

REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY COMMITTEE

IMPACT OF THE WESTCONNEX PROJECT

UNCORRECTED PROOF

At Macquarie Room, Parliament House, Sydney on Monday, 15 October 2018

The Committee met at 9:00 am

PRESENT

Reverend the Hon. Fred Nile(Chair)

The Hon. Greg Donnelly
Ms Cate Faehrmann
The Hon. Trevor Khan
The Hon. Shayne Mallard
The Hon. Daniel Mookhey
The Hon. Dr Peter Phelps

The CHAIR: Welcome to the third hearing of the Public Accountability Committee's inquiry into the impact of the WestConnex project. Before I commence, I acknowledge the Gadigal people of the Eora nation who are the traditional custodians of this land. I also pay respect to elders past and present of the Eora nation and extend that respect to other Aboriginal persons present or listening to this broadcast. Today the Committee will be hearing from the Sydney Motorway Corporation, WestConnex, the City of Sydney Council, SGS Economics and Planning, Desane Group Holdings Limited, Office of the Valuer General, Property NSW, Dr Zeibots from the University of Technology, public transport advocacy groups, the WestConnex Action Group and a number of residents from St Peters.

I will now make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the parliamentary website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the *Legislative Council's Guidelines for the Broadcast of Proceedings*, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind members of the media that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at this hearing. I urge witnesses to be careful about comments they may make to the media or to others after they have completed giving their evidence. Such comments would not be protected by parliamentary privilege if another person decided to take defamation action. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I request witnesses to focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to the Committee members through the Committee staff. To aid the audibility of this hearing I remind both Committee members and witnesses to speak into the microphones in front of them. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who may have a hearing difficulty. I ask everyone to turn their mobile phones to silent for the duration of this hearing.

Finally, I welcome the many members seated in the public gallery. I remind everyone in the audience that this hearing is not an open forum for comment from the floor. Audience interruptions can make it difficult for witnesses to communicate with the Committee and for Hansard to record these proceedings. I now welcome our first witnesses Mr Dennis Cliche and Mr Peter Jones.

DENNIS CLICHE, Former Chief Executive Officer, Sydney Motorway Corporation, sworn and examined

PETER JONES, Former Project Director, Stage 3, Sydney Motorway Corporation, sworn and examined

The CHAIR: Would either of you like to make a brief opening statement?

Mr CLICHE: I have an opening statement to make. First of all I would like to thank the Committee for inviting Peter Jones, the former project director, stage 3, Sydney Motorway Corporation [SMC] and myself to give evidence. As I am sure the Committee is aware, I ceased to be an employee of SMC on 27 September, following completion of the sale of 51 per cent of SMC. Similarly, Peter Jones left the employment of SMC in September to return to Victoria where he has taken up a role with the Victorian Government. Consequently, Peter and I are no longer employees, officers or directors of the SMC. We can only answer questions to the best of our recollections in our personal capacities and not for or on behalf of SMC.

As is well known, WestConnex will form the spine of the Sydney motorway network with more than 30 kilometres of continuous motorway, 20 kilometres of which will be underground, in tunnels, freeing up valuable space on the surface road network and returning local streets to local communities. The project now is in the midst of delivering more than \$20 billion in economic benefits to New South Wales and supporting 10,000 jobs in construction. When complete, the project will provide more than 23 kilometres of new and upgraded cycle and pedestrian paths linked to existing cycleways. It will also deliver more than 18 hectares of open space for local communities. WestConnex has been identified as a key priority in a number of important State and Federal planning documents. These include the NSW State Infrastructure Strategy, released in 2012 and the 2014 upgrade, NSW Long Term Transport Master Plan, NSW Freight and Ports Plan, A Plan for Growing Sydney and the Australian Infrastructure Plan. It is also a state significant infrastructure [SSI] project and listed as being of "national significance" on Infrastructure Australia's priority list.

Ms CATE FAEHRMANN: Point of order: We have heard all of this before. The Committee has limited time. How much longer is this opening statement going to take?

Mr CLICHE: About three more minutes. I am about to get into some of the stuff that was talked about in the earlier questions.

Ms CATE FAEHRMANN: Would you be able to table it? If it is just more public relations material for WestConnex we have already heard plenty of that.

The Hon. TREVOR KHAN: Point of order: That comment is outrageous. A witness is entitled to give a brief statement to the Committee. Mr Cliche is doing precisely what witnesses generally do.

The CHAIR: There is no point of order. The witness will conclude his opening statement.

Mr CLICHE: Its economic value has also been tested very recently in the market with a competitively contested \$9.3 billion sale of 51 per cent of SMC. That was a great result for the taxpayers of New South Wales, as per the evidence given by Treasury at this very inquiry. Having said that, we acknowledge that the WestConnex project has impacted members of the community. These impacts are taken very seriously and we do everything we can to minimise them. Unfortunately, this is one of the realities of delivering a major project in a densely populated city. I can assure the Committee that every member of the team delivering WestConnex—be they SMC employees, our prime contractors or their subcontractors—are all committed to minimising these impacts and take very seriously the concerns that have been expressed.

A number of questions have been raised at this inquiry as it relates to governance and assurance for the delivery of the WestConnex project. For the record, I joined the project as the first chief executive officer [CEO] of the WestConnex Delivery Authority [WDA] in August 2014. Following the Auditor-General's review of WestConnex in 2014, the Government took the step to wind up WDA and redistribute its functions to Roads and Maritime Services [RMS] and SMC. This was done in October 2015 and I was then appointed the chief executive officer of SMC. On the Government side, the functions of project development, planning approvals and property acquisition to name a few were vested with RMS, while SMC focused on project procurement, delivery and finance. Mr Kanofski spoke in more detail about the description of the roles between RMS and SMC so I will not bother going into any further detail but it should be stressed that SMC's role throughout this time has been to deliver government policy, not formulate it.

SMC is a doer and performs these project delivery functions for its client RMS under the terms of the concession deeds for the three stages of WestConnex. Similarly, as has been stated by Mr Betts at this inquiry, Infrastructure NSW [INSW] since that time has performed some 36 health checks or audits of the WestConnex project. Our project teams met monthly with their RMS counterparts and I gave monthly project updates to the

WestConnex Interdepartmental Steering Committee [WISC]. Our financial accounts were audited on an annual basis by the NSW Audit Office. In addition, SMC had at a minimum monthly board meetings to monitor project delivery, in addition to periodic reviews by the audit and risk and remuneration subcommittees of the SMC board. I am happy to report that the project remains on track, time and budget. During my time as the chief executive officer, SMC completed the King Georges Road Interchange upgrade ahead of time and under budget, completed the remediation of the heavily contaminated tip site at St Peters Interchange on time and on budget, and opened the widened and upgraded M4 close to time and on budget.

This widened section has been providing travel time savings for the customers who have been taking the 150,000 trips every day. As at the end of September, progress of both the M4 East and the new M5 was on program. The M4 East is currently in mechanical and electrical fit-out, having already completed all tunnelling and paving. The new M5 has finished more than 80 per cent of all tunnelling, with paving and fit-out commenced in a number of areas. Civil works on both projects are well advanced. The Committee would be aware that the construction contract for the main tunnel works on the M4 and M5 link was signed in September, after having signed a commitment deed in June of this year to allow project mobilisation to commence. Construction is expected to commence later this year. From a personal stand point, my role at SMC was to deliver the business case provided by government, which, in addition to the physical delivery of the project, also included the sale of SMC.

As I have just summarised, project delivery is in good shape. As for the sale, it has never been a question of if but rather when it should occur. This has now been done. Finally, it would be remiss of me not to acknowledge the dedication and significant efforts of the men and women on the job, both those at SMC as well as the 41,000 plus employees currently working for our contractors. The tremendous efforts of those people have helped ensure that the project remains on time and on budget. The value attributed to SMC, as evidenced by the recent purchase by such a knowledgeable and experienced operator as Sydney Transport Partners, is testimony to their efforts. This has translated into a great outcome for the citizens of New South Wales. I thank the Committee for its time. I am happy to take questions from Committee members.

The CHAIR: Thank you. Mr Jones, do you wish to say anything?

Mr JONES: No, thank you.

The CHAIR: You have not made any submission. Is there a reason why you did not make a submission? You have a lot of facts in your opening statement.

Mr CLICHE: No, we did not. I guess it is because we are not employed anymore—neither one of us are working directly for the Sydney Motorway Corporation.

The CHAIR: Thank you.

The Hon. DANIEL MOOKHEY: Mr Cliche, congratulations on your retirement.

Mr CLICHE: Thank you.

The Hon. DANIEL MOOKHEY: Mr Jones, congratulations on your appointment with the Victorian Government. Mr Cliche, when you became Chief Executive Officer of the Sydney Motorway Corporation in October 2015, was it within your remit and the mandate that you had to deliver the business case—as you say—to construct the Sydney Gateway?

Mr CLICHE: We had within the business case a provision to provide connections to the airport, yes.

The Hon. DANIEL MOOKHEY: And that included both road and rail?

Mr CLICHE: No, that was road only.

The Hon. DANIEL MOOKHEY: Road only?

Mr CLICHE: Yes, and there was an \$800 million contribution that was part of the revised business case released by RMS that talked to that point.

The Hon. DANIEL MOOKHEY: When were you informed that it was no longer within the remit of the Sydney Motorway Corporation to deliver the gateway?

Mr CLICHE: Almost immediately upon the wind-up of WDA. Up to that point, the WestConnex Delivery Authority [WDA] was essentially an arm of the RMS. During that time, we had project development resources working within the WDA. Upon the wind-up of the WDA and the formation and my move across to SMC, all of those development staff were moved over to RMS and continued to develop Sydney Gateway, the F6,

the Western Harbour Tunnel and all of those other projects. At that point in time, we were effectively involved but not leading any of it.

The Hon. DANIEL MOOKHEY: When you say you were involved but not leading, what does "involved" mean—you were attending meetings, participating in briefings, receiving information and stuff to that effect?

Mr CLICHE: Early in the piece, yes, but as time progressed, no. As you are aware, progressively SMC became more of an arms-length company or a Corporations Act company, with less and less direct involvement with government. There was a period of time during which we worked with RMS to ensure that there was a proper handover of the project. But from that point on we had limited visibility.

The Hon. DANIEL MOOKHEY: What time frames are we talking about here?

Mr CLICHE: RMS released the business case in November.

The Hon. DANIEL MOOKHEY: November 2015?

Mr CLICHE: It was approximately around that time that we progressively moved to the back. I draw your attention to the testimony I gave at the tolling inquiry, which has been—

The Hon. DANIEL MOOKHEY: That is okay—I was there and I heard it. I have limited time, Mr Cliche. When did SMC cease all work on the gateway according to the wind-down procedure that you have just described? When was the last time any substantial work was performed?

Mr CLICHE: I would say within a couple of months of the wind-up of SMC.

The Hon. GREG DONNELLY: The wind-up of the WestConnex Development Authority?

Mr CLICHE: WDA, yes.

The Hon. DANIEL MOOKHEY: Were you ever told why Treasury or Infrastructure NSW were not told of the transfer until September 2017?

Mr CLICHE: No, I have no knowledge of why other government departments were told or not told.

The Hon. DANIEL MOOKHEY: In your tenure as CEO, did you enter into a sponsorship agreement with the Greater Western Sydney [GWS] Football Club?

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: When did you do that?

Mr CLICHE: I would have to check and take that on notice, but it would have been about 1½ years to two years ago.

The Hon. DANIEL MOOKHEY: What was the value of the sponsorship agreement that was reached with the Greater Western Sydney Football Club?

Mr CLICHE: I understand that you will be interviewing my successor, Andrew Head, post talking to me. I am under confidentiality in terms of what I can disclose about contractual relationships between SMC and any other entities. It is not for me disclose the amounts.

The Hon. DANIEL MOOKHEY: Okay. What was the sponsorship for?

Mr CLICHE: We were providing community services through the GWS Football Team—helping disadvantaged kids stay in school, giving Indigenous people support through that process and giving naming rights for the WestConnex training facility, which has the GWS Giants, the women's footy team and the netball team.

The Hon. DANIEL MOOKHEY: What about uniforms? Were they to wear WestConnex-style logos on their uniforms or anything to that effect?

Mr CLICHE: No. All of our sponsorship was specifically focused on community outcomes. We supported people, we would go and give health information and the players would go and visit schools. We provided funding directly into that and directly into that only.

The Hon. DANIEL MOOKHEY: Was that agreement reached when Tony Shepherd was your chair?

Mr CLICHE: Yes, it was.

The Hon. DANIEL MOOKHEY: Did he participate in the decision to give the sponsorship?

Mr CLICHE: No, he did not. To make sure I am 100 per cent correct, he may have been off the board at that point. I believe that by the time we took that decision Peter Brecht was our chairman. I would have to check that to be 100 per cent sure, but I am pretty sure it was Peter Brecht. Tony was not involved in any of those discussions.

The Hon. DANIEL MOOKHEY: Did he declare a conflict of interest when any of these discussions surfaced?

Mr CLICHE: Yes, always.

The Hon. DANIEL MOOKHEY: What steps did you take to ensure probity was followed by Mr Shepherd?

Mr CLICHE: Mr Shepherd left the room anytime—and I speaking generally here and not just about GWS—there was any possibility that Mr Shepherd would have been conflicted. He left the room.

The Hon. DANIEL MOOKHEY: What other conflicts presented themselves under Mr Shepherd's tenure that were not related to GWS?

Mr CLICHE: I am actually referring to an earlier job when he was also my chairman. I am speaking generally, which is why I said "generally speaking". I cannot quite remember whether or not Mr Shepherd was our chair at the time we were discussing the GWS sponsorship. But as a matter of practice—and I have worked extensively with Mr Shepherd both in this job and in previous jobs—I can attest to the fact that he would not sit in on any conversation.

