreed upon and then the method of complying with the standard is a subject left entirely to the proponents. The method of complying with the standard could be by way of creating the tunnel in certain circumstances as per the M5 East. Where there are obligations where certain levels are reached or exceeded, certain traffic management measures are taken or to add extra capacity to the ventilation, which would provide for other benefits as well. That was what the proponents then submitted by the RTA as part of the formal proposal for approval. When we had this proposal for approval it had this extra tunnel in it, which we assessed and then approved subsequently.

The Hon. GREG PEARCE: Was the extra tunnel subject to an exhibition period?

Mr HADDAD: I will have to take this on notice. The extra tunnel was not strictly speaking part of the exhibition period, but it was made publicly known after the exhibition. When the RTA submitted its formal proposals through what we call a preferred activity report, but I will have to take this on notice just to double-check.

CHAIR: Did you increase the standard because of the criticism of the M5 tunnel?

Mr HADDAD: I am not sure that that was the main reason. Obviously, when we assessed subsequent tunnels the M5 East experience probably had a bearing on the thinking in that regard, but probably it was not the only one. There would have been other factors as well noting that the WHO had also recommended somewhere an added standard, which, to the best of my recollection, was not explicitly available at the time of the M5 East. That is the broader picture. In assessing some of those major projects the fact is that one had to build on the experience and operating experiences and all these factors that enter into it. Whether you rely entirely on managing traffic or whether you rely more on building hardware systems that is a matter that evolved as part of the ongoing assessment project. Nevertheless, all these things were put to the RTA at the time and probably a judgment was made that that is an appropriate outcome.

The Hon. GREG PEARCE: You made it a condition?

Mr HADDAD: Yes, but the conditions were made and then the proposals came to us. The conditions were imposed and there were opportunities for the conditions to be rejected. The conditions were not necessary to build it, but they were the standard. There were opportunities to do otherwise. Having said that, I am not trying to imply—

The Hon. GREG PEARCE: Are you telling me that the RTA could have come back and said, "No, we don't want to do that"?

Ms CORBYN: Certainly from our perspective when dealing with any kind of air quality standard, whether it be ambient or in tunnel—although Health is the one that advises on in tunnel—is to look at the appropriate designs. There are always options that you can bring forward in terms of how you meet those. But it is quite regular that you would assess any major projects according to the standards that are current at the time and advice that is received and standards to set a context. But it does not necessarily identify what the design structure would be.

Mr SMITH: It is worthwhile recognising that the benefit of having a separate method of conveying air rather than running it through the tunnel is that you get much clearer visibility in the tunnel. You have removed the current of polluted air.

The Hon. GREG PEARCE: I know. I have been through the M5 East quite a lot.

Mr SMITH: Realistically that is because some of the tunnel is being used as a ventilation method in the M5 East, whereas in this tunnel there is a separate tunnel or a separate shaft to remove the exhaust gases and that is a benefit for all the tunnel users.

Mr ANDREW CONSTANCE: What was the nature of the advice that the Department of Environment gave to the RTA in relation to the stack?

Ms CORBYN: We provide generally advice to the Department of Planning in relation to setting of the conditions and I will ask Joe Woodward to talk a bit more about the detail. But what we do is actually go through and look at modelling and the assessments that are done about the potential stack emissions that might be coming from the proposals that they have made. We compare those to the standards that are available and then we look to see how we can establish appropriate in-stack limits in relation to our national ambient standards. We do quite a sophisticated comparison and analysis of both their modelling and assessments. That allows us also to determine whether we think the standard can be achieved, because that is very important to us. We test that from our perspective to make sure that any proposal is able to be achieved.

Mr WOODWARD: I think that covers it fairly well. In essence, we advise on the appropriate ambient air quality standards and they were primarily in relation to particulates, oxides of nitrogen and carbon monoxide—that is not in-tunnel but the emissions outside. Then the proponents went away and they designed up their tunnels and stacks to meet those standards and came back, and then we assessed the modelling and the predictions to see whether what they were proposing would

meet those standards. Those standards come from the Australian national environment protection measures, which have been in place in draft form since early 1997 and then finalised in 1998.

Mr ANDREW CONSTANCE: Your team that would be working on the stack would provide advice to the RTA, or would you deal with the consortium directly in terms of the stack?

Ms CORBYN: We provide our advice into the Department of Planning.

Mr ANDREW CONSTANCE: From the Department of Planning's perspective.

Mr HADDAD: No, that is Joe Woodward.

Mr ANDREW CONSTANCE: I am sorry, in light of that the question might be better directed to Mr Haddad. Do you deal directly with the RTA or would you deal with the consortium in terms of the stack?

Mr HADDAD: We dealt only with the RTA and with the then department of the EPA.

Mr ANDREW CONSTANCE: So no departmental staff had any contact with the consortium at any point?

Mr HADDAD: No.

Mr ANDREW CONSTANCE: What about in relation to the relocation of the stack?

Mr HADDAD: No, all our dealings are entirely with the RTA as proponents, and that is throughout the process. I note in that regard that, particularly in the case of the cross-city tunnel, the assessment and the conditions were given to the RTA prior to the granting of any contractual arrangements in that regard.

Mr ANDREW CONSTANCE: Has that got to be approved by the Minister at any point?

Mr HADDAD: The conditions are approved by the Minister, yes.

Mr ANDREW CONSTANCE: Before the RTA sees them?

Mr HADDAD: No, the RTA sees them. Just to go very briefly through the process: when the assessment is completed there is the director-general's assessment report. Usually draft conditions are provided to the RTA for their comments; those comments are taken into account and documented; and then there are final conditions of consent. We also liaise with the EPA and others in terms of their relevant conditions and we incorporate all their requirements and then we put all that into an assessment report, the formal director-general's assessment report, and we forward the whole thing to the Minister.

There is a statutory requirement for the Minister for Planning to consult with his colleague the Minister for Roads and there is a period of 21 days for this consultation to occur. The Minister for Planning must statutorily take into account the comments received from his colleague the Minister for Roads and then he sort of makes his final decision and issues the approval. All that is then made publicly available and it is posted on the web site, all this documentation. That is broadly it. But there is, as I said, a statutory process of discussions between the agencies, between the proponent agency, the RTA and the assessors, and the decision made by the approving authority both at a bureaucratic level as well as an administrative level.

Ms CORBYN: Could I comment just from a DEC perspective? In consents the Minister for Planning's approval conditions require the RTA, as I understand it, to investigate and report on comparative air quality impacts of alternative ventilation stack location options, and the approval condition did actually ask the Department of Planning, or set up as the Department of Planning, to consult the EPA when looking at the RTA's report on those options of where to locate the stack. And we did review the assessment that was done and we concluded that the impacts of each option were at a very similar level. So I think we advised Planning that it was really open to them to select any of the

alternative stack locations—if that was your question about the different locations. We did look at it in the consent conditions as we were consulted and we provided advice back to Planning on the locations.

The Hon. GREG PEARCE: Just to finish that point. When SHFA sought to have the stack location changed, the same would have applied: your staff would have advised the RTA you had no contact direct with SHFA or the consortium?

Mr HADDAD: No. There is a condition of approval which required an investigation into an alternative location, if applicable, and I think within a radius of 100 metres or something. And the reasoning for that is that if it is beyond that then we need to go through a proper consultation process and the rest of it. That came about as a result of an extensive concern, raised essentially by the business community in the Darling Harbour area, of the location of the stack. An investigation was done in liaison with the then EPA and essentially all these discussions were with the RTA in terms of challenging assumptions, requesting more information, and yes, we had, I think, one or two meetings with SHFA to understand the concerns of their constituents, in a sense, just in terms of their concerns. But the whole assessment process was done independently by the department and the advice provided and the decision and advice provided by the then Minister accordingly.

The Hon. GREG PEARCE: But you did not have any conversations direct with the consortium?

Mr HADDAD: No, we did not have any conversation with the consortium.

Ms LEE RHIANNON: Ms Corbyn, did you require an assessment of the greenhouse implications of the tunnel?

Ms CORBYN: I will probably have to take that on notice specifically, but generally our licences do not cover greenhouse emissions, and, as a result of that, it would not be our requirement. I would have to take on notice as to whether the planning requirements—

Ms LEE RHIANNON: I am surprised that you do not remember something of such moment. But considering the DEC's charter, it is very clear about looking at reducing the risks to human health and preventing the degradation of the environment, and considering climate change has been identified by the past and present Premier as being very serious and very real, and recognising that the science here is most exact on this, surely it should be a priority?

Mr SMITH: Basically, the greenhouse impact is very closely proportional to the amount of traffic and therefore air emissions, so essentially we focused our effort on the air pollutants that will have direct impact on human health in the area. And in dealing with that as best we can that will be the best proxy. Because I mean the change in total greenhouse gas emissions as a result of the tunnel is not a significant issue for human health compared to—

Ms LEE RHIANNON: It seems as though you are saying you do not see a role in advocating for public transport because it is known that the greenhouse gas emission from transport is increasing considerably and will become one of the main contributors to climate change?

Ms CORBYN: I should comment that we actually have taken quite a strong advocacy role with the Department of Planning to try to pursue positive public transport options in the negotiation of the consent conditions. That said, my comments were that we do not use our licences, which deal with local and regional air issues, to control greenhouse gases, and that has been a longstanding issue. But we are clearly quite concerned about climate change. But I should also say that the consent, which is brought forward by the Department of Planning does often look at greenhouse issues, so you should not assume just because we do not require it by a licence that greenhouse issues are not considered.

Mr SMITH: I think probably, just to conclude, it is worthwhile reiterating what Sam said, which is that while greenhouse is a highly significant issue, the context here is that the process is yes or no in relation to the project that has come in to be looked at.

Mr HADDAD: I have just been looking at our conditions and in fact there are two conditions of approval 223, which relate specifically to the greenhouse gases during the construction stage, and condition 225, which relates to the supply of energy from greenhouse.