The Hon. DANIEL MOOKHEY: Did he receive papers that referred to any of the negotiations with the GWS?

Mr CLICHE: No.

The Hon. DANIEL MOOKHEY: Was that deliberately withheld from him because he was the chair?

Mr CLICHE: Absolutely.

The Hon. DANIEL MOOKHEY: Was this all assessed by a probity advisor?

Mr CLICHE: No, I do not think we had a probity advisor on that one.

The Hon. DANIEL MOOKHEY: Who was the Sydney Motorway Corporation's probity advisor throughout this period?

Mr CLICHE: We had a variety of probity officers. It depended on the specific project. Each one of our projects had a tender process to establish the probity officer. The organisation would fulfil that function and every one was different. We did not have a probity advisor to sit at our boards, and this would have been discussed at a board meeting.

The Hon. DANIEL MOOKHEY: Okay, thank you, Mr Cliche. We were chatting at budget estimates about the dispute the SMC was in with regard to the St Peters Interchange in relation to the landfill issue. Can you confirm that under your tenure the SMC was in dispute with the contractor building the St Peters Interchange, which was seeking money for the removal of landfill from the site?

Mr CLICHE: As I am on the record saying, we have a number of claims from contractors on all projects.

The Hon. DANIEL MOOKHEY: I am asking you specifically about that one.

Mr CLICHE: That is one of them. When I left there was a claim that was lodged through us through RMS and that claim was rejected. The contractor was informed—

The Hon. DANIEL MOOKHEY: Just to be specific—

The Hon. TREVOR KHAN: Let him answer.

The Hon. DANIEL MOOKHEY: No, he referred to multiple claims and I want to be clear about which one he is talking about.

Mr CLICHE: The access material, which is the one you asked about.

The Hon. DANIEL MOOKHEY: Okay, so that one was rejected?

Mr CLICHE: Yes, as having no basis. So we rejected that claim.

The Hon. DANIEL MOOKHEY: But that was the view of the Sydney Motorway Corporation?

Mr CLICHE: And RMS.

The Hon. DANIEL MOOKHEY: And RMS. Have they initiated a claim under the contract dispute framework?

Mr CLICHE: You will have to discuss that with RMS.

The Hon. DANIEL MOOKHEY: Now that you mentioned that there have been multiple claims, what other claims have been made?

Mr CLICHE: As I said during estimates, there is a variety of claims that arise in all of our projects.

The Hon. DANIEL MOOKHEY: Let us specify. Let us go through what are the other claims in respect to the M4-M5 Link there have been lodged so far.

Mr CLICHE: There is a number of matter of discussions and negotiations as we enter into all of these. It is much like building a house and renovating a house.

The Hon. DANIEL MOOKHEY: What about the M4 East?

Mr CLICHE: That is also there.

The Hon. DANIEL MOOKHEY: How much are we talking about? What is the value of these claims?

Mr CLICHE: As I said in my opening statement, we are very confident that we are under budget or on budget on all of our projects and that includes provisions—

The Hon. DANIEL MOOKHEY: That is useful, Mr Cliche, but it is not what I am asking you—

Mr CLICHE: —excuse me, excuse me—

The CHAIR: He is finishing his answer.

Mr CLICHE: —you asked me a question and I am going to try to answer it.

The Hon. DANIEL MOOKHEY: You need to let me finish asking the question.

Mr CLICHE: I thought you did.

The Hon. TREVOR KHAN: I will take a point of order. The member is constantly talking over the top of Mr Cliche. We are all entitled to hear the answers without interruption from the member.

The CHAIR: Could you complete that answer?

Mr CLICHE: Yes. There is always a variety of claims on foot all the time on any major project, both WestConnex and any other project, that anybody knowledgeable in the industry who has ever been involved in knows that this is that process.

The Hon. DANIEL MOOKHEY: I appreciate that, and you have said that now three times, but I am asking you specifically: What are the claims that are available that have been made? You have said that there are a variety. It is the Public Accountability Committee. It is not that unreasonable a question for me to ask you. What are the claims that have been received, for what parts of the project—and now that I am here—what value?

The CHAIR: You can take that question on notice as it has a lot of details in it.

Mr CLICHE: Yes. Thank you.

The Hon. DANIEL MOOKHEY: Were any claims lodged in the security of payments Act during your tenure?

Mr CLICHE: Not that I am aware of, no.

The Hon. DANIEL MOOKHEY: In respect of the claim on the landfill, when were you informed that the claim was made?

Mr CLICHE: Again, it would probably be 12, 15 months ago.

The Hon. DANIEL MOOKHEY: This claim has been outstanding for roughly \$100 million for 12 to 15 months. Is that correct?

Mr CLICHE: There are constantly conversations and negotiations with contractors. They raised it a number of months ago. It was not raised as a claim; it was raised as a request for us to look into it because they found they had excess material beyond what they had provided for. Without getting into a whole bunch of technical reasons, the compaction levels they had estimated to deal with that material did not result, so they had

extra material. We talked to them about how we could help them, as is good practice between a good client and its subcontractor, to see how we could help them in dealing with that. We went through an extended process to facilitate what they needed to do. That resulted in a number of iterations.

That number, what you talked about, was the initial, would I say, ambit claim from our perspective. After going through all of that, meeting with them, discussing with them, evaluating their technical advice, looking at our own advice that we provided at the time, we felt confident that their claim was without basis and rejected it. That process takes a year.

The Hon. DANIEL MOOKHEY: It is the case that under the link claims regime, SMS will pass on—

Mr CLICHE: SMC.

The Hon. DANIEL MOOKHEY: —SMC will pass on this claim through to RMS, or at least will do so if it is substantiated. That is correct?

Mr CLICHE: That is absolutely correct.

The Hon. DANIEL MOOKHEY: Thank you. Let us move forward. Mr Cliche or Mr Jones, you say that the contract was entered into for the construction of stage 3A. That is correct?

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: That was done. When was the commitment deed was entered into?

Mr JONES: Commitment deed was entered into mid-June, and final contract signature would have been in—

Mr CLICHE: Mid-September.

Mr JONES: Mid-September.

The Hon. DANIEL MOOKHEY: What is the value of that contract?

Mr JONES: I think, particularly given my role now is not with the SMC, that is probably a question better directed to my colleagues at SMC.

Mr CLICHE: I think Mr Kanofski made it very clear that they are in the middle of a negotiation on 3B. You know the total, and I think he indicated that if he gave you 3A then it would jeopardise his commercial position on 3B.

The Hon. DANIEL MOOKHEY: Yes, but he also has a statutory obligation to disclose contracts he enters into on behalf of taxpayers. I am just asking you: Do you know what the value of stage 3A is?

Mr CLICHE: I do, but it is for Mr Kanofski to disclose that.

The Hon. DANIEL MOOKHEY: Right. When do you anticipate 3B to finish construction?

Mr CLICHE: Again, that is an RMS—

The Hon. DANIEL MOOKHEY: When was the last forecast advice that SMC received under your tenure, Mr Cliche?

Mr CLICHE: 2023.

The Hon. DANIEL MOOKHEY: Are you aware why Transurban is disclosing a 2025 date? Have you ever inquired into that?

Mr CLICHE: No, I have not.

The Hon. DANIEL MOOKHEY: Moving forward, were you aware of the collapse of a contractor by the name of RCA that was working on parts of the WestConnex while you were chief operating officer?

Mr CLICHE: To be honest, I am not 100 per cent sure that I have. Were they a trucking company?

The Hon. DANIEL MOOKHEY: No, they were a landfill company, but they did organise to provide the movement of spoil.

Mr CLICHE: Okay, then I have a recollection, yes.

The Hon. DANIEL MOOKHEY: What is your recollection?

The CHAIR: You can take it on notice if you want to check some details.

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: What is your recollection?

Mr CLICHE: My recollection is that they had financial issues, were not able to pay their debts and went into administration.

The Hon. DANIEL MOOKHEY: Which part of the work were they performing? Which part of the WestConnex were they working on?

Mr CLICHE: I cannot remember.

The Hon. DANIEL MOOKHEY: Did you receive correspondence from the Transport Workers Union advising you that this had taken place?

Mr CLICHE: No, I do not recall having received anything.

The Hon. DANIEL MOOKHEY: Did the SMC?

Mr CLICHE: I do not recall having personally received anything.

The Hon. DANIEL MOOKHEY: Are you aware that as a result of that company going bust while working on your project, approximately 40 employees and roughly the same number of subcontracted small businesses lost their businesses or had their businesses placed in serious jeopardy?

Mr CLICHE: As I said, I have a vague recollection. I am not 100 per cent au fait with everything.

The Hon. DANIEL MOOKHEY: Can you explain why SMC replied to the effect that it had nothing to do with them and, therefore, no claims should be pursued against them? On what basis did the SMC send that advice?

Mr CLICHE: Well, because again, you are talking about a trucking company that would be employed and I would suspect, given the size of the company that you just described, they would be employed not even directly by our prime contractors but by the subcontractors of those prime contractors. You are aware of the contract structure whereby we have given the mandate to deliver the stages of the project to a construction consortium. Those people have signed up a number of trucking companies to provide those services. Those trucking companies, in turn, have subcontracted to a variety of operators throughout their chain of responsibility to deliver those services. So it would have been at least three or four levels removed from any direct contract negotiations that SMC would have had.

The Hon. DANIEL MOOKHEY: So your position is effectively: because even though they were subcontracted through your supply chain, there is no responsibility for you at that level of the supply chain. Is that correct?

Mr CLICHE: As I said in my opening statement, we are spending, delivering to New South Wales, \$20 billion worth of work—of economic value, rather. We have been spending, when I left, circa \$200 million a month. There are many, many, many businesses throughout New South Wales who are benefiting strongly from WestConnex.

The Hon. DANIEL MOOKHEY: Yes, but there is this whole category of contractors who are now out of business who had this very—

Mr CLICHE: Well, I am sorry—

The Hon. DANIEL MOOKHEY: —sorry, Mr Cliche, let me finish—reasonable expectation that perhaps, if they are working on a government project, they would get paid.

Mr CLICHE: You are making a lot of suppositions there that they are running effectively, there are running efficiently. You are also, I am sure, very aware that we got into a considerable amount of strife because of contractors who were not living up to the standards that we expected from our subcontractors.

The Hon. DANIEL MOOKHEY: I understand your position. Mr Cliche, did you receive severance pay or a termination payout when your contract was terminated? If so, for what value?

Mr CLICHE: I did indeed, and that was for one year's pay.

The Hon. DANIEL MOOKHEY: One year's pay, so to the equivalent of roughly \$1 million.

Mr CLICHE: No, one year's base salary.

The Hon. DANIEL MOOKHEY: Did you receive your short-term incentives before you left?

Mr CLICHE: Short-term incentives were paid for the financial year that was finished on 30 June, so—

The Hon. DANIEL MOOKHEY: To what value? What key performance indicators did you meet to obtain it?

Mr CLICHE: Safety, project delivery, cost, time, employee initiatives, morale.

The Hon. DANIEL MOOKHEY: And what value?

Mr CLICHE: I have a very detailed key performance indicator [KPI] structure. They were appraised by my board and by my chair. I was awarded a short-term incentive for having accomplished those objectives. That was for the financial year that finished 30 June. It was paid in August, I think, and it was for the previous year.

The Hon. DANIEL MOOKHEY: And what was the value?

The CHAIR: Thank you. We will move on to The Greens representative.

Ms CATE FAEHRMANN: I am happy for him to answer.

Mr CLICHE: It is documented. I have said it before, it is—

The Hon. DANIEL MOOKHEY: The short-term incentives?

Mr CLICHE: Yes, I am trying to remember what the exact is. It was roughly 200,000, which is basically the difference between my base salary and the 900 and some odd that has been reported in the papers. Whatever percentage that is.

Ms CATE FAEHRMANN: I refer my questions to Peter Jones in the first instance. What dates did you begin working for SMC, whether it was the WestConnex Delivery Authority at that point, and when did you finish?

Mr JONES: I spent just shy of four years with SMC, finishing up in September of this year.

Ms CATE FAEHRMANN: Your role was project director—remind me—of stage 3. Is that correct?

Mr JONES: Project Director M4-M5 Link Stage 3.

Ms CATE FAEHRMANN: With reference to the Darley Road dive site, what new information did you receive in May or June of this year regarding the proposed Darley Road dive site that led you to no longer require it?

Mr JONES: Very simplistically, we went through a detailed tender process. The eventual winner of that tender process had a different delivery solution. They responded to a range of requirements we had in the tender process. As you are aware we had two tenderers who submitted bids for this project. The winning tenderer had a different solution which meant we did not have to utilise the Darley Road location.

Ms CATE FAEHRMANN: Why did you say numerous times in the past, I understand, that the tunnel could not be built without having the Darley Road dive site?

Mr JONES: There was certainly, for delivery of a project of this kind of scale and nature thereof, time and cost implications for undertaking a project. The availability of construction sites is a key metric in that. The tenderer that won the project was able to find an alternate solution. The whole process of a design and construct [D and C] contract is we come up with our reference design, we come up with our solution. In this scenario an internationally recognised construction contractor came up with a better answer—

Ms CATE FAEHRMANN: I think the community—

Mr JONES: —which is the ideal outcome.

The Hon. TREVOR KHAN: Point of order—

Ms CATE FAEHRMANN: —also came up with a different answer as well. I am sorry, I thought he was close to finishing.

The Hon. TREVOR KHAN: He should be entitled to finish his answer, not "close" in your perception.

Ms CATE FAEHRMANN: Chair, I have eight minutes.

The Hon. TREVOR KHAN: True, so let him answer.

Ms CATE FAEHRMANN: What due diligence did you undertake? I understand that you entered into negotiations with the lessee of the Darley Road site. Is that correct?

Mr JONES: I think it is important to be very clear on this. The Sydney Motorway Corporation, in my role as project director, no we did not. All property acquisition matters are a matter for Roads and Maritime Services.

Ms CATE FAEHRMANN: So you did have discussions with the Inner West Council, for example, regarding the Darley Road site. Why was Inner West Council not informed that a proposed acquisition notice [PAN] had been issued for the Darley Road site? I understand that the Inner West Council spent \$12,000 on an independent engineer to investigate alternative sites. We have heard from the community and we have heard from the council words to the effect that SMC members lied to them and withheld information. Why did the Inner West Council have to spend \$12,000 for an independent engineer to investigate alternative sites?

Mr JONES: If I may come back to what I think was the first question, which was the PAN question. Forgive me, but I am going to have to repeat the earlier statement in relation to the statutory process and the property acquisition issues and PAN notices and so on, that is fully a matter for Roads and Maritime Services. I cannot speak to when they engaged and who they engaged with in that part of the journey. That sits over with Roads and Maritime Services.

I think on the more substantive point, which is the identification and working through the locations of potential construction sites across that area, yes I am aware that Inner West Council commissioned some independent work; that was something we engaged with them during that process. I think all I can really say is at the end of a competitive design and construction journey we had an internationally recognised global contractor who was able to come in and say, "Actually we think there is another way of delivering this. We have listened to the community concerns. We have an alternate approach". That manifested in the Darley Road site not forming ultimately part of the project. I understand Roads and Maritime Services at the moment is going through a modification to the planning journey addressing that very issue.

Mr CLICHE: Could I just add one other point too? As I said in my opening commentary, if we know there are issues we try to encourage our contractors during a very extensive contract negotiation that included numerous interactive sessions that there was a problem with that site and that they would be looked upon favourably if they could find an alternative to using that site very much in response to the feedback we were getting from the community both through the many sessions that you sat through. So we do try to take the community feedback on board. All through the interactive process they were reminded that that site was very contentious and if we could find a way out of using it, it would be something beneficial.

Ms CATE FAEHRMANN: We heard that members of the community spent thousands of their hours campaigning against the Darley Road site. We had dozens of homes sold. Maybe 17, I think, families sold in that area because of the Darley Road site. It has absolutely wrecked their community. They cannot understand why suddenly—they were campaigning for this for 18 months; they were being assured by you that it was the only site possible and there was no other way to do it and it was also in the environmental impact statement—two months later they were not informed, I understand it was issued on a community notice, that the Darley Road site was not required. Mr Jones, do you think under your leadership at the SMC in terms of that project that is satisfactory?

Mr JONES: I think the overarching point that I take comfort from is we went through a very detailed process working with the community. I spent a lot of time engaged with individual members of the community. Forgive me, I cannot remember the name of the actual organisation—there were a number of them—that we spent a fair amount of time engaging with. We went through a number of design iterations during that journey looking at alternative access routes. Ultimately we ran a competitive procurement competition. We had internationally recognised onshore and offshore contractors. The end result of that journey is we had one contractor who won the process that said "Actually, we have an alternate solution." The underbidder—

Ms CATE FAEHRMANN: Why did they say they were not going to use Darley Road? If you were so sure about it, why did they say they did not need it?

Mr JONES: Just to close my prior statement, had the other contractor been appointed they were still looking to utilise the Darley Road site. The whole journey, the whole point of a competitive process with internationally recognised contractors is to exactly drive these kinds of outcomes.

Ms CATE FAEHRMANN: Mr Jones, Lisa Chikarovski was working for SMC when you were there. Is that correct?

Mr JONES: I am not aware she was actually a SMC employee.

Mr CLICHE: She was never a SMC employee.

Ms CATE FAEHRMANN: What was she engaged as? As a consultant?

Mr CLICHE: No.

Ms CATE FAEHRMANN: I have a number of submissions that attest she was.

Mr CLICHE: I am sorry, your submissions, with respect, are incorrect.

Ms CATE FAEHRMANN: Was it RMS?

Mr CLICHE: RMS. She never worked for SMC.

Ms CATE FAEHRMANN: Did she have anything to do with acquisitions in RMS?

Mr CLICHE: I am not exactly sure what her entire role is at RMS. You would have to ask—

The CHAIR: You would have to ask RMS.

Mr CLICHE: Yes. But I can assure you she never worked for SMC.

The Hon. Dr PETER PHELPS: What does SMC actually do?

Mr CLICHE: We are the deliverer, in short—I am sorry, they are because I am no longer with SMC. I keep forgetting. They are the deliverer of the business case that is defined by government. So we are the doer.

The Hon. Dr PETER PHELPS: You do not actually have the D9s, the borers and the people? You are not actually out there building the tunnels themselves or the roadways?

Mr CLICHE: That is correct. We manage that process.

The Hon. Dr PETER PHELPS: So you hire firms to do the job which is required as part of the overall construction process.

Mr CLICHE: That is correct.

The Hon. Dr PETER PHELPS: Is it fair to say that WestConnex, taken in its entirety, is a fairly complex project?

Mr CLICHE: I think that would be quite a significant understatement.

The Hon. Dr PETER PHELPS: Presumably you have three motorways under construction at the moment. Is that right?

Mr CLICHE: Two and one that is contracted.

The Hon. Dr PETER PHELPS: Two and one that is coming up in the not too distant future?

Mr CLICHE: That is correct.

The Hon. Dr PETER PHELPS: Managing the relationship between all three of those would be a fairly complex process, would it not?

Mr CLICHE: Indeed.

The Hon. Dr PETER PHELPS: During all of that you were subject to a sale process, which increased the complexity of your job during that time. Is that fair to say?

Mr CLICHE: Very much so, yes.

The Hon. Dr PETER PHELPS: It is no wonder that you decided to head off, is it, really?

Mr CLICHE: Yes, it has been a big four years.

The Hon. Dr PETER PHELPS: When you were the CEO would you say you had full confidence in the SMC team around you?

Mr CLICHE: One hundred per cent—the best group of people that I have ever had working with me.

The Hon. Dr PETER PHELPS: In your direct relationships with the major contractors, would you say you had confidence in the contractors that you appointed to develop each section of the motorway?

Mr CLICHE: Absolutely, yes.

The Hon. Dr PETER PHELPS: During your time you presumably had a great deal of contact with RMS? How would you describe your relationship with RMS?

Mr CLICHE: I would say it is the same. We provided tension at times but very collaborative working together—a good relationship.

The Hon. Dr PETER PHELPS: Would you describe your relationship as open and transparent in relation to the construction process?

Mr CLICHE: Absolutely, yes.

The Hon. Dr PETER PHELPS: Have you ever refused to attend a parliamentary committee?

Mr CLICHE: I did not refuse. I declined to come to one, initially.

The Hon. DANIEL MOOKHEY: They would not let him talk.

The Hon. Dr PETER PHELPS: But subsequent to that?

The Hon. DANIEL MOOKHEY: It was not his fault.

The Hon. Dr PETER PHELPS: That is right it was not his fault.

Mr CLICHE: Thank you. I appreciate that.

The Hon. Dr PETER PHELPS: What is your relationship with Infrastructure NSW?

Mr CLICHE: Excellent as well.

The Hon. Dr PETER PHELPS: Do you know approximately how many assessments they had done during your time there?

Mr CLICHE: Thirty-six.

The Hon. Dr PETER PHELPS: Did they raise with you directly or indirectly any concerns that they had in relation to the project?

Mr CLICHE: Nothing of—shall I say—huge project significance. There are always a number of matters that we can do better on every project, which is why INSW does the health checks. I think it has been a great benefit to the project to have experts in the field come in. As you are aware, I am sure, they bring expertise in from not just New South Wales but across Australia and international. They spend days with our teams. They debrief me personally on the results of those reviews and I would say they often pick up things that they tell us that we can do better in this area or that area and we take that on board and do it.

The Hon. Dr PETER PHELPS: At any stage did you refuse any information requests from INSW?

Mr CLICHE: Not that I am aware of.

The Hon. Dr PETER PHELPS: You are aware that INSW has made independent assessments in relation to the benefit-cost [BCR] analysis of the project?

Mr CLICHE: Yes, I am.

The Hon. Dr PETER PHELPS: On that basis, all the information that they have requested you have provided to them?

Mr CLICHE: Yes, 100 per cent as far as I am aware.

The Hon. Dr PETER PHELPS: So there is no way that a claim could be made that INSW was starved of information in relation to the benefit-cost process?

Mr CLICHE: Au contraire. I am practising my French.

The Hon. Dr PETER PHELPS: That sounds like you met with a large number of requests for information.

Mr CLICHE: Yes, indeed. Just as a point, the preparation on our side for every one of those audits was typically two weeks for a large number of staff, so 36 times two.

The Hon. Dr PETER PHELPS: Part of this inquiry is into the impact of the WestConnex project and a lot of it has been focused on the negative aspects which have occurred. Could you tell me how many jobs are likely to be created over the lifetime of the project?

Mr CLICHE: Over the lifetime our estimate is in excess of 10,000 jobs.

The Hon. Dr PETER PHELPS: As at the last time you were working there, how many people were working on these projects?

Mr CLICHE: It was 4,100 at the last count from when I left.

The Hon. Dr PETER PHELPS: So 10,000 over the life of the project and just over 4,000 at the time that you left the project?

Mr CLICHE: Yes, and we should also highlight that these projects go through phases. During the tunnelling we have one type of workforce. As the tunnelling finishes off and we move into what we are doing on the M4 East, which is the mechanical electrical, we have a completely different workforce. When I left there was something in excess of 700 people working underground on the M4 East tunnel doing all of the electrical and mechanical fit-out that needed to be done. There was not a single person there from the tunnelling side I am talking about that was involved in tunnelling; they had moved on to other projects. So 4,100 is now but we have probably already hit 10,000 if you look at the cumulative through the project.

The Hon. Dr PETER PHELPS: With stage 2 and 3B those figures are likely to be comparable?

Mr CLICHE: Easily, yes. As I said at the outset, we have not even started three yet.

The Hon. Dr PETER PHELPS: We have heard about, unfortunately, one contractor who failed. Approximately how many contracts would you have had overall through your primary contractors and also the subcontractors from those primary contractors?

Mr CLICHE: We have estimated over 1,600 businesses that have signed contracts worth more than \$2 billion since we started work.

The Hon. Dr PETER PHELPS: That is 1,600 New South Wales businesses?

Mr CLICHE: Yes, I cannot say 100 per cent that they are New South Wales but the vast majority of those would be local businesses.

The Hon. Dr PETER PHELPS: And the vast majority of them would be small to medium enterprises?

Mr CLICHE: Exactly, yes.

The Hon. Dr PETER PHELPS: That is, of course, beyond the primary contractor level?

Mr CLICHE: Yes.

The Hon. Dr PETER PHELPS: Presumably many of those are based in Western Sydney?

Mr CLICHE: Yes, they are.

The Hon. Dr PETER PHELPS: Did you in your planning process consider the return of green space to the community flowing on from the WestConnex project?

Mr CLICHE: Absolutely. That was one of the key functions or factors that we put into it. Maybe I will ask my colleague, who spent most of his time trying to figure out Rozelle and how to give green space back to the community.

Mr JONES: Just very briefly, we were always focused on the amount of green space. Green space is not just the aggregation of a particular park. I think as Mr Cliche mentioned earlier, there are 23 kilometres of new cycle road. Although I was not personally responsible, if you look at the St Peters location, that had been historically an industrial landfill. That was not green space. As part of that project very significant green space is returned. It was always a key function and object for the project to emphasise what we could return.

The Hon. TREVOR KHAN: Not return, create essentially.

Mr JONES: Absolutely. That is actually a much better way of articulating it. There were areas that we were able to rehabilitate, so industrial areas that were unused. We also created very extensive new green spaces, new networks, new pedestrian access and new cycle roads.

The Hon. Dr PETER PHELPS: Would it be fair to say that the Rozelle site and the St Peters site had significant contamination issues prior to your development of them?

Mr CLICHE: Yes, I think that would be fair.

The Hon. Dr PETER PHELPS: After WestConnex is completed will people be able to go to those sites knowing that the contamination has been removed?

Mr CLICHE: Absolutely.

The Hon. Dr PETER PHELPS: How is that factored into your costs? Is that an additional cost that you have incurred?

Mr CLICHE: It is part of the 16.8 but it is what we have factored into the construction cost. We have tens of millions of dollars, for example, on green space returning park areas that we have rehabilitated. We have taken Rozelle and St Peters, which were pretty ugly sites if you went there at the outset before our project came in, and they are going to be returned to the community to a large extent as park space.

The Hon. Dr PETER PHELPS: Just on that point, given both of your experience, do you know of any other major infrastructure project in New South Wales which has delivered more green space than what is proposed under this project?

Mr CLICHE: Not to my knowledge. I think we claim—although I do not know that we have audited that claim—to have done the most of any major project thus far.

The Hon. Dr PETER PHELPS: Do you have a rough estimate of the size of the proposed green space which will be provided once WestConnex is completed?

Mr CLICHE: Just between Rozelle and St Peters it is 18½ hectares.

Mr JONES: There is some additional space. It rounds out around the 23 hectare space by the time you include some of the pocket parks and various other activities.

The Hon. Dr PETER PHELPS: So 23 hectares in what are essentially high-density residential urban areas of Sydney is a pretty good effort, is it not?