Ms LEE RHIANNON: With all due respect, Mr Haddad, I think you realise that that is like just the icing on the cake. The enormity of a project like this, which is just locking Sydney into such a car dependency is huge in terms of greenhouse gas emissions. But just to continue with Ms Corbyn: with the M5 East I understand that there is a power to issue the RTA with a cleanup, prevention and prohibition notice. Do you have the same thing for this project?

Ms CORBYN: My understanding is if it is for the RTA that we would be capable of issuing notices to the RTA.

Ms LEE RHIANNON: Partly why I am asking it is because I understand you have not used it on the M5 East and I am therefore curious to see if you will now use it at the cross-city tunnel.

Ms CORBYN: What we would do is actually go through and identify where we thought there were concerns. Again, our regulatory role, particularly in terms of licensing, relates to the construction of the tunnels, whatever they might be, and we would generally use our notice powers in relation to the issues associated with construction. So I am not sure whether we have actually issued any notices.

Ms LEE RHIANNON: Do you want to take that on notice to see if you do have a clean up prevention and prohibition notice for the cross-city tunnel, because I gather from your answer that you are not too sure?

Ms CORBYN: Yes, I will certainly take that on notice and we would use them where there might be issues that need to be cleaned up.

Ms LEE RHIANNON: I understand that you have requested standardised reporting for the three tunnels: the M5 East, the cross-city tunnel and the Eastern Distributor. Has this request been met?

Ms CORBYN: I will have to ask Joe if he can actually answer that. It certainly has been one of our objectives to try to get a standardised routine reporting process.

Mr WOODWARD: There has been a lot of work going on, on that and the monitoring that has been captured through the planning approval goes a long way towards achieving consistent monitoring and that monitoring is publicly available. It is on the Internet. The information from the cross-city tunnel and the other tunnels are alive on the Internet.

Ms LEE RHIANNON: I want to go back to the issue about the exposure rates. I understand that the WHO standards of 87 parts per million per 15 minutes is appropriate. That is widely accepted and is not in dispute. However, I understand that where there is a problem and there is dispute is that the regulator requires that it be demonstrated that someone be exposed, so the problem is how do you establish this? It seems to be a way of avoiding it. Certainly we are starting to feel that is the way DEC is handling this. I am interested in the report on the cross-city tunnel's web site that the exposure has failed regularly since the opening. The figures come across as quite meaningless. How can we be assured that this regulation will ensure the safety of the public and that what is really a good regulation from WHO is not misused and we get standards that ensure that the polluted air does not cause damage to people's health?

Ms CORBYN: I should comment that the in-tunnel standard was actually advised by the Department of Health because it is about exposure to people, so I cannot answer the direct question.

Ms LEE RHIANNON: What action are you taking to ensure that the RTA provides adequate signage to tunnel users warning them to wind up windows and turn off air intake, as highlighted by you and by the Department of Health? I understand this has been highlighted many times for the M5 East and for this tunnel, but it has not happened. How are you pursuing this?

Ms CORBYN: We have certainly had discussions with the RTA and working groups about trying to ensure that public information is provided and that there are a range of different avenues that the RTA uses to actually provide that information.

Ms LEE RHIANNON: Because of the shortage of time, I am actually interested in what meetings you have had and what you have actually done. Can you take that on notice? I do actually want details.

Ms CORBYN: Certainly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Mr Haddad, does the Department of Planning have an overall plan and an overall vision for Sydney?

Mr HADDAD: We have recently published the metropolitan strategy.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When you evaluated the project I understand that there was an option to build light rail to the University of New South Wales that would have had a similar effect on the cross-city traffic flow as the tunnel would have, is that correct?

Mr HADDAD: I am not sure about that. I would have to take that on notice, but the assessment that we had really related to the project that we had. There may have been other projects to deliver different transport outcomes but they were not the subject of the formal assessment process. The cross-city tunnel project was a specific project before us and we had to assess that project.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In other words, if someone puts up a project, whether it is the RTA or a consortium, you evaluate that. You do not look at what else you might have done with that amount of money?

Mr HADDAD: Well, basically, that is much more of a strategic issue. If there is a proponent who is proposing to undertake a particular activity, we are duly bound by law to assess that particular proposal and to give a recommendation to government on that particular proposal. That recommendation may be, yes, to proceed, or not, but we are bound to provide advice to that specific proposed activity that is before us.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So if a proposed activity comes which, in effect, wipes out other options, you do not actually have an overall view of what that other option might be?

Mr HADDAD: We may request proponents to look at other options that relate to that activity, but we cannot make a decision on any other option. We have to make the decision in relation to the development application to the proposed activity that is before us, because the other option may have different impacts that may affect different people, that may have different implications.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So if a proposed project has a strong proponent such as the RTA and a light rail project or a heavy rail project does not have any backing from the STA because it does not have its act together or there is not a light rail proponent, then the planning emphasis is affectedly dictated by the latest project?

Mr HADDAD: No—

The Hon. AMANDA FAZIO: Mr Haddad, perhaps you could explain condition 34 of the Minister's terms of approvals.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Perhaps you could let Mr Haddad answer the question.

The Hon. AMANDA FAZIO: It might answer your concerns.

Mr HADDAD: We deal with each project on their merits, irrespective of who is the proponent. We deal with each project on the merits of the proposal.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do not look at the overall possibilities in terms of favouring rail rather than car, which, of course, is the essence—

Mr HADDAD: We look at each project on its merit.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But if no-one proposes a rail project, you do not look at that option?

Mr HADDAD: No, what I am trying to say is that this is more a strategic issue, which basically may be addressed at the much higher level through a strategic plan,

CHAIR: It is government policy.

Mr HADDAD: That is a much higher level.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Who is a higher level than you in terms of strategic planning?

Mr HADDAD: No, certainly we do strategic planning and we should do, and we are going to do more strategic planning, there is no question about that. I am just trying to clarify the statutory responsibilities and obligations in terms of the strategic plan, which is a framework, and the actual assessment and advice to government as to whether an activity should or should not happen.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If no-one from rail proposes rail, you do not look at it and it does not get proposed at all, is that not the bottom line?

Mr HADDAD: No, we will be considering that at the strategic level, but the rail proposal will have to undergo a specific environmental impact assessment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Well it would if it were proposed, but what you are saying is that you have to respond to the proposal.

Mr HADDAD: We cannot propose it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You are not actually setting a vision; you are responding to proposals that proponents put up.

Mr HADDAD: Hopefully, we are setting a vision as well but we are not proponents of activities, but hopefully we are setting a vision and we want to do more than setting visions. We have done that. We have tried to do that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Did you set a vision for rail as opposed to this vision for traffic?

Mr HADDAD: We try to do that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Well, what happened?

Mr HADDAD: No, what I am saying is that these are strategic issues.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But are you not the strategic planners for the State or do we not have any?

Mr HADDAD: No, we have. We are the strategic planners.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Then why are you merely responding reactively rather than having a strategic plan that might have involved rail?

Mr HADDAD: Well, we do have strategic plans and if there is a plan which is a specific proposal—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can you show us the rail plans that you had as an alternative to this car plan?

Mr HADDAD: Sure. I am more than happy to take it on notice and see what are the plans.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: So you can send us the plans that you had for rail?

Mr HADDAD: We had a number of considerations for alternatives.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In the lobbying for that, were there any lobbyists for the rail plan from, perhaps, the STA?

Mr HADDAD: I really cannot answer that in terms of the lobbying. We deal with each proposal. As I am trying to say, yes, we do set the vision; yes, we try hard to put a broad strategic framework. We deal with the various proponents.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But you are reacting to proposals put to you; you are not lobbying for it.

CHAIR: Dr Chesterfield-Evans, you have repeated the question about four times and you have wasted your time by repeating the same question. We will have to move on to the Government now.

Mr MATT BROWN: My first question is to Mr Haddad. New legislation has recently been introduced, which will change the way that the Government makes assessments on these large infrastructure projects. You have explained in earlier answers the process that occurred under the previous system. Can you please outline to the Committee what the process will be under the new system?

Mr HADDAD: Sure. I think the main difference is that there is much more emphasis at an early stage of the project under the new system. That is, the proponents—the RTA in this case—would have to do a very preliminary assessment, which may in fact include more emphasis at looking at alternatives if that is the case. Before they seek the director general's requirements they have to do a bit more work in that regard. So there is a bit more emphasis on the process up front. Certainly the issuing of the director general's requirements, which guide the whole process after that, is much more explicit in its consideration of the relevant issues so it is much more focused on the relevant issues.

I think the main difference procedurally—which is important in my view—is that, as I have said before, in the case of the cross-city tunnel it was the RTA that put the EIS on public exhibition and considered submissions before coming to the department. Under the new system it is the department that is going to oversee the public consultation process—that is, the EIS will be submitted to the department and then the department will look at that. That is, in a sense, a bit of a historical correction where we had two systems: we had a system called part 4 of the Environmental Planning and Assessment Act, which applied to private sector proponents; and part 5, which applied to the public sector proponents. We now have the one system. They are both treated the same—public or private. We would put that on exhibition. The other difference is that the RTA and other proponents would have to do something which recorded the statements of commitments that have to explicitly tell the community up front about the safeguards that they are suggesting as part of that project. That is essentially the key procedural difference between the then system that applied to the cross-city tunnel and the current system.

The Hon. AMANDA FAZIO: Can I ask you some questions on air quality?

Mr HADDAD: Yes.

The Hon. AMANDA FAZIO: There is a huge number of conditions in the Minister's conditions of approval, October 2001, on air quality. One of them—No. 91—says, "Following 12 months of operation of the project the proponents shall, in consultation with the EPA and to the satisfaction of the director general, validate the air quality assessment undertaken for the proposal utilising actual monitoring data recorded by the proponent." Can you explain to the Committee how you are going to do that and what sort of measures you have taken to ensure that you are getting accurate readings of the air quality, both in the tunnel and around the tunnel?