Mr CLICHE: We think so and that was reflective, I hope, of my comments when I said we do listen to the community, we do try to take their concerns and their requests on board. It is not always possible. I do not know how to build something in the middle of Sydney of the size and scope of what we are building without disrupting the community and that is very unfortunate. We do not do it lightly. We do not do anything that impacts the community lightly. I really sincerely mean that. In my time as CEO and the staff that we have take very, very seriously what happens. We would like to leave a legacy that we are proud of. The business case itself is in tunnel. The reason for having it in tunnel is, as you can imagine, 30 plus kilometres across the face of Sydney on the surface, what that would do to properties and green space and connectivity, the fabric of it. By taking this project, putting over 20 kilometres underground, that was done so that we can actually create real estate. By taking trucks off of local roads, putting them underground, allowing them to go from Parramatta to the airport underground as opposed to on the surface, that has to be an amenity improvement.

The Hon. Dr PETER PHELPS: When, of course, a historical alternative would have been to cut a swathe through the historical suburbs of Glebe and Haberfield and parallel Parramatta Road essentially from Timbrell Park to Strathfield, would it not?

Mr CLICHE: I will leave you to conclude but, yes, I think that is again a fair comparison.

The Hon. Dr PETER PHELPS: But it would be fair to say that the element of the M4 motorway from Strathfield all the way through to Parramatta if the original plan had been put in place would have meant essentially a replication of that, would it not—the original above ground plan?

Mr CLICHE: The original plan some time ago, yes.

The CHAIR: Both of you are now former officers, a former CEO and a former project director. Was the termination of your employment part of a contract and you have retired when you expected to retire?

Mr CLICHE: Yes, in my own case it was very much. The severance payment I received is what I negotiated when I joined the company, which was exactly the same severance arrangements I had in my previous job when we also sold that company. My firm expectation was upon the sale that I would be replaced by an incoming CEO. In the vast majority of cases that is what has happened. I was not at all surprised. It is a bit sad when you have to leave a project.

The Hon. Dr PETER PHELPS: Were you on the selection panel for the new CEO?

Mr CLICHE: No, I was not. That is the bidders. Each bidder through that process has their own business plan as to what they would do with the business, but in the vast majority of business sales the outgoing CEO of the previous company generally leaves and is replaced with somebody else. It was part of my negotiation when I joined this project. That was the logic. We always knew that it would be sold and in all probability I would leave at that time.

The CHAIR: There have not been any problems as a result of you both concluding your employment at the time you have? Obviously, you have gathered a lot of corporate knowledge.

Mr CLICHE: Yes.

The CHAIR: All that knowledge is in your head.

Mr CLICHE: Yes.

The CHAIR: Has that caused any problems for the new incoming people who replaced you?

Mr CLICHE: No, not that I am aware of. We have provided a period of overlap and handover. The Sydney transport partners have been in to the business, met with the people and met with me numerous times. We have ensured a good handover is accomplished. I will ask Mr Jones: He did not answer your questions.

Mr JONES: For my part, I was entirely voluntary. It was something that I have been planning for some time—to take up an alternate role. I actually tendered my resignation back in June. There was about a three-month handover—in fact, it was a little bit longer in the end for my replacement who came in afterwards. There was also a transition phase with the team that was involved in the procurement phase and in the delivery phase. We were very conscious about keeping that continuity through both of those stages. Clearly, I remained on the phone to be called, should something occur.

The Hon. DANIEL MOOKHEY: Are you on restrictions?

Mr CLICHE: We have a non-compete, as such.

The Hon. DANIEL MOOKHEY: What period of time?

Mr CLICHE: I think mine was six months, but I am not even sure.

Mr JONES: I am just a private citizen so, no, I do not have those kinds of restrictions.

Mr CLICHE: What Mr Jones omitted in his testimony just then is that he has been commuting from Victoria for four years. He has a family and children so his priority has been to get back to Victoria—if I can say that on your behalf?

Mr JONES: Thank you, Dennis.

The Hon. DANIEL MOOKHEY: Time away from Victoria is usually a good thing.

The Hon. Dr PETER PHELPS: Especially under an Andrews Government.

The CHAIR: Are you aware of any problems that occurred because of both of you terminating at an arranged time to move on with the new appointed staff?

Mr CLICHE: No. I am not aware of anything like that. As Mr Jones said, I am retired. One—I think all of us—past and current employees of the Sydney Motorway Corporation want to see this project succeed. There is no bitterness or anything like that. We remain available to the new owners as and when needed, our business commitments allowing. We have a very, very good staff that has remained there. The project teams are there. The only person who has left the business as a result of the transaction is me. I do not know all the intimate details but I know that Andrew Head, my replacement, has been the bid leader for this transaction for well over a year. He has done nothing but this. He probably knows more of the fine details of the things than I do because I had to run the day-to-day as well as provide all the information for the sale. He is probably extremely well-placed at this point in time to come in and take over the business.

The CHAIR: You sound very confident that the project teams that you appointed will carry on in an efficient manner.

Mr CLICHE: Yes, and obviously I cannot speak for the new owner—and I do not want to say anything on their behalf—but there have been strong signals. As you know, it is a very hot market for good people. We have a lot of good people at Sydney Motorways. I suspect they will be retained.

The CHAIR: Good. Thank you. Are there any further questions?

The Hon. GREG DONNELLY: Yes. We still have some time and I have a couple of questions.

The CHAIR: Yes.

The Hon. GREG DONNELLY: In terms of breaches or possible breaches of the Environmental Planning and Assessment [EPA] Act associated with the project, how were they brought to your attention? What was the process of them being drawn to your attention as the chief executive officer?

Mr CLICHE: If there was anything of any nature, any legislative—I do not know if that is the correct term—anything of the nature that you are describing, I would be informed immediately. My staff would send me a text message or phone me up and say, "This has just happened." I should also stress that those, I think, 100 per cent—I will take that subject to validation—were raised against our contractors or their subcontractors. But even

in those cases, if there was an environmental issue, or a work safe issue, or a lost time injury, or a significant injury, we have protocols within the company that they would advise me immediately. If it was of a serious nature, we would advise our board. We reported on all of those things at our monthly board meetings. We had detailed reporting on infractions, complaints—community complaints.

The Hon. GREG DONNELLY: Just so that I understand this, you are saying that you were effectively immediately informed about those matters.

Mr CLICHE: Yes.

The Hon. GREG DONNELLY: Then how did it work itself back to the subcontractors? Who did you speak to? Just give us the stages of the process.

Mr CLICHE: Okay. What would happen is that we would be informed essentially by the consortium running the project that there had been an infringement—let me use that term—against them under the environmental protection Act. That would be a flow from the contractor to our project director. As well we have a team that looks after the safety environment, so there would be parallel reporting at that point. It would then be brought to my attention along with remedial action that is planned by the contractor. We internally would ensure that whatever breach had occurred it was being promptly rectified—immediately. We would review that with our contractors, usually as a project director to contractor interface.

The Hon. Dr PETER PHELPS: Can I just follow up on that: With your contractors, did you have any additional penalty clauses for breaches or multiple breaches of the EPA Act?

Mr JONES: No. It was probably just the notification process and the consequences, depending on the nature of the event, are statutory and are defined by the relevant Act. Whilst we had received notification, the contractor, depending on the nature, would also be required to provide notification to the EPA and to RMS. Relevant enforcement action also flowed down that exact same chain. It is very cause dependent. It depends on the nature. There is always an investigation to define those types of outcomes. I am not aware that we have had any other measures within any of our contracts.

The Hon. DANIEL MOOKHEY: Mr Cliche, does that procedure that you just specified apply to breaches of the planning conditions?

Mr CLICHE: Oh, yes—absolutely.

The Hon. DANIEL MOOKHEY: Not just environment protection offences?

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: When you were notified about trucks driving on residential roads without permission, how many of them did you receive, and what did you do?

Mr CLICHE: I counted and I think the number that was officially reported was 33. There was explanation given in earlier testimony that sometimes, because of the three partners in the consortium, that was one issued to each of them for the same infraction. We would meet with the contractors—and particularly at that point when there were trucks driving on residential streets, or as per our earlier conversation where we found there were operators that were not up to the standard that we expected, we would meet with the contractor. We would ask them what actions they had taken. Another example is that we would have security at the worksites to make sure that the workers did not park on the streets where they are not allowed to.

The Hon. DANIEL MOOKHEY: Did you terminate any contractor from the project?

Mr CLICHE: Sorry?

The Hon. DANIEL MOOKHEY: Did you terminate any contractor as a result of them breaching planning conditions or environmental protection Act conditions?

Mr CLICHE: No. I am not aware that there have been breaches of the planning conditions.

The Hon. DANIEL MOOKHEY: There is a monthly regime of reporting to the Secretary of the Planning and Environment Department that is specified as a condition of planning.

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: How many reports did you have to file with the secretary?

Mr CLICHE: That is what I am saying: I am not aware of breaches of the planning conditions. I am aware that there have been notifications. Those are the 33 that I referred to.

The Hon. DANIEL MOOKHEY: The Department of Planning and Environment came before us and said that they determined them to be 33, and you are right to say that they specified that some of them came from multiple numbers.

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: They did not specify how many of them fell within that category.

Mr CLICHE: Yes.

The Hon. DANIEL MOOKHEY: They said that they issued three penalty notices on you—actual penalty infringement notices on you. What did you do?

Mr CLICHE: I would have to take that one on notice but I can say that we looked at all of them. I am not aware that they were on us directly, but I, you know—

The Hon. Dr PETER PHELPS: Are you saying that they may well have been on the primary or subcontractors?

The Hon. DANIEL MOOKHEY: RMS? It could be on RMS.

Mr CLICHE: Yes, or the subcontractors. I am not aware of any that have been on SMC directly.

The Hon. DANIEL MOOKHEY: Should we not be concerned by that: If you were the CEO of the project and the Department of Planning and Environment was fining people who were working on your project, and you were not aware of it or you did not know?

Mr CLICHE: No, I am sorry. You are not listening to what I said. I said that I am aware of every single one of them. I did not differentiate whether they were directly on SMC or subcontractors. I am aware of when our trucks of contractors and subcontractors were driving where they were not supposed to. We had monthly planning meetings initially with the Secretary of the Department of Planning to make sure that the enforcement regime was appropriate. We were advised that they were putting enforcement officers into the projects and where they would be located. In the Inner West Council, our project directors met with them very regularly to discuss issues like that. When we did the tender for stage 3 we insisted that all trucking companies provide global positioning system [GPS] in all their trucks. So we took on board the issues that we had seen, particularly on stage 1, where we were getting reports. They were exceptions. We were running a truck on the M4 East every 90 seconds, full of spoil, at the peak of tunnelling. Every 90 seconds we had a truck and dog going out from our project sites taking material away. So we insisted, if there was something like that, that they would be thoroughly investigated and our people would sit down directly with the contractor and discuss it with them. We worked with the police. So some of the issues that you raised before about certain—

The Hon. DANIEL MOOKHEY: I understand that. Mr Cliche we had the presidents of Parents and Citizens Associations [P&Cs]—

The CHAIR: He is just finishing his sentence.

The Hon. DANIEL MOOKHEY: We had presidents of P&Cs coming before this Committee telling us that the parents essentially have had to organise their own neighbourhood-watch-style programs to keep an eye on the trucks that are going in—

Mr CLICHE: Well, of course, they are welcome—

The Hon. DANIEL MOOKHEY: Let me finish. It is a really straightforward question. Apart from the processes that you described as discussions, are you able to specify even one time that the Sydney Motorway Corporation took any action against a trucking company that was driving in defiance of the planning conditions—just one incident where you took such an action?

Mr CLICHE: What I said to you earlier—and I will repeat it—is that we have no contractual arrangement—

The Hon. DANIEL MOOKHEY: So, no power.

Mr CLICHE: —with any subcontractor, particularly in trucking. So it is the same answer I gave you earlier. We have no power to go in, other than saying—

Ms CATE FAEHRMANN: But that is the issue, is it not? You are contracting out—

Mr CLICHE: Excuse me. That is what we did—

The Hon. TREVOR KHAN: Point of order—

The CHAIR: Let him answer.

Mr CLICHE: We said to our primary contractors, who had the contractual relationship with the subcontractors, that it was unacceptable. Anytime anything like that happened we brought them in and told them it was unacceptable—

The Hon. DANIEL MOOKHEY: How many times did you do that?

The Hon. TREVOR KHAN: Point of order: He is answering the question.

Mr CLICHE: Every time. I do not have my log here to say how many times, but 33 divided by three would give you 11. So, is it 15 times? It would be the same if any water was released into a creek. That happened once by one of our contractors on stage 2. We brought the contractor in. "What happened? What was the analysis? What have you done to fix it to make sure it does not happen again?" As I said, on stage 3, the winning contractor is obligated to have very sophisticated GPS systems on the trucks, which give reports so we can know if one of the contractor's trucks is going somewhere else. So we acted on every single one of those without exception.

The CHAIR: Thank you very much for appearing at our inquiry. The time has finished. The secretariat will give you a copy of any questions on notice and you will have 21 days to answer.

(The witnesses withdrew)

ANDREW HEAD, Chief Executive Officer, WestConnex, affirmed and examined

The CHAIR: Thank you for appearing before our inquiry. If there are any questions you cannot answer, or for which you need more time, you can take them on notice. You will have 21 days to answer those questions. Did you have an opening statement?

Mr HEAD: Thank you very much for the opportunity to speak today about WestConnex. The last time I appeared in this place was at the New South Wales tolling inquiry.

The Hon. TREVOR KHAN: Indeed it was.

Mr HEAD: At that stage I was representing Transurban. Much has changed since then, and today I am here in my capacity as chief executive officer [CEO] of WestConnex. It is a role that, as of tomorrow, I will have been in for two weeks. I will do my best to answer any questions that you have. I will give you a little bit on the last few months. In late August, Sydney Transport Partners was named the preferred bidder for the 51 per cent sale of WestConnex. Included in that was operational control of WestConnex. The Sydney Transport Partners consortium paid \$9.26 billion for the 51 per cent stake. As of today, WestConnex is essentially a private sector organisation which is now operated by Transurban under a management services agreement on behalf of Sydney Transport Partners.

The Hon. DANIEL MOOKHEY: Sorry, can you repeat that?

Mr HEAD: Today WestConnex is essentially a private sector organisation which is operated by Transurban on behalf of Sydney Transport Partners and WestConnex under a management services agreement. I would like to take a few moments to quickly introduce Sydney Transport Partners. It consists of four parties—Transurban, AustralianSuper, Canada Pension Plan Investment Board and Abu Dhabi Investment Authority. So, Sydney Transport Partners is 70 per cent Australian owned. If you combine that with the residual stake in the New South Wales Government, WestConnex is 85 per cent Australian owned. The value that we hope to create going forward will either accrue to the taxpayers of New South Wales via their residual ownership or a very large portion of it will flow to the superannuation accounts of Australians. Sydney Transport Partners is very excited to be part of Sydney's future. The group of investors that I referred to are already committed to electricity assets, airports, ports, freight rail and roads in Sydney and in New South Wales, and WestConnex is just a further commitment to this group in this space. We are very excited to be part of it because we believe that over the next decade or so Sydney is going to be absolutely transformed.

The combination of metro rail going in, light rail projects, roads, investments in hospitals and schools, the upgrading of sporting and cultural facilities and a new airport is, we believe, going to hugely improve the mobility of the citizens in Sydney. That will be coupled with enhanced services that are being provided to those citizens. If you combine those two things with what is already here—a very deep pool of very skilled human capital, much of which resides in Western Sydney, along with our natural beauty, our great climate and our incredible proximity to Asia—we believe that Sydney will take its place, over the next few decades, as the pre-eminent city in Australia, and generate a very rosy future for all of us here today and, probably more importantly than that, for future generations of Sydney. As I said at the opening of this statement, financial closure was reached on this transaction on Thursday 27 September. I started in the role of CEO on 2 October, so tomorrow will make two weeks in the role. I have had a quick look at the terms of reference that is being examined by this Committee. They are matters that largely relate to the New South Wales Government in terms of planning, policy and decisions, many of which pre-date my involvement or Sydney Transport Partners involvement. But I do know a little bit about toll roads and, for that matter, I am very happy to try and answer any questions that will assist this Committee.

The Hon. DANIEL MOOKHEY: Congratulations on your appointment. I am glad that within two weeks of your appointment we have provided you with an opportunity to appear at the New South Wales Parliament. I would like to tie up a couple of details that arise from your opening statement. When you say that there is a management agreement in place between Sydney Transport Partners and Transurban to provide the management team, does that mean that your services to the WestConnex project are delivered under that agreement? Therefore, are you still an employee of Transurban?

Mr HEAD: I am the one exception to that. I have been seconded into WestConnex and I report to the WestConnex board, which consists of 10 members, including an independent chair.

The Hon. DANIEL MOOKHEY: That is likely to be a continuing arrangement. Is that secondment not a short-term transition matter; it is a permanent appointment?

Mr HEAD: Yes.

The Hon. DANIEL MOOKHEY: I will start with matters more focused on our terms of reference than necessarily with the other matters. Did you see any of Mr Cliche's evidence?

Mr HEAD: No, I just stepped in then..

The Hon. DANIEL MOOKHEY: How many disputes has the Sydney Motorway Corporation received from contractors on the WestConnex project so far that are still current?

Mr HEAD: I do not know. One of the things I will be doing over the course of the next few months is familiarising myself with not only the management team but also the projects. I had the opportunity to walk through the 1B project, probably better explained as the M4 East, a couple of weeks ago. I am just going through the process of getting to know the assets other than through the data room, which is just a mountain of documentation, getting to know the people and bringing myself up to speed with all of the commercial matters that are on foot.

The CHAIR: Take that question on notice. If you do get material, you can send it to Committee.

The Hon. DANIEL MOOKHEY: In respect of the M4 East component of the project—or 1B, as you described it—we were told in budget estimates that there was a claim to the value of \$500 million on which an arbitrator has reached an \$8 million assessment. Does that accord with your memory?

Mr HEAD: That is not on the M4 East; that is on the new M5, according to my memory. Whether those numbers are the exact numbers, I would have to take that on notice. But there is a claim—I cannot recall the magnitude of it or where it was at in relation to the arbitration—there is one claim in particular that we did have a close look at on the way into the opportunity of acquiring 51 per cent of WestConnex.

The Hon. DANIEL MOOKHEY: Which one was that?

Mr HEAD: It relates to planning approvals and the impact on the timing of the contractor to do his works.

The Hon. DANIEL MOOKHEY: On which part of the project?

Mr HEAD: On the new M5.

The Hon. DANIEL MOOKHEY: What did you find out?

Mr HEAD: Essentially what we did with all of these things is trying to understand the data that was in the data room and form an assessment about the likelihood that it would turn out the way that the documents might suggest. One of the important things we are doing over the course of the next few weeks—and months, actually—is trying to confirm—

The Hon. DANIEL MOOKHEY: You are checking your due diligence?

Mr HEAD: Exactly.

The Hon. DANIEL MOOKHEY: In respect to the planning approvals on the new M5, you say there was an issue about contractors being able to deliver according to the stated timetable. Is the contractor able to deliver according to the expected timetable?

Mr HEAD: I think all of that is going through the process. This is very normal process and oftentimes in my experience there are views expressed by the contractor that are at one end of the spectrum and then there are views that are expressed by the client at the other, and in my experience these matters end up far closer to the client than they do the contractor. The contractor tends to put—

The Hon. DANIEL MOOKHEY: Right, but that is still a live issue in respect of the new M5?

Mr HEAD: I think it went through some form of arbitration process, but it is still on foot, yes. It is not completely resolved.

The Hon. DANIEL MOOKHEY: On the St Peters interchange, Mr Cliche confirmed there is a dispute about the movement of landfill for which the contractor is claiming circa \$80 to \$100 million, and RMS and SMC have rejected the claim. Does that accord with your understanding?

Mr HEAD: I am not across the detail of that one yet—

The CHAIR: Will you take it on notice?

Mr HEAD: —but it is one of the things on my list to get across. I am happy to take it on notice but I would like to say that, when we do respond, one of the things we will be very keen to do is make sure that we do not in any way weaken our position with the contractor. As best we can we would cooperate with the Committee

and its requests but there is a commercial element to ensuring that we get the best outcome here for WestConnex, which obviously includes the 49 per cent stake owned by the State.

The Hon. DANIEL MOOKHEY: Under the WestConnex contract procedures, the linked claims regime would apply. If any of these claims are substantiated under the contract framework, it would be available to the SMC to seek recovery from RMS—is that correct?

Mr HEAD: It depends on the content of the claim. Essentially with all of these projects there is a risk allocation that is outlined in the project between the contractor and the concessionaire.

The Hon. DANIEL MOOKHEY: But the point is that you have that available to you as an option in accordance with the contract.

Mr HEAD: There are all sorts of different ways that these matters can be dealt with. The first port of call is to obviously ensure that the contractor is doing everything they possibly can to administer their duties under the contract. If it is deemed that whatever has happened is outside their responsibility, then it could come to us as concessionaire or it could in fact, as you suggest, go through to the RMS.

The Hon. DANIEL MOOKHEY: Thanks, Mr Head. I have limited time, so I will have to progress.

Mr HEAD: Okay.

The Hon. DANIEL MOOKHEY: A sponsorship agreement is in place between the Sydney Motorway Corporation and the Greater Western Sydney Football Club. What is the value of that sponsorship?

Mr HEAD: I have just started to try and get across some of these matters, and I do have some detail on that one. Please forgive me for referring to my notes; it is very fresh. As I understand it, based on what has been provided to me, the GWS sponsorship for this year, 2018-19, comes at a cost of \$350,000.

The Hon. DANIEL MOOKHEY: That is the annual cost?

Mr HEAD: For this financial year, 2018-19, yes.

The Hon. DANIEL MOOKHEY: How much was paid last year?

Mr HEAD: I have not reviewed a document, but I have been told that it is of the same order and it is a three-year contract. To the best of my knowledge its circa value is about \$1 million or three lots of \$350,000.

The Hon. DANIEL MOOKHEY: The SMC entered into a contract with the Greater Western Sydney Football Club for a three-year sponsorship agreement for \$1.1 million. What precisely is Sydney Motorway Corporation getting for that \$1.1 million?

Mr HEAD: Again, I am going on advice that has been provided to me: The money is being spent on community programs. I do not actually know what the specifics of those are yet; it is only two weeks into the role. The other thing that comes with that sponsorship is the naming rights for the training facility that the Greater Western Sydney Giants use.

The Hon. DANIEL MOOKHEY: Are you intending to review this, and are you intending to continue it?

Mr HEAD: There are a lot of things I have to review and get across. This is going to be one of them but, I have to be honest, it is probably not something I will be getting to in the next few months.

The Hon. DANIEL MOOKHEY: You have a list?

Mr HEAD: There is quite a list.

The Hon. DANIEL MOOKHEY: Moving on, because we have got limited time: How much would it cost taxpayers to not proceed with stage 3? I ask this because we have had lots of people come to us with submissions asking for us to do so, so it is only fair that I ask.

Mr HEAD: I am really glad I have the opportunity to respond to this question. There are two parts to stage 3. Let me talk about stage 3A first. At the same time that we reached financial close for the 51 per cent sale, the design and build contract was also agreed to. Now that contractor is mobilising and the project is effectively underway. For it to be cancelled would cost billions, frankly, because—

The Hon. DANIEL MOOKHEY: Just 3A is billions?

Mr HEAD: Yes. The contract is in place now. Mobilisation has taken place and with the sale of Sydney Motorway Corporation the bidders have actually bid on the basis that it will be completed.

The Hon. DANIEL MOOKHEY: You bought it, yes.

Mr HEAD: Yes. I think it is important to also note that it would be very disadvantageous for the State to abandon 3A. We have seen that in other jurisdictions. In my experience that introduces the concept of sovereign risk. One of the reasons why the State of New South Wales was able to attract \$9.26 billion to buy half of WestConnex is because it is deemed to be a very good State for business. It is deemed to be a place where certainty is something you can rely on. To do something like that I think would have significant impacts to the confidence of this market. Just as importantly, if not more, I think we should consider if it were to be cancelled the impact it would have on the local residents in the inner west with those two projects that connect onto it not being completed. Essentially, not completing the network of WestConnex would have significant impacts to the local community in terms of congestion and more traffic in that area, which I think would need to be considered very carefully before anyone was to proceed with that kind of approach.

The CHAIR: We are at the point of no return, are we not?

Mr HEAD: That would be my view. I think there would be a lot of downsides to proceed otherwise.

The Hon. DANIEL MOOKHEY: To clarify, Mr Head, you are saying effectively there are two components that would be payable should that not proceed: payments that are owed to the contractor for mobilising the resources, which you just described, and the payments that would have to be made to Sydney Transport Partners in order to compensate you for the equity part of the lease. Am I correct in understanding your evidence, which is that, if you combine the two of them we are looking at a multi-billion dollar price tag?

Mr HEAD: We are but, forgive me, it is not as simple as just that.

The Hon. DANIEL MOOKHEY: I am sure it is not.

Mr HEAD: No, but as to the parties who would need to be compensated: When you put the debt in place, for instance, just as we saw with the East West Link in Melbourne, one of the biggest costs was unwinding the swaps, which is essentially fixing the interest rates. There are significant costs incurred by multiple parties. It would not be prudent to suggest it was just Sydney Transport Partners or the contract partner; there would be many, many parties.

The Hon. DANIEL MOOKHEY: It is the equity in the debt components—right.

Mr HEAD: Yes.

The Hon. DANIEL MOOKHEY: Moving on, you made reference to the \$9.26 billion paid by Sydney Transport Partners. Does that encompass the tax and stamp duties payable as well?

Mr HEAD: Yes.

The Hon. DANIEL MOOKHEY: Are you able to itemise how much of that \$9.26 billion was the stamp duty component?

Mr HEAD: I can provide that to you. I do not have it at my recall but I would be happy to provide it on notice.

The Hon. DANIEL MOOKHEY: Has the equity raising undertaken by Transurban been completed?

Mr HEAD: It has, yes.

The Hon. DANIEL MOOKHEY: Do you intend to make any changes to the management team?

Mr HEAD: One of the things that we have done is change over the chief executive officer—

The Hon. DANIEL MOOKHEY: Apart from you.

Mr HEAD: Yes. I just want to recognise that in our view the existing Sydney Motorway Corporation management team has done a very good job in delivering a very difficult project. I sympathise with all of the disruption that has taken place in the local community.

The Hon. DANIEL MOOKHEY: I have only got 20 seconds left so I will ask my next question and you can then answer both questions. The Committee has received many calls from residents to look at not only how SMC engages in community consultation but also the extent to which SMC engages in community consultation in good faith. The Committee has received a litany of evidence about the behaviour of SMC that has caused resident concern over the past two years. Is that something you are contemplating looking at and making improvements to?