Ms CORBYN: We did put a huge amount of effort into trying to make sure that the conditions in relation to air quality were thorough and comprehensive. One of the issues for us is to make sure that you can test the projections that are made in environmental impact statements—hence the reason for that condition. We are working to make sure that the monitoring and the data that is coming in is satisfactory to us so that we actually can test the assumptions that were made in the EISs. I am not aware of recent work that we might have been doing to set that system out. I will ask either Simon or Joe if they have any further information about that. But it is an important stage in the process. Of course, we are not yet to the point of having been through a year but it is an important step from our perspective.

Mr SMITH: There are four air monitoring stations that surround the area of the stack. The system is controlled so that under all ordinary conditions—

Mr MATT BROWN: Where are they?

Mr SMITH: Some of them are at high level and some of them are at ground level. We can get you a map with the locations of where they are. The way the tunnel is operated is that there are no emissions normally through the portals of the tunnel. There is a negative pressure so that all exhaust gases are sucked into the ventilation system and they all come out through the tunnel stack. There are monitoring requirements in the stack so we know what is coming out of the stack and there are monitoring stations surrounding the area where the modelling predicted could be the greatest impacts of the pollutants. Then there are monitoring requirements where the monitoring equipment has to meet our standards for monitoring equipment. The data will come in and can be analysed to demonstrate whether or not the tunnel as a whole has achieved the required environmental outcomes.

Mr MATT BROWN: What sort of technology are you using for this monitoring equipment?

Mr SMITH: We can get you the full technical specifications on that but it is the same sort of monitoring technologies that we use for other air quality monitoring stations.

Mr MATT BROWN: In New South Wales or around the world?

Mr SMITH: In New South Wales.

Ms CORBYN: New South Wales has one of the most comprehensive air quality monitoring networks in Australia. We work to be quite sophisticated in the way we manage our monitoring network. This is additional monitoring that is required to be undertaken by others but it gives us information so that we can test the assumptions on the EIS.

Mr SMITH: The way our technical people do it is that there is various plume monitoring software that is available to evaluate certain levels of pollutants and flow, and configurations of stack height and location. That takes into account the surrounding other buildings. The effects of meteorology in those local areas make forecasts about: if the stack emission was of a certain quality and type, what would we expect to see in the ambient surrounding environment? The conditions of consent include limits on both the total mass of pollutants that is allowed to be emitted each year and also the concentrations of those pollutants in the air flows. So we will be able to very clearly demonstrate whether or not the outcome is as proposed within the consent.

Mr MATT BROWN: What has led to such a rigorous and sophisticated air quality monitoring system being implemented here?

Mr SMITH: I think it is a very strong commitment through the whole process. We know the community cares deeply about air quality and that other tunnels have been controversial. It is important to have in place some really rigorous and transparent process to show whether the proposal has lived up to the forecasts and, if it did, is it still safe for the community.

Mr MATT BROWN: Is it fair to say that it is a combination of listening to the consent of the community as well as trying to achieve best practice?

Mr SMITH: Yes.

Ms CORBYN: We also have a comprehensive air quality management plan, as I mentioned, Action for Air, which sets a longer-term perspective. As Simon said, it is a comprehensive framework within which we then also consider individual proposals that also look at the status of the current air quality in Sydney's air shed, which is quite focused, and also where the community has concerns.

Mr SMITH: It is probably worth keeping in mind that traffic emissions occur—we call them an area source technically in the sense that obviously in every block of Sydney, any 100-metre cell of Sydney's area, there are various car emissions going on all the time. What we are trying to do is reduce emissions across the Sydney basin by looking at the types of cars that are available for people to buy, how well they are serviced—are they smoky—the quality of the fuels that are provided and then the national standards bringing in cleaner technologies. What is different about a tunnel is that you take all of that normal dispersed level of emissions and you draw all the emissions into a more concentrated exhaust stack system. You are not dealing with anything fundamentally different in terms of the types of pollutants; you are just dealing with the potential for it to be concentrated and therefore have a greater local input at a particular point. That is the reason for all the modelling, standards, monitoring and reporting systems that are put in place.

Ms CORBYN: In general, we are finding that it does not have a greater local impact.

Ms LEE RHIANNON: What do you base that statement on? Can you provide that information?

Ms CORBYN: In other tunnels that we have been dealing with we do the ambient monitoring that allows you to determine whether there has been a greater impact or not. We have had experience with the Sydney Harbour tunnel, the Eastern Distributor and others so we do have that sort of information.

Ms LEE RHIANNON: But that is not the case with the M5 East, is it—

The Hon. AMANDA FAZIO: Excuse me. It is not your time for questions. I have a few questions about the conditions of planning approval that were developed for the project. I know we have heard a lot about light rail. I notice that one of the conditions of approval is that the proposal does not prevent or impose significant and greater cost implications for the future provision of a light rail system within the Sydney CBD. Can you explain and elaborate a little more on some of the conditions of planning approval that you developed for the cross-city tunnel?

Mr HADDAD: In relation to other options or generally?

The Hon. AMANDA FAZIO: More generally.

Mr HADDAD: Essentially, the conditions of approval relate basically to just ensuring that the construction of the project is being undertaken in accordance with certain standards and that those standards are being complied with in terms of the physical construction and in terms of amenity and environmental issues, such as noise and air. These standards are based on input from the Department of Environment and Conservation and others. We then have a set of operational conditions which relate to the impacts during the life of the projects. On previous occasions the question of auditing and the question of monitoring have been an issue of particular concern to communities and others in terms of what are the mechanisms that are put in place to ensure that what the project said it will do in terms of environmental issues and amenity issues is actually doing.

In liaison with the Department of Environment and Conservation and others, the philosophy that is used here is to have the proponent reporting via independent mechanisms and those independent mechanisms are by way, for instance, of auditors which are appointed by the director general, and there are annual reports and periodical reports that are presented and made public. In terms of air quality, there is an extensive network of air quality monitoring, including monitoring run for community organisations, the specific provisions for the community to have their own monitoring. The conditions include extensive provisions for public transport. This is an important issue because obviously one of the benefits of the cross-city tunnel was to maximise the use of surface roads and to try to prevent what we call the possibility of induced traffic which would then go against meeting the core fundamental objective of the project.

So there are a range of conditions which make provisions for public transport, both within the area and in fact regionally, a number of kilometres of bus lanes outside the core distance of the CBD, to be able to strengthen the achievements of the core objective of the project. I suppose the sort of conditions that relate not impeding any other transport forms from happening is part of this thinking. That is coming back, I think, to the question you are raising. I take this opportunity to go back to these auditing mechanisms that we have been doing because it is an issue that has been brought to our attention in terms of making sure that there is a credible delivery particularly in terms of some of these environmental outcomes—air, noise and other amenity issues—on an ongoing basis. We work closely particularly with DEC and other agencies but we have been strengthening these aspects for these projects because, as Ms Corbyn was saying, we regulate the operational aspects of the tunnel operations in terms of the environmental. I think I have covered most of the key elements of the conditions.

CHAIR: You mentioned the public transport, that it is through those bus lanes and the removal of cars now using the tunnel. Are you involved in assessing whether that public transport is moving more efficiently and more rapidly?

Mr HADDAD: We did not have the opportunity to do a very formal evaluation of all that, given the relatively short duration of the tunnel and all the discussion that is going on. Certainly, it is our hope that the benefits of this project will lead to strengthening public transport provisions in the core CBD area and will then deliver one of the main benefits that we set out to achieve, which is essentially the discussion between having this versus a do-nothing option—a do-nothing option meaning the CBD growing up. There is a conflict between public transport, private cars—how do we do all this, or whether we can strategically develop a mechanism to ease all this at the surface. That is rightly or wrongly forward planning other aspects but that is where we are hoping to strengthen aspects. There are specific conditions of approval which require the bus authority in particular and the public transport authorities to develop plans to report on them, together with the local councils and others, to periodically be able to implement some of those provisions.

Mr PAUL McLEAY: Do you audit this? All the conditions that you say, new bus plans, how do you do the compliance of it? How do you audit that?

Mr HADDAD: We basically have broad provisions in the conditions. I am not sure whether the first one is due after a year or two, whereby we do an entire audit of the implementation of those conditions. We put them in a report and we publish that report on the web site. I just have to go back and seek advice further as to the frequency of this but it is basically almost an account of the implementation of all that. Some of the reporting on the bus provisions may not go down to the operational details of this but certainly in terms of the provisions of the infrastructure facilities the mechanisms, whether they have been done, they have not been done and why. So it may be that some of these measures may not be implemented entirely but there may be other reasons for it. We certainly undertake to make all this available publicly. The only thing that I must get advice on is whether it will happen in the first year or the second year. That is something I will be looking at.

CHAIR: Do you do an assessment of the reduction of that air pollution because of the tunnel? When there was no tunnel I think people were stopping at 16 lights or something like that, and the car stops and starts, the amount of pollution plus they are only driving for 20 minutes instead of 40 minutes. Does anyone do a calculation of the reduction in air pollution?

Mr SMITH: It will not be feasible to conduct that calculation because there is only one Sydney. Meteorology being as it is, you cannot say exactly what would have happened if there was no tunnel. It is impossible. What we focus on is simply whether the air is clean and safe to breathe. That is the focus of all the monitoring.

CHAIR: But there must be a reduction in, say, the William Street area in the amount of pollution now that the city tunnel is operating, or there should be a reduction.

Ms CORBYN: We do not have a network that goes street by street but, as Mr Smith said, the network is geared to assess whether Sydney's broader air quality is meeting the standards.

CHAIR: Has there been a reduction in pollution since the tunnel started? Have you noticed any change?

Mr SMITH: Basically, we have sufficient monitoring stations. There is a national standard for how many monitoring stations are necessary for a city of each different size. That number is not sufficient to provide for precise outcomes at the street level.

Mr MATT BROWN: Could you do a model of what the difference would be, with 90,000 cars going under the city rather than through it?

Mr SMITH: Yes. Those issues were certainly considered in the assessment process. There was a positive and a negative effect. The positive effect is that if you have cars moving through the tunnel at a more steady state driving conditions rather than standing in a queue and emitting exhaust while they sit there, that is a very positive thing. The potential negative is whether there are just more cars overall as a result of that. This is the perennial argument—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can you give us the figures on the models?