Mr HEAD: Of course, but I am not going into that assuming that the Sydney Motorway Corporation management team has not done a good job. As any new CEO would do, I will go in and make sure that we are adhering to all of the principles under the planning approval, the Minister's Condition of Approval, the NSW EPA, the various things that make the community interface—the impact on housing resumptions, noise et cetera—but I will be sitting down with the SMC team and ensuring that we are doing everything we can to support the Government in the role it has to play and ensuring that our part in it is executed as humbly, thoughtfully, openly and transparently as we possibly can to minimise the disruption to those residents who are living through the construction at the moment. In doing so, we will also try and articulate some of the benefits that will accrue to the local community and even broader Western Sydney when these projects come online. There will be massive mobility improvements and there will be a lot of green space returned to the local community. We will be doing what we can to make a contribution to the betterment of the local community.

Ms CATE FAEHRMANN: I want to go through some of the submissions and testimony to this Committee from some of the resident action groups and ask your thoughts on them as the new head of WestConnex. A couple of people from the Beverley Hills North Progress Association spoke with the Committee about terrible subsidence in their home—this was obviously not an isolated incident. Indeed, like every situation I will talk to you about, there are probably dozens, if not hundreds, of people who have submitted the same thing. They said they spent \$8,000 on an independent engineer, which was essentially because they had all of this subsidence that was not recognised as such by WestConnex. They have asked WestConnex for the geotechnical reports that have been undertaken and WestConnex has apparently said that it will not be providing those reports. Do you see any reason that these residents cannot see what those reports say is under their house?

Mr HEAD: Again, I am not going to be able to respond with the specifics of this case. In my experience from working in New South Wales for about 15 years on these sorts of projects at another place, I have always found the RMS, Department of Planning and all of the various agencies that undertake this work to be very cooperative and helpful where they can, but there are elements of the process that impede their ability to do certain things.

Ms CATE FAEHRMANN: These residents had to pay \$8,000 for an independent engineer's report because they did not have access to the geotechnical report that WestConnex did. They were told by the engineer employed to do the second assessment—if this was a second assessment—by WestConnex that they could access the documents. He said, "Sure, I do not see that as a problem." Then upon consultation with WestConnex he was told that under no circumstances should he pass those documents on to the residents. Would you like to look into that on behalf of the Committee? As I have said, the Committee has received a lot of submissions along similar lines.

Mr HEAD: I am happy to look into that specific example for you.

Ms CATE FAEHRMANN: Thank you.

Mr HEAD: Often, again in my experience, the community issues are very complicated.

Ms CATE FAEHRMANN: Can I go through a few more with you?

The CHAIR: Could you table that document? Obviously not today, but could you table it in due course?

Mr HEAD: What I was going to say was that I find—

Ms CATE FAEHRMANN: I have four minutes so I want to go through a few more examples, including Campbell Street, St Peters, which is being upgraded to a six-lane highway to accommodate the ridiculous amount of traffic that will be coming from WestConnex onto those local streets. WestConnex is currently blocking requests by the community to reduce the speed limit on Campbell Street to 40 kilometres per hour, including requests from St Peters Public School. Can you also look into that? This is a six-lane highway next to a school. It has requested a pedestrian bridge and SMC and WestConnex said no. It has also requested a speed limit of 40 kilometres per hour and it is being told that SMC is blocking that request as well.

Mr HEAD: I think what I was going to try and respond to last time will help with this question as well. I do have some experience in this area. These are very difficult and complicated issues and in my experience one of the best things to try and do is to share one another's experience and context. There may well be constraints that SMC or the Department of Planning or whoever has in relation to the provision of information, but where possible trying to explain the context about what they can and cannot share is helpful in finding a solution.

Ms CATE FAEHRMANN: Can you please table that for the Committee? Mr Head, with respect, you are only two weeks into the job and probably not aware of what those constraints are. I am after detail. I have one more example about air quality.

Mr HEAD: I am happy to look into them but I cannot make a commitment in front of this Committee to provide something without going and doing the due diligence on whether or not I can provide it.

The CHAIR: Would you find it helpful if the Committee were to send you the *Hansard* where a lot of these points were made?

Mr HEAD: That is fine. I will cooperate as best as I possible can within the constraints that I have.

Ms CATE FAEHRMANN: Thank you. I am trying to make you aware as the new head of WestConnex of some of the concerns. Another concern is around air quality data at St Peters Public School promised by SMC and WestConnex for about three years now. In July 2015 they had a monitor installed at the school and at their request they were assured by SMC or the WestConnex Delivery Authority that they would receive monthly data in a format that they could understand. They did not receive the data for a very long time, even despite the school principal and the P&C requesting it. Do you think the air quality data results, which I understand were undertaken by a private company, should be provided to the P&C when requested in an understandable format?

Mr HEAD: I can only speak about my experience with NorthConnex. We had similar discussions with the local community, including schools, and what we are going to do in that particular instance is monitor the air quality both before and after the tunnel opens. That is entirely appropriate and I think the NSW Chief Scientist agrees with it. I think it will show in that particular case, and the data will support it, that the air quality will actually improve.

Ms CATE FAEHRMANN: I have one more question about the air quality at St Peters Public School, which has been tested. The air quality data showed that St Peters Public School—this was after the community did all the digging and had to analysis the data themselves—had a particulate matter [PM] 10, which I am sure you are aware is dangerous to public health and particularly to children. It was compared to the top five sites monthly for PM10 in Sydney and it is the highest on average compared to the top five sites for PM10. That is still going on. St Peters Public School is very close to a construction site and is heavily impacted. Your statement that we will find it is less is not true. Will you commit to having a look at the situation at St Peters Public School?

Mr HEAD: I am happy to look into the situation but in my experience—and this is not a particularly popular message—the tunnels that are being built across Sydney at the moment are flatter, they are wider and they are higher.

Ms CATE FAEHRMANN: This is not to do with tunnels.

Mr HEAD: And they are built with the best possible ventilation equipment you could put in them.

Ms CATE FAEHRMANN: This is not to do with tunnels, Mr Head.

Mr HEAD: The cars are getting more efficient. The PM10 that they are emitting is materially lower than it once was. Then what is happening is that, as the air goes through the ventilation outlet and up into the atmosphere, it is being dispersed over a much—

Ms CATE FAEHRMANN: Sure, but I have just given you the facts about the air.

The CHAIR: Let the member answer the question.

Mr HEAD: It is being dispersed over a much wider area. We can show you the science that demonstrates, in the case of NorthConnex, that the air quality is actually going to get better. I am happy to look into it. I suspect that the same set of circumstances have been put in place here because one thing that the Government does very well is look at best practice and then implement it and improve it. WestConnex came after NorthConnex—

Ms CATE FAEHRMANN: The data is showing you that kids are in school grounds with very high air pollution as a result of WestConnex. That is the data.

The Hon. Dr PETER PHELPS: We do not know that is as a result of WestConnex, considering that it is under a flight path and next to—

The CHAIR: We need to move on to the Government questions.

The Hon. Dr PETER PHELPS: Point of order: There are repeated interjections, coughing, laughter and oohing and ahing from the gallery. Chair, once again, I ask you to remind members of the public in the gallery that they are to remain quiet during this testimony.

The CHAIR: We need to have silence from the audience in the gallery. You are privileged to be present to listen to what is said but you cannot participate in the discussion with sounds, noises or applause.

The Hon. Dr PETER PHELPS: Thank you. Mr Head, who did you say were the investors in Sydney Transport Partners [STP]?

Mr HEAD: AustralianSuper, Australia's largest superannuation fund; Canada Pension Plan Investment Board, Canada's largest fund; and Abu Dhabi Investment Authority, one of the largest sovereign wealth funds in the world, alongside Transurban.

The Hon. Dr PETER PHELPS: My understand is that AustralianSuper is the industry super fund and is essentially a trade union superannuation fund.

Mr HEAD: It is an industry fund.

The Hon. Dr PETER PHELPS: It is an industry fund, of which there is a substantial trade union component. Are you aware, for example, that Mr Dave Oliver from the Australian Manufacturing Workers' Union is on that board?

Mr HEAD: I must admit I have not reviewed who is currently on the board.

The Hon. Dr PETER PHELPS: Or that there are representatives from the Finance Sector Union, United Voice and the Australian Workers' Union?

Mr HEAD: That sounds right.

The Hon. Dr PETER PHELPS: All four of those unions are affiliated with the Australian Labor Party.

The Hon. DANIEL MOOKHEY: I think we are now straying beyond the terms of reference here.

The Hon. Dr PETER PHELPS: I am just suggesting that when STP receives income from tolls it is going into the industry vehicle to provide superannuation benefits to literally hundreds of thousands of Australians. Is that correct?

Mr CLICHE: Yes. That is something that Sydney Transport Partners is very proud of.

The Hon. Dr PETER PHELPS: Because this is an inquiry into the impact of the WestConnex project, the creation of the WestConnex project will literally make the material wealth of hundreds of thousands of Australians better, will it not?

Mr HEAD: That is my responsibility. We have made a lot of assumptions to pay the \$9.26 billion, but, yes, if we get it right, the 2.2 million members of AustralianSuper—600,000 of which reside near the WestConnex project—will be beneficiaries from growing returns in their superannuation accounts. As well as that, over the long term, we hope to improve the livability of Sydney and return some green space to this area—more green space than any project in Australian history in the road space. There are a number of benefits, financial and otherwise, that will accrue to the members of AustralianSuper and beyond.

The Hon. Dr PETER PHELPS: In addition to the people who will receive a direct material benefit from the creation of WestConnex through their superannuation funds, their children and their grandchildren will also have a benefit from the 10,000 or so people who will, for the lifetime of the construction, be employed on this project, will they not?

Mr HEAD: Yes. One of the things we are very proud about at WestConnex is that there will be some 10,000 jobs created through the construction period. There are 4,000 on site at the moment. There are a number of young people from Western Sydney who are receiving apprenticeship training on the way through. If I am to talk about the contracts, there are some 1,600 businesses that are benefiting as a consequence of the delivery of WestConnex across Sydney, which are worth about \$2 billion. In fact, on the new M5 project, which is really focused in on the New South Wales benefits, 80 per cent of the contracts that have been let as part of that project are going to New South Wales businesses. In addition to that—I think it relates to your question—18 hectares of open space will be returned when the project is completed and 23 kilometres of new cycleway and walkways will be delivered. There will be considerable benefits, not only for today's generations but also for future generations.

The Hon. Dr PETER PHELPS: And the workers who are part of the superannuation fund of AustralianSuper will also benefit in the long run, will they not?

Mr HEAD: Yes.

The Hon. Dr PETER PHELPS: Does STP or Transurban have any power to unilaterally increase tolls?

Mr HEAD: No.

The Hon. Dr PETER PHELPS: Who sets the tolls?

Mr HEAD: The tolls are all set in the concession deed, which is the agreement that was made between the State of New South Wales and the concessionaire back when those concessions were agreed upon. Sydney Transport Partners and WestConnex are not able to make decisions about putting up the price that is described in the concession deed.

The Hon. Dr PETER PHELPS: So those people who are suggesting that Transurban can unilaterally increase tolls on WestConnex are not telling the truth?

Mr HEAD: It is absolutely not the case.

The Hon. TREVOR KHAN: And there is no concession deed that operates on any of the tollways in Sydney that is any different. It is a standard arrangement—that is, the concession deed determines what happens with the tolls.

Mr HEAD: Yes, that is absolutely correct—

The Hon. DANIEL MOOKHEY: If you were here the other two days you would have gone through this.

The Hon. TREVOR KHAN: Just be quiet.

Mr HEAD: They are all agreed and they cannot be changed—in fact, successive New South Wales governments of both sides of the aisle, over the last 20 to 30 years, have delivered these projects. They have agreed to put a summary of each one of those agreements on the RMS website so anyone from the public can see exactly what is going to happen with toll prices. It is completely transparent. Sydney Transport Partners, Transurban and WestConnex cannot change that. It is prescribed in the arrangements.

The Hon. Dr PETER PHELPS: Thank you. Are STP economically illiterate?

Mr HEAD: I hope not.

The Hon. Dr PETER PHELPS: Okay, so your decision to pay more than \$9 billion for this part of the project would indeed confirm the Government's assessment as to the work of the project, including benefit-cost analysis and traffic flows?

Mr HEAD: We have had to make a series of assessments on our own behalf in relation to all of those matters and the result of all of that was a valuation of \$9.26 billion.

The Hon. Dr PETER PHELPS: Arguments have been put forward that somehow the Government was slack or lackadaisical in relation to its BCF or projects. But, presumably, when it goes to market the market has—particularly in the case of Transurban—a degree of experience and knowledge which, considering the price paid, would vindicate the work of the bureaucrats within the State Government.

Mr HEAD: We did not actually undertake a business case analysis in deciding what to pay. It is a slightly different approach. Our methodology is one of discounted cash flow analysis. I apologise for non-financial people but, essentially, we make a long-term assessment of the value of the cash flows and then we discount them back to today and work out what the price that is to be paid should be. Unfortunately, I cannot attest to the business analysis, but I am sure there are others who have appeared in front of this Committee who have that detail and are far more versed in it than I am.

The Hon. Dr PETER PHELPS: Prior to the last State election, The Greens candidate for Newtown indicated that, if they voted Green, WestConnex would be stopped. Has WestConnex been stopped?

Mr HEAD: No.

The Hon. Dr PETER PHELPS: And if it were to be stopped—let us say, for example, that at the next State election 51 per cent of lower House seats were magically claimed by The Greens and they decided to void the contract in its entirety—how many billions of dollars would that cost the State?

Mr HEAD: I have not seen an assessment of that, but it would be definitely in the billions. As I tried to explain before, there would be a lot of other impacts beyond just the financial ones. There may be differences of opinion on this, but my strong view is that the impacts in the inner west of Sydney, having had two big tunnels built and not having the third one completed, would be very detrimental to those communities. If you are suggesting that perhaps with the other ones that are not yet finished, that we just stop where they are, that would also derive not only financial costs to the State but also long-term costs to the productivity of the economy and the livability of Sydney.

The Hon. Dr PETER PHELPS: As evidenced by the current Strathfield to Haberfield Parramatta Road debacle?

Mr HEAD: I am not sure specifically what you are referring to, but—

The Hon. Dr PETER PHELPS: The fact that the M4 stops and goes on to—

Mr HEAD: Nobody would argue with you that there are significant mobility challenges in the inner west and accessing the outer western suburbs of Sydney and all of the human capital that resides there and its ability to realise its potential. This project, as I said at the beginning, coupled with the light rail investment and metro rail investment will all combine to make a significant impact to the livability of this city and help it realise its potential. I mean there are a lot of people—old colleagues of mine—who often talk about how quickly Melbourne is growing and I think with these investments Sydney is going to take back the mantle as the number one long-term global city for Australia.

The Hon. Dr PETER PHELPS: Finally, Mr Head, there has been some scepticism enunciated in relation to the amount of open space—green space—which will flow from the WestConnex project. Can you guarantee that at least 18 hectares will be delivered and possibly more when you include smaller parks into the final project? Can you guarantee that there will be 23 kilometres of bicycle paths created?

Mr HEAD: Everything that is prescribed under the contract for us to deliver, we will deliver. The only reason I hesitate in relation to your question about providing a guarantee is that I am not 100 per cent familiar, having only been in the role for two weeks, what portion of stage 3B is included in that assessment of the 18 hectares or the 23 kilometres of bike path. But if it is in the existing contracts and that number is correct, which I will provide on notice, then I will provide that guarantee.

The Hon. SHAYNE MALLARD: Good morning, Mr Head. Dr Phelps took a bit of my thunder. I was going to inquire more about the open space and you said you would take it on notice. You may know now or you may have to take it on notice, what state of landscaping and tree planting will that open space be? Is it transferred to local Government after that, or is it retained by WestConnex as open space that it maintains?

Mr HEAD: I appreciate the question. I wish I had more detail at hand to be able to help you with that. Ordinarily I would, but I am just a bit early in the role. There are documents that have been provided as part of the planning process that provide a vision for that. Essentially, what has to happen next is that vision, which is part of the planning approval, then needs to get translated into various different design and construction contracts. I will need to go back and check those design and construction contracts to see how they line up against what was proposed, but if it is part of the planning approval, then chances are it is all going to be delivered as planned. In terms of who ends up being responsible for it, again I will have to take it on notice, but in my experience, the concessionaire tends to take responsibility for the maintenance and upkeep. I would expect that to be the case here. There may be some out-of-ordinary treatment, but ordinarily, it would stay with the concessionaire for the life of the concession and it would be their responsibility to look after it and maintain it, much the same as it is on the M2 motorway or NorthConnex or M7.

The Hon. SHAYNE MALLARD: I will let you take that on notice.

The Hon. Dr PETER PHELPS: Mayor Byrne does not have to pay. He will be happy about that.

The CHAIR: Thank you for coming in. You are the chief executive officer for WestConnex and you have talked a lot about the Sydney transport partnership. Are you also employed by them? Is there a clear distinction as to who you work for?

Mr HEAD: Yes. It was made very clear as part of the transaction that the chief executive officer—in this case, me—would be employed by WestConnex and report to the WestConnex board. For my specific arrangements, I have been seconded in on a long-term basis, but my bosses are essentially the board of WestConnex.

The CHAIR: So you do not give separate reports to the Sydney partnership group?

Mr HEAD: My role requires me to report to many, many stakeholders in different forms. There are some reports that I envisage I will need to provide to the retained interest directors, so the 49 per cent of New South Wales Government. Equally, I suspect, if there is information I need to provide to the Sydney Transport Partners, I will do it. I will also need to report to all of the various different regulatory bodies, as you would normally expect. The concession deeds are regulated by the RMS. Then, of course, primary to all of that, I think it is fair to say that the board of WestConnex is my primary responsibility and the primary place that I report to.

Ms CATE FAEHRMANN: What about the public? Is that in there at all?

The CHAIR: Can I finish?

Ms CATE FAEHRMANN: Yes.

The CHAIR: It is probably impossible to have an insurance policy that would cover the harm or damage that would be caused if the WestConnex did not proceed. Has that been looked at from the Sydney partnership group?

Mr HEAD: I am sorry. Can you just clarify that question a little bit for me?

The CHAIR: Is it possible? I am asking whether you have looked at it. It may not be possible—

Mr HEAD: To insure?

The CHAIR: To insure that risk.

Mr HEAD: If it was materially changed by government?

The CHAIR: Yes, if the WestConnex did not proceed, as some people are advocating.

The Hon. DANIEL MOOKHEY: I think it means both. I think that the Reverend might be referring to whether the New South Wales Government can enter into an insurance policy to cover the cost of terminating WestConnex?

Mr HEAD: I suspect not. I think most insurers would be quite concerned if you went and sought that policy because they might know what is coming next.

The Hon. SHAYNE MALLARD: Based on the Victorian Labor Party's model.

Mr HEAD: Sydney Transport Partners has invested in this State a lot of money based on the reputation of this State. It has a good reputation of doing what it says it is going to do and it has over a long period of time. Australian States in general have that reputation. It was a little bit threatened in recent times in other jurisdictions where big projects were cancelled. I think the industry and government, as a collective, have probably learned that there are better ways to deal with these sorts of issues than retrospectively cancel them after they have started.

The CHAIR: Thank you very much again for your evidence before our inquiry. All the best with the WestConnex.

Mr HEAD: Thank you.

(The witness withdrew)

(Short adjournment)

CLOVER MOORE, Lord Mayor, City of Sydney, affirmed and examined

MONICA BARONE, Chief Executive Officer, City of Sydney, affirmed and examined

KIM WOODBURY, Chief Operations Officer, City of Sydney, affirmed and examined

SEBASTIAN SMYTH, Executive Manager Access and Transport, City of Sydney, affirmed and examined

TERRY RAWNSLEY, Principal and Partner, SGS Economics and Planning, affirmed and examined

The CHAIR: Do you want to make an opening statement?

Ms MOORE: Yes. The City of Sydney strongly opposes WestConnex. It has become Australia's most expensive toll road project. The estimated cost now is \$16.8 billion. But as we outlined in our submission, the overall cost of all the proposed roads is likely to be in the range of \$40 billion to \$50 billion. This makes it one of the most expensive collections of road projects ever undertaken in the world. It has been built beyond the scrutiny of Parliament, the Independent Commission Against Corruption [ICAC] or the public. It has been independently verified that there has been a shocking lack of due diligence and rigour associated with this matter of investment of public funds. The project fails to meet the Government's own processes. Contracts for the first two stages were entered into before planning approval was given, exposing taxpayers to unnecessary risk and producing poor design outcomes for the community.

As a key driver of the national economy the area covered by the City of Sydney is vital to Australia's future and the future of New South Wales. The city economy now totals approximately \$125 billion or almost a quarter of the entire New South Wales economy. Independent analysis suggests that the City of Sydney economy, together with the central business districts [CBD] of Melbourne and Brisbane, are contributing more than 10 per cent to Australia's current economic growth. But one of the most significant risks for the growth in the City of Sydney and our future economic viability is congestion in the city centre. It is already costing the city \$6 billion a year and it could rise to \$14.8 billion by 2031. WestConnex will dramatically increase congestion by bringing 120,000 vehicles daily through the St Peter's interchange, after which they will flow out onto the already gridlocked inner city streets in the most densely populated neighbourhoods in Australia. This is a significant threat to our future livability and to the investment in the city centre and the Green Square renewal area with its residential population of 61,000 people and 22,000 workers by 2030. WestConnex has changed from a project with specific aims to link Kingsford Smith Airport and Port Botany to the west, and to bypass and improve Parramatta Road to a toll-driven, money-making venture developed in secret for the sale to the private sector.

Around the world in this era of accelerating climate change, cities are foregoing motorways, even dismantling them as we have seen in cities like Shanghai, Seoul, Boston and Vancouver. WestConnex in its current form undermines everything we know about good city planning. It swallows up vast tracts of otherwise valuable and productive inner city land. It destroys significant tree coverage, and eats into parklands and much-needed recreational sporting space. It threatens the health and amenity of people increasingly living in high densities in response to government policies. The congestion threatens business activity, Sydney's competitiveness, jobs and employment and the shear cost of the project means that more efficient and urgently needed public transport projects could be delayed or scrapped. For these reasons, we believe it is critical that WestConnex is scrapped immediately and for the reasons we have outlined in our recommendation "A". If the project is not scrapped as it should be, the Government should significantly minimise its harmful impacts as outlined in our recommendation "B".

We have been really concerned about this project from its first announcement. We have been really concerned about the impact it would have on the city. We therefore engaged SGS Economics and Planning to do a strategic review and give us a report on what it meant for the city and what it meant for the city community. We are really pleased that Terry Rawnsley is here today. I have included in the submission all the very many mayoral minutes that I have done over the years in response to the threats and impacts of WestConnex. The Committee will see the mayoral minute from 23 February summarises the recommendations of SGS to us. We presented an alternative proposal to government trying to look for solutions to this problem because we are so concerned about the impact it will have on the city and city communities. We presented that to the Premier. That is also included in our submission. Because of our concerns about the increasing costs we have actually also prepared a map for members of the Committee which you might find helpful in terms of these costs. Even though we have excellent staff in the city and we are able to engage excellent people like SGS Economics and Planning it has still been difficult for us to get to the bottom of what this project means for the city in the future. But we have done our best and all that information is in our submission to the Committee. I think you will find that map very helpful. I commend the Committee for its formation and running this inquiry. It is vital, and the public are very appreciative.

Mr RAWNSLEY: Thank you for the invitation to speak to this important inquiry. I will speak to the independent report, which is referred to in the submissions of the City of Sydney and other people to this inquiry. During my 11 years with SGS I have worked for toll road operators, toll road investors, Commonwealth, State and local governments on assessing the impact of urban infrastructure. The independent review prepared by SGS is based on this experience and the experience within our organisation and it is built upon all available information in the public domain, which is primarily the executive summary of 2013 WestConnex business case and the 2015 redacted strategic business case. As shown by the Cross City Tunnel and the Lane Cove Tunnel, New South Wales has a poor record in developing brownfield whole road projects. While in the case of those two projects the risk sat firmly with the private sector investors, the risk with WestConnex still sits firmly with the taxpayers of New South Wales. The WestConnex business case contains a range of issues which present a risk to New South Wales taxpayers. These issues range from the very technical issues around the treatment of induced demand and what is best practice in terms of dealing with congestion globally.

Others are more straightforward. One example is that the WestConnex business case made a simple error in calculating the benefit-cost ratio. The ratio between the benefits and costs stated in the business case is 1.64, not the reported 1.71. Despite requests from Infrastructure Australia, the WestConnex business case is the only major transport infrastructure project in New South Wales which has not produced a P90 cost. The P90 is an almost worst-case scenario in terms of construction costs. Transport for NSW guidelines were ignored by the WestConnex business case in estimating the cost of the project. The cost of acquiring the land at St Peters and Rozelle for the project should have been costed and valued at approximately \$3.7 billion by the business case. However, this cost was completely ignored. The updated strategic business case provides little confidence that the New South Wales taxpayer is receiving value for money from the WestConnex investment. Thank you.

The Hon. GREG DONNELLY: I will direct my questions to the Lord Mayor and you may allocate them as you see fit. Looking at page 4 of the City of Sydney's submission, about halfway down the page in bold it says—and this was incorporated in your opening statement:

WestConnex has changed from a project with specific aims to link Kingsford Smith Airport and Port Botany to the west and the bypassing and improvement of Parramatta Road to a toll driven money making venture for sale to the private sector.

In the presentation of evidence to this Committee by representatives of the Government, and I am talking primarily about Transport for NSW, it has been essentially put to us that we should accept the proposition that, whilst it may have started off with some specific ambition, the nature of the beast is that this sort of project, because of its size, has to evolve and develop. In other words, it is an organic process. I would like you to reflect on that as being a viable argument to put to this Committee, that we should be able to believe that such a huge project should be just given that flexibility to evolve and develop and that is an acceptable way in which particular communities in Sydney, a large number of them represented by the Sydney council, are to accept the proposition. I wonder if you could comment on that.

Ms MOORE: Could I respond by asking a question? What did they say it has evolved into? What we have been able to assume it has evolved into is, as I said, a toll-driven money-making venture developed in secret to the private sector, because that is what it now appears to be. It did start off as a project that was about getting freight to the port and to the airport and a corollary to that was going to be the improvement of Parramatta Road. We know Parramatta is now going to get an increase of about 24 per cent in traffic, not a decrease and there certainly will not be any improvements there. We know that the project is not going to the port or the airport. It is arriving at St Peters, which is a residential parkland precinct. We have had a subsequent announcement that there will be work done to take vehicles to the airport, not to the port, as part of that gateway project. But what is Transport for NSW saying it has morphed into?

The Hon. GREG DONNELLY: A large project with different pieces which are developing as time goes on. They are my words, but that is effectively the way in which they have described it. If you take, for example, the point that you have just raised, we had representatives from Transport for NSW put to us that with respect to the matter of roads to Port Botany, which was expected to be part of this project—in other words, this connectivity with Port Botany—we had the trite response that there are roads to Port Botany already.

The Hon. DANIEL MOOKHEY: All roads lead to Port Botany, I think was the exact phrase that was used.

Ms MOORE: Via St Peters.