Ms CORBYN: We do have work that is being done, because it is quite complex. All the fuel is getting cleaner so doing historical comparisons would be a challenge but we are working up to, but they are regional models, not street-by-street models that allow us to understand the contributions that motor vehicles make to the air quality that we have, which is pretty good in Sydney. And we are seeing cleaner technologies coming forward as well as a significant drop in the sulphur in fuels so we expect to see a continuing improvement, we hope.

Mr PAUL McLEAY: Generally in environmental terms did the cross-city tunnel present other opportunities?

Ms CORBYN: I am sorry, I do not quite understand.

Mr PAUL McLEAY: Besides specific monitoring of air particles, were there are other environmental achievements for the tunnel?

Mr SMITH: As Mr Haddad has explained, one of the objectives is to get the bulk of traffic or reduce the bulk of traffic out of the middle of the CBD so you can get a more effective movement of public transport around the CBD, and many of the conditions clearly reflect that objective.

Ms LEE RHIANNON: As that failed, what are your comments, that it therefore works for local air conditions?

Ms CORBYN: The operation has really just started, so it is too early for us to make any conclusions about what is occurring from an air quality perspective. I guess that is part of the evaluation process and the conditions to see whether the predictions that were made in the EIS are carrying true. But it is too early for us to make that judgment at this point.

Mr MATT BROWN: Mr Haddad, earlier the Chair asked a question about the length of time the EIS was on display and whether that provided effective consultation time. I understand that there was quite a detailed and lengthy consultation phase leading up to the EIS. I would appreciate

hearing some evidence about that. Would you please outline the role of the Department of Planning in strategic planning verses its role in individual projects?

Mr HADDAD: I am sorry?

CHAIR: I ask the member to rephrase his question. The witness is seeking clarification.

Mr MATT BROWN: I am not sure what part of my question the witness did not understand. Was it the second part?

Mr HADDAD: I am trying to differentiate between the EIS being available on public exhibition and the community consultation process.

Mr MATT BROWN: Leading up to the EIS.

Mr HADDAD: As I said, as part of what we call the requirements for the preparation of the EIS through the issuing of director-general requirements, there is an explicit requirement on the RTA to undertake appropriate community consultation as part of developing the project. My advice certainly is that that happened during that phase by the RTA; that is, there were community meetings and requests from community groups and the like for an input into the development of the EIS.

CHAIR: And that was for longer than a month?

Mr HADDAD: It was for much longer than a month. How do I know that? I know that because when they report on the EIS they say, "We have had all those meetings. We went through all those communities" and all that.

Mr MATT BROWN: How did long did that take? Did it take about a year?

Mr HADDAD: I am sorry, I cannot answer that question. It would probably have been a year for the preparation of the EIS. I should have all the dates here. I am happy to take that question on notice.

Ms CORBYN: I have some information. The RTA exhibited the project EIS in August 2000, and we then provided comments in October. There was a supplementary EIS in June 2002. We certainly provided comments on that by September. So, from those dates, it was out for quite a period.

Mr HADDAD: I am happy to take that question on notice. There is a period of almost over two years from the start of this process of putting the requirements, through to the submission of the documentation for approval. It is between two and 2½ years. I am happy to go through all the details for those periods. There have been a number of consultations, changes and all the rest of it. That is the general thing. I happy to submit those details to you or give you a breakdown. I will do that.

Mr JOHN TURNER: Mr Haddad, Paul Forward, the then Chief Executive of the RTA, forwarded a letter to you on 5 September 2003 that, inter alia, stated:

The contents of this letter should be kept confidential until an initial decision is taken on the relocation of the ventilation stack and negotiations have been undertaken with CCM. Premature disclosure may prejudice RTA and SHFA in negotiations with CCM.

That was in relation to the cross-city tunnel proposed relocation of the ventilation stack. I presume that request was honoured and it was kept confidential. What other persons in your office or in your department might have had sight of this letter in that period of confidentiality?

The Hon. AMANDA FAZIO: Point of order: Is this not related to a matter that is currently being considered by the ICAC?

Mr JOHN TURNER: No, it is not.

Mr MATT BROWN: It is part of the ICAC.

CHAIR: It is up to the witness. He is aware that the matter has been referred to ICAC.

Mr HADDAD: I am aware. I have no hesitation in saying that the discussions or the assessment were done in a very transparent manner between the departments and the RTA in relation to the normal process. I can tell you that no discussions took place and no contact was made with contractors or with third parties that were negotiating anywhere. I can also tell you that the officers who were involved in that would not have had access to any third party. The process was a technical process evaluating alternative locations, advantages and disadvantages, including for that matter not only technical and environmental benefits and dis-benefits but also the cost and practicality of doing that. It is just one of the issues where we had to make a decision in meeting a requirement of the condition. There was a report, which is publicly available. On the basis of that report I made the decision about the final location of the stack. That was consistent with the requirement of the condition.

Ms LEE RHIANNON: We have been constantly told that the cross-city tunnel is an improvement on other tollway projects. Why then does the approval condition not include any monitoring of possible portal emissions? Why are there no fines for portal emissions in the cross-city tunnel despite regular portal emissions occurring from the M5 East tunnel? What process is in place to ensure that the lessons learned on one such project will be transferred to subsequent projects?

Mr HADDAD: I am happy, if you do not mind, to get back to you in relation to the monitoring around portal emissions. My recollection is that we were talking about some monitoring around portal emissions. Maybe that is not explicit in the condition, but I would like to take that question on notice, if possible, and clarify it. The condition in the policy was that there should be no emissions from portals.

I am observing that portal emissions are occurring in other circumstances elsewhere in the world. But in this case, together with the Department of Environment and Conservation and others, the decision was made that no portal emissions were to take place that might have implications on other ventilation systems and all the rest of it. If we need more monitoring to prove the point, we will try to do that. But my recollection is that we had started discussions on monitoring around portals. I happy to come back to you with that information.

Ms CORBYN: There is an explicit condition that it should be designed and operated to avoid portal emissions.

Mr SMITH: The thing is that there is no point in wasting money monitoring air pollutants of portal emissions. You simply need to know whether there is a negative vacuum pressure in the tunnel portal because then you know that the air will come back through the ventilation system and out the stack where it is all monitored.

CHAIR: Is there any need for filtration? Filtration is not included now, is it?

Mr SMITH: No. It is not necessary to meet the air quality goals.

CHAIR: Would it be necessary in the future?

Mr SMITH: The conditions make provision for that in the future, if necessary. But the monitoring is in place. The modelling that we did before suggests it is unnecessary.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Will the Department of Planning propose any rail or light rail options for Sydney?

Mr HADDAD: If you do not mind, I will take that question on notice. I do not want to mislead the Committee now.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you mean that you do not know?

Mr HADDAD: I know.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You do not know whether the Department of Planning would propose doing that in the future?

CHAIR: The member has asked that question five times now.

Mr HADDAD: That is under consideration. I would like to come back with a more appropriate answer.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If such options were proposed would the material adverse effects [MAEs] make those possibilities and options more expensive?

Mr HADDAD: I really cannot answer that question. The project would be assessed on its merits, including costs and environmental and other aspects. As I said, I am more than happy to clarify the progress that has been made in that regard. Obviously, that is always under consideration. The main point I am trying to make is that public transport, broadly, is being looked at and encouraged in the context of the benefits of this project. That is all I want to say.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Was the money spent on ventilation as a result of the conspicuous muddle over the M5 East ventilation and the subsequent public protest?

Mr HADDAD: I think I have tried to answer this before.

CHAIR: Yes, you have.

Mr HADDAD: It is a one-off. It is partly, yet not, but really it is an examination of all these issues on the merits of the situation that existed there, taking into account evolving standards.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But was it a major in addition?

CHAIR: We will have to finish the questions there, Dr Chesterfield-Evans.

Mr HADDAD: It was an addition.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It was. Thank you.

CHAIR: I thank you very much to appearing before the committee and for your co-operation. If the Committee needs that to recall any witnesses, then we will be in touch with you.

Mr WOODWARD: Sure. With pleasure.

CHAIR: Thank you for your attendance.

Mr SMITH: Can I request that the matters we have said will take on notice set out in writing what is required?

CHAIR: Yes. We will send those in writing to you.

(The witnesses withdrew)

NICHOLAS FRANK HUGO GREINER, Company Director, 98 Lang Road, Centennial Park, sworn and examined:

CHAIR: Thank you, Mr Greiner, for agreeing to appear before the Committee. We appreciate your availability. In what capacity are you appearing before the Committee?

Mr GREINER: That is a very good question. I assume, chairman, that I am here partly because I am a former Premier and perhaps the father of some of this private infrastructure, and it is also true that I am chairman of the company which owns the construction company which did the main part of the construction. You invited me: I assume someone thought that I knew something about the subject matter. Beyond that, I am not quite sure.

CHAIR: Thank you. Are you conversant with the terms of reference for this inquiry?

Mr GREINER: Yes, I am.

CHAIR: You know the rules: If you have anything that you want to say in camera, or any documents you want to table, we will consider your request.

Mr GREINER: I do.

CHAIR: Did you prepare an opening statement?

Mr GREINER: I do not have a written opening statement, but if it is all right by you, I would like to say a few things and then respond to any questions. I should say that I have an involvement in this project directly in the sense of Baulderstone Hornibrook, of which I was the chairman, I think, at the time the bid was made. It was one half of the construction joint venture. I am now the chairman of the holding company which continues to own Baulderstone Hornibrook, including other companies. I should say before I am deluged with questions that I have no involvement with the Cross City Motorway Consortium [CCM], the company that actually operates the motorway, but the same parent company in Germany does own 20 per cent of CCM. I have no personal involvement or indeed no personal knowledge of CCM's relationships with the Government or anyone else.

I should say by way of background that I did announce this project in 1988 along with then Lord Mayor Bingham and you would expect me to say that I think it is both an excellent and appropriate project in its generality. I do think that conceptually it is important. It is also true that I was the father of private infrastructure, and of toll roads in particular—at least the twentieth century and now the twenty-first century version of toll roads in New South Wales—and to some extent, with urban toll roads, they were the first in the world. So it is true that I have been involved from the beginning and that I have a previous position in favour of this sort of funding of infrastructure.

When I announced the cross-city tunnel with then Lord Mayor Bingham, two of the absolute opponents were the then Leader of the Opposition, Mr Carr, and the then Lord Mayor, Mr Sartor. It is good to see that they have had a coming of wisdom over the intervening years, which I am pleased about. Chairman, if I might, I would like to say something very briefly about the general public-private partnership [PPP] space as it relates and then run through a series of dot points of my opinions. They are frankly mostly my opinions rather than my knowledge of the project. Hopefully some of the things I cover may lead to areas of interest to the Committee.

In general, the case for PPPs or private infrastructure is very simple and straightforward. It is in the first place that it accelerates the provision of infrastructure, and I think, in the case of the road network around Sydney, by a minimum of 15 to 20 years, but I suspect substantially more than that. So it certainly brings forward infrastructure which the State simply could not afford. I will come to the question of affording. Private funding is simply part of a suite of delivery and funding mechanisms—debt, partnerships, 100 per cent private ownership and a whole range of hybrids are a part, and things in between.

It is often put by critics of private infrastructure, including some around the table, that this is all stupid and we should just go and borrow; governments can borrow more cheaply; why do we not just go and borrow, and everything will be sweet. The truth is that you cannot do that. You cannot do that because the State will quickly lose its credit rating. The implications of New South Wales losing its triple-A credit rating with unbridled debt I think are fairly obvious. The range of alternative needs that need to be funded is so great that it is simply not possible to debt fund all the infrastructure that any government would think is reasonable; nor, frankly, does the government have the capacity to deliver the detailed planning and execution of these projects.

On the question of pricing, this is all about risk. It is all about what risks there are, how they are priced, and who takes them. The truth is that the government never prices project risk. In fact there was an article in yesterday's *Australian Financial Review*, which I am sure Committee members read, by a person who was a former adviser—I think to this Government and the Federal Government—and is now a consultant. I have the article and I can read to you the relevant part:

What PPP critics fail to appreciate is that governments utilise private equity or expertise to improve value for money because other fiscal strategy options—tax, budget spending, borrowing, reducing recurrent expenditure or maximising asset value—are all unreliable sources for infrastructure funding because of policy or political constraints.

There is just a final short paragraph:

The real cost is project risk. Government does not explicitly price project risks in the costs of its finance. Unpriced risks that lead to project delay, performance failures and cost increases are subsidised by taxpayers at the expense of other government functions.

That is an article by Vish Beri in yesterday's *Australian Financial Review* and I think it is impossible, frankly, to argue with those propositions.

I would just make one final point before I come to the cross-city tunnel [CCT]. The notion that we are going to go back to simply 100 percent debt funding, that we sort of have free money because we, or you, are the government and therefore debt is just available and indeed it is cheaper is the ultimate exercise of putting Dracula in charge of the blood bank. The notion of you go back to the situation that you had in the early eighties around the Australian States, which led to most of them—and dare I say most of them or all of them under Labor governments—effectively going broke, is bizarre. No-one, including the current lot of Labor governments, I think, believes that that is remotely plausible. So the notion that it is really simple—you just do it all by debt and the government authority simply delivers—is not only impossible and impractical but it is also undesirable. I really think that is an important point to make in terms of the overall debate about private infrastructure.

If we come to the CCT, I make these points in no particular order. I do think conceptually it is an excellent project. When I announced it, the thinking was exactly the same as when Mr Carr announced, or re-announced, it in the mid-eighties some time. I have not done the homework on this. It is essentially a measure to avoid congestion in the CBD. It is true, as I read in the paper Mr Carr said yesterday, that the alternative essentially is a congestion tax. I think there is some conceptual merit in regarding a toll on this road as an alternative to a congestion tax. The cross-city tunnel is also, and should have been—there may have been some weaknesses in the execution of this approach—part of an overall network approach to the problems of Sydney's roads. It clearly should not be seen as just a single project. It is in fact an integral part, successful or not, of the overall road network.

There was substantial risk transfer in this process. The company of which I am chairman, and a sister company, took a construction risk and, unfortunately, we had a fatality, various things went wrong, and we made far from a satisfactory profit—essentially no profit. We took that construction risk and that is the way it works. Of course, the private sector has taken the patronage risk and, as well all hear and read every day, it may well be seen not to have got it right, at least not in the short term. Whatever happens, the private sector has taken the patronage risk, so the public has a piece of infrastructure and whether it is used sufficiently or not, that risk is taken by the providers of the equity and, indeed, by the providers of debt.

In my view, and as I say this is just a series of dot points, the charges of secrecy regarding the road closures cannot be sustained. I know, because my wife is on the Sydney City Council, a wonderful body, and I remember her discussing all this with me and our seeing some of the press

releases from the then lord mayor and others. I am sure you have had this from other more informed people than I. The notion that the road closures, particularly William Street and the main corridor, were in any way not known is simply not the case. In any case, whatever the committee might find on the disclosure situation, it is not the private sector's doing.

The dynamics of the bid do not allow the private sector to come along and say, 'You should really do it this way and connect in a corkscrew that comes out to the right or left.' The Government—the RTA—decides what is 'best for the community' and the bidders respond to the Government's view of what is best for the community—roads closed, not closed, gold plated, not gold plated. The private sector does not do that and if you believe some of the nonsense that I have read in the last month or two you would think somehow the private sector—the CCM or the builders—had closed these roads, or even asked for them to be closed.

By and large these road closures have nothing to do with the economic viability of the project itself. They simply move the risks around. The more roads you close, the more you funnel traffic, the less the risk, the more the capacity to pay the Government something upfront. You can argue about the validity or the correctness of those decisions, but it is important to note that the road closures are not part of the private sector's input into this process. The private sector accepts what is given, and that includes not just the physical tunnel but also the road closures and the environmental, planning and amenity-type issues that are around. Stacks and air quality are a bit like a favourite subject here. The private sector does not care what the air quality is. It assumes the Government is capable of determining the right amount of filtration and the right amount of air quality. The private sector will make it as pure or as impure as the Government and its agencies say is appropriate. I would have thought that was self-evident, although again you would not understand that from some of what I have read and heard.

I want to say something briefly about the RTA and its chief executive. I think the RTA is probably the most competent State Government instrumentality in this private infrastructure area. Some might say that is damning with faint praise, but it is a bit simple to blithely criticise it. In my opinion, both commercially and technically, the RTA is generally very competent. Whether it is always right is an entirely different matter. One ought to accept that the RTA in general is competent in both the commercial and technical sense in private infrastructure projects. It is not an easy beat, nor are they people who get run over by wicked people from banks or construction companies.

This is a gratuitous comment, but in my view the Government treated Mr Forward very badly and improperly. In my dealings with him on this and other projects I found him a person of integrity. I do not know the detail of the matter upon which he was allegedly asked to resign. I would be surprised if that was a genuine reason. I think he is a more than capable chief executive of a government instrumentality. That is a gratuitous comment, but I wanted to say that.

In these cases the private sector really needs certainty regarding the risks so it can price them. As I said earlier, it does not really care what the risks are as long as they are clear. It does not care what the surrounding economic and environmental dynamics are as long as they are clear so it can give the Government, as the client, what it wants. For example, there is the question of road closures. You will recall the first of these roads in my time, the M4 to Penrith, has the Great Western Highway running beside it. One is a toll road and one is free, and as long as people understood what was going to happen—as they did then—people bid on the basis that there was a toll road and a free road, and they priced the risks accordingly. They went into it knowing that to be the case. Certainty is the important factor.

I want to say something about funnelling, or road closures, which is one of the exciting political issues. Funnelling, not surprisingly, does exactly what the word suggests. It funnels traffic where the traffic planners want it to go. I hate to sound like a unity ticket with Mr Carr, but the truth is the Government had a very clear purpose in all this: it was to do with trying to reduce congestion in the CBD. One can argue about whether it has worked or whether it is going to work, but there was a clear purpose. It did not relate to the road; it was a broader economic and environmental issue. The Government did not want people who were through traffic to go into the city. It could have done that, as Mr Carr suggested yesterday, by a congestion charge. Singapore does it by banning odd and even numberplates. There are a lot of ways of doing it. I do not think you can argue with the principle that the Government should be trying to reserve the city for those who are going to the city, and keep out

people who are going from one side to the other. In this case the Government chose to put them under, which probably made sense and may have been the only alternative.

The objectives of the funnelling were not to make Bilfinger Berger or CCM feel good. They presumably were there to stop the rat run in the area where I lived until not so long ago. They were there for various other reasons, such as clearing the city. There may have been weaknesses in information flow, although I rather doubt it. You have to look at this project in the context of the Government's urban amenity objectives rather than simply as a piece of road. I think there has been some weakness in information flow to users as to how the tunnel should be used. That and some of the congestion, which does not appear to have been forecast, is certainly worthy of questioning.

I have made the point that the closures are not essential to the project. I have no knowledge of what Mr Sansom said yesterday; indeed he said something different today. The point is, it is only changing the risks if you say, 'We are going to close this, narrow William Street, narrow Park Street.' You are changing the risks, changing the model and changing people's assumptions as to the outcome. However, it is not essential at all. It does not matter to the private sector. They accept what they are told. I think it is obvious that the answer to the question about compensation is that compensation follows damages. I am not a lawyer and I do not want to be one. The reality is that if CCM is damaged by something the Government does in reopening roads, of course it will take action. It would be brain dead not to do so. If there is no damage it would be very hard to seek compensation. I think commonsense applies.

I think the front-end payment was arguably the wrong criterion. The Government and the RTA chose the front-end payment and they could have chosen the lowest toll, as the Victorian Government did in relation to a recent road. They could have chosen the shortest concession period so the Government gets the road back in a shorter time. There are various criteria one could use.

In this case, I think essentially because yesterday one of your witnesses, Michael Egan, said, as many Treasurers do, that not one cent of Government money shall go into this project. That becomes an overriding given as far as bureaucrats are concerned. They say, "We accept what Michael Egan, the Treasurer, said." Then everything tends to flow in that direction. In the end result they chose the company, the bidder, that offered the most money as the criteria. They could have had different criteria, and that is a matter on which reasonable people could disagree, and which you may well have views on.

I suppose people like me used to say that this should be no cost to the Government as well. I doubt that that is the right place to start from; the right place to start is how does this piece of road fit into your overall road network? If you start from that, what is the right solution for the city? You can then work back to how much people are willing to do, how much toll they want to charge to do that, and so on. If you start from the appropriate road or network solution, rather than starting from the price or government contribution, or lack of government contribution, you are far more likely to get an outcome that makes everyone happy. I suspect this has been driven a bit by the starting point that says, "There shall be no Government money put into this." I am not sure, as much as I like spending government money, that that has any implicit or explicit merit.

It might well be that a government subsidy of \$100 million rather than a government receipt of \$100 million, with all the other changes that come around, might have been a better outcome. I do not know. It is important to look at the criteria, and it is the case that you certainly need to question whether maximising the front-end payment was the appropriate place to start as a criteria for determining the winner of the tender process.

My last point is on price. Again, this is just my opinion, I was not involved in the discussion on either the CCM side or the other side. You will notice that the new tunnel in Brisbane, the bids for which went in yesterday, is probably the closest project to this you will find anywhere. The suggested toll is \$3.47, that proves nothing other than it suggests that \$3.50 may not be all that far off the mark. Mr Forward gave evidence about the RTA's view many years ago, which was that \$3.30 was the top of the range. If you look around Australia and the other tolls, \$3.50 is not automatically out of the ballpark.

The Government, of course, if it is fair dinkum, can do the same as it did with the M5 and the M4; it could have a cash-back program for people in the eastern suburbs. I somehow suspect that for sound political reasons it may choose not to do that. It is perfectly apparent that the Government could behave consistently with its behaviour on both the M5 East, where it had no toll on that politically sensitive road, and on the M4 and M5 West, where it gave money back to residents. That is clearly open to the Government, the technology is there, the scheme is there, it is just a matter of what the Government wants to do.

Finally, it is the case that the value proposition in a tunnel or a bridge—and this is stating the obvious—is different from the value proposition in the M7, with which another one of my companies is involved in building. In one case you have long toll road journeys through open land, and a number of overbridges, but essentially lots of new road. It is perfectly obvious that the capital cost per kilometre is much, much less than the capital cost of putting a tunnel under the middle of Sydney. One does not have to be too bright to see that. The value proposition is different. The public may take a while to decide, or it may never decide, that the value proposition of crossing a really congested area, even for a short distance, is worth the same as driving through the western suburbs on the M7.

So there is a change in value proposition of tunnels or bridges compared to roads. That does not mean that the two lots of tolls are out of whack. On at least a sensible, superficial view that toll is broadly in line with what makes sense and with what both the public and the private sector modelled. They need to be viewed collectively, they all had it done differently but you have to give them some credit for being not entirely stupid.

CHAIR: Thank you for that comprehensive opening statement. Yesterday Mr Carr made great importance of your comment from the *Financial Review* of 21 November that the cross-city tunnel was a spectacularly good example of risk transfer.

Mr GREINER: And that is my view now and I am glad that Bob has come to that wisdom.

CHAIR: You stand by that, there is no change?

Mr GREINER: Absolutely. And the reason I said this is because of what I said in my passing remarks. There is legitimate criticism of some private matters where there has not been enough risk transfer to the private sector and where they make large profit with very little risk. In this case it is public that the construction risk passed to my company and its affiliates. As I have said we did not make effectively any return, certainly not an appropriate return. I read in the paper every day about how there are not enough cars using the tunnel. People taking that risk are the equity and debt providers. I have great trouble believing some of the things that Ms Lee Rhiannon and others have said about how this is a terrible passing of wealth to the private sector, at the same time that everyone says that the private sector is going to go broke on this project. The two cannot be right.

Ms LEE RHIANNON: Yesterday the consortium representative said he was quite happy, that they were making profits.

Mr GREINER: I cannot speak for him. I am saying that the risk in terms of patronage was taken by the private sector, and that is the appropriate thing. If people do not want to use it, or only half of them, if it becomes free and still only half of them are using it in 30 years, the risk is taken by the debt and equity providers, not by the taxpayers. That seems to me to be a good thing. It is exactly how these partnerships are meant to work. Mr Chairman, I do stand by what I said.

CHAIR: Are there any key differences between the cross-city tunnel project and some of the other projects you initiated, the PPPs?

Mr GREINER: I have to say that there is no longer any risk in my mind. Of course there are differences. Some are short tunnels and others are roads. There is a difference in terms of the criteria that was used; in other words I do not think in the early roads we used the criteria that people wanted to pay us money up front. I think we went by who wanted to give us the lowest toll for delivering this service for 25 years or whatever the years were. Some of those projects said, "No road closures, no funnelling measures", but others may have. In principle I do not think funnelling is a bad thing, as long as it is transparent and clear. Roads are closed all the time, without any private roads around.

There are road closures around my home in Centennial Park, which are there because someone made a judgment about the balance of amenity of local residents compared to through traffic.

Of course there are differences in the detail and the execution. I think there is room for criticism, if you will, of some of those differences in some of those particular decisions. But I do not think that could in any way lead you to the conclusion that this is a bad project. It might lead you to criticise some elements of its execution.

CHAIR: Is the Australian market for infrastructure projects large enough to support the level of competition needed to ensure that value for money is delivered to governments? You mentioned some connection to companies in Germany and so on. Is that partly how you solve that problem?

Mr GREINER: It is the case that on the construction side there are not that many players and the majority are in two groups. It is equally fair to say that the level of competition, the intensity of competition, is very great. With some of these toll roads the banks or the financial investors have made what you might consider more than reasonable profits. In this case the banks may make less, it is too early to say. You might judge that the banks and their equity investors may make less than a reasonable profit. Australia is essentially a world leader in this area.

The rest of the world is behind us. One of the reasons that Macquarie Bank has done so well overseas is that it went to school on what happened in Australia, in New South Wales in particular. Any suggestion that this is somehow a cosy club is simply nonsensical. There is enough oversight of these, there are probity audits by the square metre and there are many sorts of checks and balances.

One point I failed to make in my opening remarks concerned the disclosure of documents. Again, I do not see that this is a particular issue—if what we are talking about is disclosing the contracts—if you say to people upfront, "We are going to disclose your contract on day one or whenever we are ready." In doing that, though, you have to understand that it may not be in the public interest. I know that does not sound instinctively right, but, as I think perhaps the RTA or Mr Carr or Mr Egan said yesterday, when you are negotiating with various other people—I mean, this is the real world and simply putting the contracts up on the web site on day one might make members of the Legislative Council or the media feel better, but it is not automatically either in the public interest or the taxpayers' interest. But the companies do not mind, so long as they know what the rules are.

The Hon. GREG PEARCE: Mr Greiner, thank you very much for coming in at such short notice. I think you were asked to attend only on Friday. We have only a couple of questions because I know that Government members are champing at the bit to ask you a whole series of penetrating and devastating questions. You touched on the M4. My recollection was that it was essentially your policy that when you built a road such as the M4 that there would be an alternate free route?

Mr GREINER: Yes. That was the policy; that was the case. To state the obvious again, it is different here. It is not that obvious what the alternative free route would be, because a lot of it is like a rat run, but yes. That was our policy at that time, 15 or 17 years ago. It was my policy that there ought to be an alternative free route and, frankly, if you had said something like that in the case of the cross-Sydney tunnel, there would still have been three bids. The difference would have been, in the context of the way it was structured, instead of saying, "We will give you \$96 million," or \$100 million, whatever the upfront payment was, "because we have to meet Mr Egan's requirement of no Government money involved," I think the tenderers might have said, "You will have to give us \$100 million." I am making up that number, but what I am saying is that if there was a free road very clearly defined and doing exactly the same job it would have led to a different set of economics. The other question is whether it would have met the Government's environmental keep-cars-out-of-the-city objective. That is a matter for the Government.

The Hon. GREG PEARCE: I think you also just touched on the obvious fact that these projects have been evolving over time; that there have been some mistakes in the past, which people have learned from, and the risk allocation is better now. Are there any other lessons that you think are worth noting from some of those older projects?

Mr GREINER: I think one of the lessons is the point I made about starting from the appropriate network solution. That is jargon, but I think if you start from what is the right road

solution and you do not try to take this out of the system, because it is part of the system, perhaps you would get better interchanges. I remember at the time of the Eastern Distributor my wife and many other people arguing that there was not enough provision for a future cross-city tunnel. So I think that one of the lessons is that you really should start from what is best for transport and environmental purposes and then work back to what that means in economic terms. If it means that the Government has to put in \$100 million and the private sector still puts in its \$600 million or \$700 million, then that is just a judgment the Government and Treasury have to make.

I do think you have to start from transport, not from economics. It may not sound like a Nick Greiner comment, but I think that is the right order of things. I think the rest of the comments that people have made over the weeks are probably right in terms of disclosure and transparency. I guess I do not have a strong view of the overall performance of the Carr Government—in fact I said publicly when Bob retired what I thought—but in this case I think the weakness has been in the political response after the road opened; not at the time. I think the way the project was organised, from what I know, which is only partly involved, was pretty good. I think the appropriate thing would have been for the Government to respond a bit like Mr Carr and Mr Egan responded yesterday rather than immediately backing off and saying, "Oh, we have made all these mistakes. Mea culpa. Mea culpa."

I think that in many cases it has been the politically weak response and that of course led to Mr Forward being made a sacrificial lamb/scapegoat. I think this has been useful in the sense that these issues have had more currency and more debate amongst members of Parliament. This used to be a bit of a black box. It is not a black box, it is not magic and it is not always the answer; it is a good part of an overall fiscal strategy or procurement strategy for a government. I think one of the lessons is that it has to be seen in that way, as part of a whole rather than as a you-beaut special thing called "a private tunnel".

Mr ANDREW CONSTANCE: I think one of the key lessons that we will get out of this inquiry is the fact that the current Government is generating a trend of up-front fee payment as a criterion, as you have identified, particularly given that, in order to recoup that up-front cash payment, they are having to distort tolls in this circumstance. Do you see it as a trend moving forward in relation to governments, as a result of the current Government's actions?

Mr GREINER: You might play a useful part in stopping them from doing that. I certainly do not think it is a desirable trend. On balance, as I say, I think you ought to start with the best solution and work backwards to the money, rather than start with the most money and then fit a solution around that. This does look a bit like you start with who will pay the most money and then you squeeze all the road closures, toll levels and everything else into the starting requirement that, at the very least, there be no government money in it and preferably that people pay. In this case all three of the consortia offered to pay for the privilege so, naturally, the Government gave it to the one who offered to pay the most. I do not think that is a particularly useful trend. Effectively, it is just bringing forward toll payments. It is getting an upfront net present value. I do not think that is desirable.

Ms LEE RHIANNON: Mr Greiner, we only have a few minutes together, as you spoke for about 25 minutes—

Mr GREINER: It is hard to shut these people up, is it not?

Ms LEE RHIANNON: Yes, but it was very interesting.

CHAIR: It answered many of the questions we were going to ask, so that saved time.

Ms LEE RHIANNON: I understand that that you were a consultant to Clayton Utz, solicitors for the RTA on the tunnel project, between 1999 until just before the tunnel opened. When did you stop working for Clayton Utz?

Mr GREINER: A couple of years ago. But I can give you an absolutely—

Ms LEE RHIANNON: Will you take that question on notice and give me an exact date?

Mr GREINER: I can, but I can give you the more relevant answer, which is that I had absolutely not the slightest involvement in any work that Clayton Utz did. I was supposed to give them advice on business strategy and other things. So I can give you an absolutely cast-iron answer. I did not even know that they were the advisers to the RTA until you told me. But I can give you the exact date; it was a couple of years ago.

Ms LEE RHIANNON: During that time you presided over a number of seminars organised by Clayton Utz on infrastructure project issues. Is that the case?

Mr GREINER: Yes, that is correct.

Ms LEE RHIANNON: I understand from what you have said just now, and from what I have read, that you were the Chairman of Baulderstone Hornibrook and are currently Chairman of Bilfinger Berger Australia, which has a 20 per cent interest in the tunnel?

Mr GREINER: Yes.

Ms LEE RHIANNON: So is it correct that you were a consultant to Clayton Utz during a period in which Clayton Utz was assisting the RTA to cull the tunnel bids?

Mr GREINER: I was a consultant to Clayton Utz until a couple of years ago and if they were working for the RTA at the same time, God bless them!

Ms LEE RHIANNON: Is it true that while you were already a director of Clayton Utz, that firm acted for British American Tobacco, which ended up before the Supreme Court of the Victoria where Justice Eames, in April 2002, seriously criticised Clayton Utz for improperly dealing—

Mr JOHN TURNER: Point of order: That has absolutely nothing to do with the reference to this Committee.

CHAIR: The question is outside the reference to this Committee. Please rephrase the question so that it does not deal with matters outside the Committee's terms of reference.

Ms LEE RHIANNON: Do you see that these relationships may have put you and Clayton Utz in a situation of conflict of interest, or at the very least that it would have been perceived there was a conflict of interest? As you are aware, a perception of a conflict of interest is also taken very seriously.

Mr GREINER: Only by you!

Ms LEE RHIANNON: You do not believe there is a perception of conflict of interest?

Mr GREINER: Absolutely not! I was expecting Arthur to ask me about British American Tobacco. I was a consultant to Clayton Utz until a couple of years ago. There would have been an overlap, definitely an overlap with this time period. There was not even the most remote chance. Mr Nile and you have had the same involvement as I did, absolutely nil!

Ms LEE RHIANNON: The man or woman on the street would perceive a conflict of interest here. You are involved with companies on both sides here.

Mr GREINER: You would have to try very hard to reach that conclusion.

Ms LEE RHIANNON: Baulderstone Hornibrook gave regular donations to the ALP?

Mr GREINER: It is a shocking decision by them.

Ms LEE RHIANNON: I was interested to see what part you had in making those decisions to give to the ALP?

Mr GREINER: Baulderstone Hornibrook, like most other construction companies, give donations to both sides, and I had no involvement in making decisions about the money they gave to the Liberal Party or the Labor Party. They probably did not give anything to the Greens, and that is a good judgment.

Ms LEE RHIANNON: Can you answer the question about the benefit they received?

Mr GREINER: None, as far as I am aware.

Ms LEE RHIANNON: Even though they got the contract?

Mr GREINER: You are not really suggesting that—

Ms LEE RHIANNON: I am just asking your opinion.

Mr GREINER: Baulderstone got the contract. Baulderstone was bidding to the CCM. Baulderstone has no contractual relationship with the RTA. There is a concession company and it is owned by CKI, by Deutsche Bank on behalf of various funds and by Bilfinger Berger.

Ms LEE RHIANNON: I understand the relationship, I was asking about the benefit.

Mr GREINER: There is no relationship between Baulderstone winning the contract from the CCM. You are suggesting we gave, if you like, the Labor Party money and because we gave them \$1,000 the Labor Party gave us this job?

Ms LEE RHIANNON: There is much more than \$1,000, as you know.

Mr GREINER: I do not, actually, but it is not a lot. The Labor Party or the Government had no involvement in deciding who was going to build this road. The whole nature of this, and this is the point, with great respect, is that this is a private road. CCM and the other three bidders, the three concession companies, decided who was going to build the road. It has nothing to do with the Government. I am sorry if I have not explained that or if you do not understand it, but it has nothing to do with the RTA that CCM chooses a joint venture of someone in Germany and someone here to build the road. It is entirely a private decision and that is why that risk is internalised, otherwise the risk would be taken in part by the Government.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You said all the risk had been transferred to the private sector.

Mr GREINER: Not all, but a lot of it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What would you say about the fact that the Government has the risk that it is unable to do rail projects because it will be an MAE?

Mr GREINER: As I said, I was not involved with CCM or the contract. I have never seen the contract; you have more knowledge than I have of it. That is a pretty commonplace clause in these agreements. I do not think that is a risk. I do not think you could reasonably say it is a risk. It is a decision by the Government that says in this particular case it chose in the commercial negotiations to say if they are building a directly competitive public transport link of some sort there would be a question or a discussion or a contractual issue about whether they have an impact on the road or not. I do not think that is particularly unreasonable but you will remember in other cases, as Mr Pease says, in most of the ones in my time, there was a private toll road and a free road side by side. The Eastern Distributor and the railway line run side by side—obviously did not help the railway line.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But we have lost the ability, probably without large penalties, to build a rail link to the north-west sector because of the M2 contract. Now you have an inability to build light rail out of the eastern suburbs because of this tollway.

Mr GREINER: You are really gilding the lily. As I understand it, the Government has announced its program of building a rail link to the north-west sector, which is where you are talking

about, into the city and out to the south-west sector. That demonstrates there is entirely no risk. It only announced it the other day, as I recall it.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Not along the route of the M2, though, is it?

Mr GREINER: It may not be but it is effectively from the north-west sector, to the city, to the south-west sector.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Do you think there is a loss of expertise in planning because the planning department here this afternoon were saying they evaluate the projects, they do not say they have an overall wish?

Mr GREINER: I think that is a problem. I think that point is valid and that is one of the good things that is coming out of all this. I tried to make point about feeding into the network. I do agree with that and this should not be seen as a series of projects. I hate to bring his name up, but when Dr Metherell as shadow transport Minister about 20 years ago announced most of the roads that the Government has now built as toll roads, they were part of an overall view as spokes on the wheel and where the toll roads ought to go and the free roads, the normal roads, would be in the middle.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The RTA had a vision and the rail network did not?

Mr GREINER: That is right. You might say the overall public sector has not had an adequate vision. I think that is a fair comment.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You painted there being a great deal of transparency but the changes to William Street were painted as a cheery boulevard with lots of cafes rather than the practical effect which was that you could not drive a car down William Street the width it was, let alone now?

Mr GREINER: I was giving you my impressions. It is true that every Premier from Barrie Unsworth, I think with the exception of me and Mr Fahey, wanted to boulevardise William Street. Precisely how it was conveyed—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: It was conveyed very cheerily but when it happened the cars banked up even worse than they did before.

Mr GREINER: I think the question of congestion points and so on is something you no doubt have asked—I have not followed the evidence. I think that is a serious question to ask the RTA, as to whether there have been what Bob Hawke might have called unintended consequences from this road.

The Hon. AMANDA FAZIO: I just want to ask a question in relation to an issue discussed by the former Treasurer yesterday. He said that as part of the overall project he had granted some concessions to the consortium on land tax. He said he did that because, "We were leasing our land to them. I think it makes sense that in the total financial package you make those payments to the Government certain so that a government of more dishonest complexion down the track could impose a much higher land tax." You mentioned in your opening statement that private companies need to know the risks involved in projects like the cross-city tunnel and that they need certainty. Would you see that providing a buffer against any increased land tax for the consortium would be in line with providing for that certainty?

Mr GREINER: I did not follow what Michael said yesterday. It is the first I have heard of it. But it does not sound unreasonable, as you put it, but to be honest I have no knowledge.

Mr PAUL McLEAY: Yesterday we heard that this project is no different to any other large infrastructure projects in the city. There is always a period of adjustment like that seen on the M2. Would you agree with that assessment?

Mr GREINER: Broadly, yes. There will be an adjustment, a ramp up. I do not think one ought to get ones knickers in a knot, dare I say. There is always a ramp up. It always takes some time. It is the case that the ramp up at the beginning, I think the initial estimate was 30—I am sure someone has given you the real numbers, I do not know them—but the initial numbers were less than the projected initial numbers. One might think that the ramp up is going to be slower and longer on the basis of what one knows to this day but these are all projections. These are different modelling companies, different consulting companies and they do not pull these things out of their left ear. They make assumptions, people take risks, form judgments, so in principle I do not think this project is different from other similar projects. Of course, it is the politicians' job to look at it after the event and say it got that wrong. People get it wrong in both the public and the private sector all the time. It is the nature of making projections into the future. You tend not to get them spot on. That is hardly surprising.

Mr PAUL McLEAY: Construction work on William Street is a continuing issue. As chair of the company responsible for these roadworks, can you tell the Committee how they are progressing and when you expect them to be complete?

Mr GREINER: I think I will have to take the second part on notice. I have risen to greater heights and am chairman of a holding company. My understanding is they are on time but I cannot tell you precisely, but I will send you tomorrow a direct answer to the question. They are going all right is the general answer.

Mr MATT BROWN: I am sure your company has bought a degree of expertise to the project, and I would like you to tell the Committee about that. When you do so, could you expand on your opening statement, in which you said that the Government sets certain standards. With regard to air quality, you said it is of no concern to the private sector whether the standards are pure or impure. It is my understanding, however, that the whole point of public-private partnerships was that the private sector would bring innovation and new ideas to projects; they would not simply accept a standard set of requirements from the RTA or any other body.

Mr GREINER: It is a very good question. The natural tendency of government departments—even when they are either encouraged or forced to go down this private road, or they do so of their own volition—is to want to determine what happens. It is sort of where the public sector gets its jollies. I think the same about the desalination plant, for what it is worth. We would be a lot better off to say, "We want so much water, of such a purity, delivered at such a point, at such a time. You, as part of the competitive process, tell us how you would propose to do it." You might not even specify whether it is at point A or point B. I think that is a better way to approach these projects. That way, you have a greater chance that you would get innovation or creativity.

I have to say that it applies to both sides. The private sector is quite happy to be told, as I said, because they then do not have to make a judgment—a judgment about what community groups, the Greens or the Democrats think about air quality, how that will play, and so on. They do not have to make those judgments; they can simply say, as I have just said to you, "We will go with what the authorities or the regulators say." Yes, you are quite right, it is possible to adopt a more outcome-oriented approach that says, "This is what we are trying to achieve: get cars out of the city, join point A to point B, but not specify the detail, not specify what sort of stack, or where it might be, and so on."

I think that is in many ways a better way of doing it. But, of course, it is a bit more risky because all you are doing is specifying the outcome and you do not know what you are going to get by way of competitive input. So it is certainly worth considering as a way of approaching infrastructure needs: to specify the need and, if you like, the broad solution, but not the detailed solution. But that is not what happened in this case; it may be what should happen.

CHAIR: Do you think there is an overreaction to the \$3.50 toll? I pay regularly \$4 on the Southern Cross tollway.

Mr GREINER: Yes. Broadly, you would expect me to say that. But it is about the going rate. I remember being in Opposition at the time the Harbour tunnel was built, and I said Opposition-like things about the Harbour tunnel. But the truth was that people had absolutely no choice. And the

toll for crossing Sydney Harbour went up, as I recall, from 20¢ to \$1; it went up five times. There was really no choice at all, other than going over Gladesville Bridge. I think the problem is more in the value proposition, as I call it. In other words, the cross-city tunnel is a short distance. But the point is that it has cost a lot of money to build because it is very complicated and you are building it under well-developed urban areas, whereas other roads are built by carting some dirt around.

I heard the Premier say this morning that \$3 would be better than \$3.50. Well, that is an insight. But you come to the figure because you need to pay back the people. This money has not come out of the air; various banks have put in 60 per cent or more of the money, and the three equity players have put in the rest. So, in a sense, you have some projections as to patronage and you have some tolls, and the mixture of those comes with some projected revenues, which you do or do not achieve. To answer your question directly, I think people have been moved to outrage more by some effective community politicking on the road closures and the allegedly secret deals and so on, rather than the fact that it is \$3.50 instead of \$3. I do not think there is a practical difference, if you know what I mean.

CHAIR: If there had been a boycott, as was suggested by some people, what effect would that have had?

Mr GREINER: I guess there has been an attempted boycott, has there not? At the end of the day, this will work on its merits. It will work, if people want to use it. The truth is, you will all be on another issue, and so will everyone else. This road is now here to stay, the consortium will own it for 30 years, unless it sells down at some point in time, and the public will vote with their dollars.

I think the fact that it was the first non-cash toll has also made a bit of an impact, and the RTA was legitimately concerned about that. That is learning curve for the public. I think there might be a case for mandatory tags. If you want me to say something vaguely original, I would have thought that, going forward, it is hard to see why you should not require all cars to have a tag. It does not cost you anything; you do not have to put \$100 into it. I think that is probably reasonable, given that you are going to have a network of toll roads around Sydney and they are all interchangeable. Perhaps new cars ought to have mandatory tags.

Ms LEE RHIANNON: Would you advise New South Wales Liberals to back the cross-city tunnel to win the 2007 election?

Mr GREINER: I do not give free political advice to anyone these days—I do not even give paid political advice to anyone. I do not think I have anything useful to say on this. There is no doubt that some of the new aspects of this—about the road closures, a bit of NIMBY-ism, the fact that it is a cash-free toll and you really do require a tag to use it sensibly—I think all those things, together with some effective politicking by yourself and others, and the NRMA, who has, incidentally, been totally irresponsible—

Ms LEE RHIANNON: And the community.

Mr GREINER: Only parts of the community. You never hear from the ones who have actually had an improvement in their amenity. There are people who like the roads being closed. There are two sides to it, are there not?

Mr PAUL McLEAY: Can you tell the Committee what went wrong with the first proposed opening date for the cross-city tunnel?

Mr GREINER: Yes. We got it wrong. Baulderstone Hornibrook's construction managers mismanaged, in my view, the electrical and closing trades. When we gave the Government a date which was not achievable, it was wrong, we owned up to it, and I seem to recall that I took the blame.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Did the death have anything to do with that?

Mr GREINER: The death certainly was a problem, not only in the sense of the obvious tragedy, but productivity on the project went down. When you have a death, quite understandably and reasonably, you get WorkCover, Uncle Tom Cobleigh, and—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: And you improve the processes?

Mr GREINER: It is sort of fundamental. Bilfinger Berger, which is the tunnelling company, is, I think, arguably the best tunnelling company in the world. They are mostly from outside Australia; they come in to do the work. They also did the M5 tunnel. We have obviously gone to school on what could happen. The WorkCover report is not yet out, and there are a range of disputes and potential lawsuits. But we have certainly looked at our procedures. It is a dangerous business. To state the obvious, there are going to be risks with tunnelling, but one ought to try to minimise them as far as possible. But, yes, it was a factor, and we obviously regret it, mostly because of the person who passed away, but it certainly reduced the productivity on the job and therefore contributed to the result. That is the risk we took, and we suffered from that, to make the point I was making before.

Ms LEE RHIANNON: You said earlier that you did not have that much involvement with Cross City Motorway. But now you are speaking with great knowledge about day-to-day matters with it. There seems to be a contradiction there.

Mr GREINER: No. Bilfinger Berger Australia, of which I am chairman, owns Boulderstone Hornibrook. Boulderstone Hornibrook is involved in building; it was half the joint-venture that built the tunnel. As it happens, someone in Germany decided that the investing arm, which invests in these projects around the world, should be separate from Bilfinger Berger Australia, or from the operating company. So Cross City Motorway has nothing to do with me, and I have nothing to do with it. I have something to do with, and am able to sort of answer questions about, the building of the tunnel because that is within my purview. The equity part, the part that invests and operates concessions, is completely separate from me.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Can I ask you about debt and equity?

Mr GREINER: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: What is wrong with government debt if there is equity to back that debt? Banks are not frightened of people who have equity, but they are frightened of people with debt without equity, are they?

Mr GREINER: The problem is that people go to black and white. I think the pendulum may have swung too far. I probably started it swinging. When I became Premier and Treasurer 17 years ago people thought debt at State level was not an issue. You hid behind the Commonwealth Government. It had a triple-A credit rating, Bob was your uncle and you could basically borrow as much as you liked. It had States like Victoria and Western Australia—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you can service that debt that is the case, is it not?

Mr GREINER: Hang on. I do not think government is much different to a company. There is an appropriate debt-equity ratio. You can get someone from S and P to come and give evidence, and he will tell you that they look at the capacity to cover interest payments. So it is not a sense of saying, "We should only have debt" or, "We shouldn't have any debt at all." It is up to governments and competing political parties to work out what their approach is, and there can be some difference. I think what I am saying is the notion that you can just do it by debt simply does not work because if you were to try to do everything by debt you would either not do these projects—put them off for 25 years—or if you tried to do them you would borrow so much that your credit rating would go down and the implications of that are not—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Obviously you have to not borrow in some cases?

Mr GREINER: Yes.

CHAIR: We have to conclude. Our time has expired. Thank you again, Mr Greiner.

Ms LEE RHIANNON: Mr Chair, could I just ask for materials that Mr Greiner may be able to give to the Committee? Mr Greiner, you spoke earlier about—

Mr ANDREW CONSTANCE: We missed out on questions yesterday.

Mr GREINER: I am happy to send you whatever you need. You could drop me a note.

CHAIR: Write a letter to Mr Greiner.

Ms LEE RHIANNON: No, I want to do it through the Committee, as we normally do.

CHAIR: You had to do that in your earlier time.

Ms LEE RHIANNON: No, I only want to ask for materials.

CHAIR: What?

Ms LEE RHIANNON: Earlier Mr Greiner mentioned media releases that he had seen that his wife had that explained about the road closures.

Mr GREINER: Not that I propagate things proposed by Mr Sartor and Ms Moore normally, but it was actually a press release from Frank and one from Clover. I am sure you have them, but I would be happy to get them—

CHAIR: The Parliamentary Library can get those for you. I declare the Committee meeting closed.

The committee adjourned at 5.03 p.m.