The Hon. GREG DONNELLY: Yes, a response like that. I am just wondering with your experience in your role as Lord Mayor of Sydney, having a trite response put like that, how is one to grasp this project? Does this project have a particular set of dimensions to it or is it just something which is morphing and growing as time moves on?

Ms BARONE: If you are not clear about the objectives of a project it is therefore impossible to create a business case and determine whether the project and the costs justify or achieve the objectives of the project. In the first instance from the point of view of good governance, the first thing any project has to do is be able to define what it is that it seeks to solve or enhance or improve. Then you ask yourself if that is the outcome we want, do these projects then achieve that or not achieve it, what does it cost, is this good value for money for achieving it and, furthermore, are there other ways of achieving it? The first issue is that to invest in a project and not know what its objectives are with clarity I would suggest is not a great way to run a project or to spend that much public money.

The second thing from the point of view of good governance is that if you do that, the community—and we are talking about community money and community land—are unable to assess as these projects come forward whether they believe that the projects and the investment deliver the things that they believe ought to happen. It makes it indecipherable for the community. It is difficult enough with projects and bits of it coming forward at different times, but it also is not good governance to then evolve and change the objectives of the project from the point of view of the community who then are unable to decipher with clarity what it is they are getting or not getting and what impact that might have on them.

Ms MOORE: I might ask Terry Rawnsley to speak on that too. That was why we engaged SGS Economics and Planning, because we really wanted a strategic review of what the Government had proposed back then.

The Hon. DANIEL MOOKHEY: Before Mr Rawnsley answers, are you able to tell us if the report that you prepared was based on the assumption that the gateway was a part of WestConnex?

Mr RAWNSLEY: That was one of the confusions in the business case review. It was quite unclear about how the Sydney Gateway sat in with WestConnex. It was sort of described as a separate project but in the business case it talked about travel times from the west to the port. If your project does not go to the port then why are you talking about—

The Hon. DANIEL MOOKHEY: In your analysis undertaken, did it look like they were including the benefits from the gateway as part of the benefit-cost ratio?

Mr RAWNSLEY: Quite possibly. That is perhaps one of the more opaque parts of the business case. I suppose back to the original question, there has been quite a morphing since the original 2012 Infrastructure NSW proposal with the cut-and-cover approach under Parramatta Road. That morphed very quickly to a later version which looks more like today's version—into a similar version of today's version but not today's version which underwent a range of other changes. It would be nice to understand for New South Wales taxpayers what was it about that Infrastructure NSW 2012 alignment, what was wrong with that and how is the one proposed in the business case better and how is it different and better to the one being proposed today? Just for a bit of best practice, in Victoria with the East West Link, which has some similarities to WestConnex, that was assessed originally in a bundle of four options. One was around can you solve the congestion problems in Sydney from a road link, a rail link, truck action plans—all four sort of options are put together and you say of the different combinations which one gives us the best assessment?

The Hon. DANIEL MOOKHEY: As to the cost of integration works for the City of Sydney, do you have an estimate as to how much money the City of Sydney is going to have to spend from its own budget for local roads to be able to join the network that has now been proposed?

Ms MOORE: It has even been difficult to get information about that. In fact, we are being told by RMS to sort of suck and see what the impacts are going to be after the traffic starts coming off St Peters interchange and then we will perhaps be able to assess what you need to do.

The Hon. DANIEL MOOKHEY: How can the city do its capital budgeting if you have got no idea?

Ms MOORE: Exactly, and so we did not accept that. We have gone ahead and we have again engaged consultants. We have done a traffic study for the area that is going to be most seriously impacted immediately and that is the Alexandria area because people in Alexandria are quite alarmed about 120,000 vehicles, as we all are. We have done that work and we are about to take that to the community. But then we are going to have to get RMS to agree to the changes we want to make to that neighbourhood to minimise the destructive impacts that WestConnex is going to have on the community once that traffic starts pouring off.

The Hon. DANIEL MOOKHEY: Do you have a cost estimate that you can share with us now of how much you think it will cost? The Inner West Council told us it is putting aside \$30 million for integration works.

Ms MOORE: It will be in the millions, but I do not have an exact figure on that.

The Hon. DANIEL MOOKHEY: Moving on, can I ask you about the loss of green space. For example, I notice that the Council of the City of Sydney rebuilt Sydney Park, which my child loves, but the bottom of it is now missing because apparently it has gone over to WestConnex. How much green space has been lost? Insofar as commitments have been made that there will be new green space coming back to the city, are we meant to assume that it is going to be like for like in quality or is it the case that we will have a bunch of parks next to some motorways?

Ms MOORE: Sydney Park is incredibly important, not only to the 61,000 people—

The Hon. DANIEL MOOKHEY: And to my son.

Ms MOORE: —who will be moving into Green Square and the people living in high densities in Alexandria—you know, it is the highest density place in Australia; it is incredibly important—but also because over the last 14 years we have spent \$23 million on that park. It is a beautiful park. It is not only servicing the people in the City of Sydney—you only have to look over the way and see the incredibly dense development that has happened in Mascot in recent years—but it is their park too. But once the WestConnex Interchange is constructed, we are looking at it covering 27 hectares. It will be a spaghetti junction that is 38 metres high. Traffic will be travelling at 100 kilometres an hour and there will be 120,000 vehicles a day. That is what is going to happen in that area where we have worked so hard at creating a livable city.

That is why densities have dramatically increased. That is why more and more people are staying in the city and living there with their families, but that is going to just be devastated by that interchange. That is what we are so concerned about. Just getting to the facts, we have lost approximately 19,294 square metres of Sydney Park. We have lost 238 trees, including 159 well-established paperbarks—a beautiful avenue of paperbarks down Euston Road—and, with the road that they are proposing to take off St Peters and take to Anzac Parade at Moore Park, which they are calling the Anzac to Moore Park Interchange, that will mean that 10 mature figs, planted in around 1900, will be threatened next to the Waterloo Oval and Mount Carmel Reserve. I think most people in Sydney would know those trees. They are just stunning, beautiful figs.

As well as that we would lose the 14 mature fig trees, 11 Washington palms that were planted in the 1920s along South Dowling Street near Dacey Avenue and another 41 mature figs planted in the 1960s along Dacey Avenue. We know the outcry in Sydney about the cutting down of those trees for light rail to go to Kensington and the devastation and anger that occurred. We are looking at that writ large if that proposal, which RMS has put on public exhibition, proceeds—not to mention the fact that when it actually arrives at Anzac Parade I think we get 12 lanes of traffic with light rail running down the middle of it and residents will have to cross at five different places to get from their neighbourhood across to the park. Mr Smyth might be able to help me here.

Mr SMYTH: What the Lord Mayor is talking about is the Alexandria to Moore Park connectivity upgrade currently proposed by RMS, soon to be on public exhibition.

Ms MOORE: It will be taking the transport from the St Peters interchange.

Mr SMYTH: Yes. It is a connector for WestConnex. She is also referring to the continuous flow interchange, which has never been done in New South Wales. Where they have been tried in other areas, they are generally in outer suburban areas where there is very little public transport, pedestrian or cyclist traffic. RMS is touting the Alexandria to Moore Park connectivity upgrade as a link for pedestrians and cyclists, despite having this untested continuous flow intersection at the eastern end.

Ms MOORE: That would be at Anzac Parade and it will be the largest non-motorised intersection in New South Wales, with 12 lanes of traffic and light rail through the middle, a complicated walking route requiring pedestrians to wait at five sets of lights and cross 14 lanes while saving motorists 20 seconds. That is what is down the track, we understand. It has been on public exhibition.

The CHAIR: You have done some estimates of other costs. Have you done estimated costs on what that would be?

Ms MOORE: Five hundred million is the cost that we have got for that. On this map we have tried to put as much information as we have been able to achieve in terms of costs of all those different parts of this road and tollway proposal.

Ms CATE FAEHRMANN: Thank you for appearing today. Lord Mayor, you were just referring to the cost of road upgrades that the City of Sydney had to do. Could you take that on notice? I do not think it committed to do that.

Ms MOORE: Yes—if we can.

Ms CATE FAEHRMANN: Of course. You do not know everything.

Ms MOORE: It is a movable feast and it has been so hard to actually be able to work out what the impacts will be and what we need to do.

Ms CATE FAEHRMANN: I understand—to the best of your ability, which I am sure you will say when you provide it. Recommendation A of your submission states that you want to the Government to "immediately halt the project". We have just heard from the WestConnex CEO that essentially that would cost the taxpayers billions, that everything has gone too far and that it would be absolutely devastating for the communities of the inner west if that was to happen. What is your view on that? Do you think we could do this? Have you talked about how you would mitigate the impacts so far, if it was to be halted at this stage?

Ms MOORE: We have already talked about how it has morphed into something else and we have seen how the costs have increased from \$10 billion and they could be up to \$40 billion or \$50 billion. We know that this is public funding and we know there is meant to be public accountability about all of this. Our understanding is that—and perhaps Terry Rawnsley can comment on that—in order to make it viable for the future, they have to keep adding these new parts. I will either get Mr Rawnsley or Mr Smyth to elaborate on what those new parts are. In order to keep the whole thing going, it is just going to keep adding billions and billions to this project. Is this the best thing for Sydney, the global city of Australia, at this time accelerating climate change?

We know that transport and vehicular traffic is an incredibly important issue in terms of getting our emissions down. We also know that when people are living at very, very high densities that to have a dramatic increase in particulate matter from pollution is really serious. It kills people. There is evidence out there to say this. Young people and elderly people will be very seriously impacted by the pollution that is already going to be occurring in that St Peters area, and that is already occurring in those other communities where those stacks are going, and people are alarmed.

Ms CATE FAEHRMANN: So there are other costs.

Ms MOORE: There are huge costs. There are financial costs that is money that is not being spent on public transport, and we know how much that is needed in the city of Sydney over and above the projects that already are being constructed, and there are health costs that are so incredibly important. There are social costs. We have responded to the Government's policies and strategies in terms of increasing our densities, but we do it and provide open space. We provide community facilities. We provide walkable streets. We provide the things that people need, but this could be destroyed by motorways coming through.

Ms CATE FAEHRMANN: Thank you, Lord Mayor. I have very limited time in which to ask questions. Was either Mr Rawnsley or Mr Smyth going to respond?

Mr SMYTH: You will work hard to find a qualified transport planner who proposes an urban motorway as part of the solution to traffic congestion and assuring future productivity. The concept of these extensions needed to mitigate the impacts of the last stage and to pay for the cost of the last stage is like drinking to get over alcoholism: It is not a great way forward.

The Hon. DANIEL MOOKHEY: It is a common strategy though.

Mr SMYTH: We do not know what has been promised to the private operators because all the details of the contract and future toll projections are kept in secret, but our information is that, for example, the stage 3 M4-M5 connection will be eight lanes wide. It will be eight lanes of tunnelled motorway, which indicates that that will rely on the traffic drawn from the Beaches Link, the western Harbour Tunnel and the new F6. So the strong indications are that these future stages, which are not currently committed, and are not currently assessed for an environmental impact, are being relied on to make the case for the existing projects to stack up.

Ms CATE FAEHRMANN: Mr Smyth, we heard from WestConnex this morning that their project will ease congestion on local roads. That is what they said to this Committee. Are you telling me that that is not the case?

Mr SMYTH: It depends on where you stand on the dogma of induced demand. In reality, major urban road projects induce more people to drive—just like major new metro or railway projects induce people to catch public transport. Even new cycleways induce people to ride.

Ms BARONE: Just by way of example, the Euston Road—St Peters comes down onto Euston Road—the people in Maddox Street and part of our traffic plan suggest that to stop the cars going onto the local road we close that road. We are pretty confident that RMS will never close that road. In fact, they have put a turning lane off Euston Road precisely to put the traffic onto the local roads. That is just one example. You ask, "What would be the cost of mitigating?" If we can get the approval then we have to close those roads, put in the traffic calming and all of the rest of it. That is just one example of a turning lane being constructed now precisely to take cars off St Peters interchange and into very narrow, small, local roads.

The CHAIR: Thank you again for your attendance. Thank you for your detailed submission. It is an excellent submission. In your submission you were very blunt and you state that the City of Sydney strongly opposes the WestConnex, and that this project should be scrapped. I raised that issue with a witness we had here today—the Chief Executive Officer of WestConnex, Andrew Head. He said that it cannot be scrapped now because of what he called sovereign risk—the reputation of New South Wales, and what harm that would do to future projects and businesses in this city. Do you feel that that is an honest or accurate description of what would happen if the project was scrapped?

Ms MOORE: I am not surprised that he would say that, but I know—because the City of Sydney is a member of the C40 Cities organisation of major cities around the world working together to address climate change—that there is shock expressed at the fact of this project. It is only cities like Dubai now that are building motorways in the way that the City of Sydney is proposing. Yes, it was a bold recommendation to say we should scrap it, but the work of this Committee is really important because this is such a big, important, expensive, costly project for the taxpayer, for the Government and for the community in so many ways. It will have such terrible costs. Yes, we think it should be stopped now because we want to minimise the harm that it is going to cause in the future. As Mr Smyth has outlined, they keep building new sections so that you can enable cars to move to another section and it is going to be a never-ending octopus type of project. All we can see is increasing emissions, increasing pollution, increasing congestion and increasing costs. We know the people of Western Sydney are going to be paying tolls that will increase over 43 years. It is going to be an incredible cost for them, and we have the details of that in our submission, too. It is a really serious impact for them and it is a really serious impact for the people of the inner area, who are dealing with those things that I have just described.

Mr RAWNSLEY: Just to touch on the sovereign risk aspect, Victoria, in the last four years, cancelled a large-scale motorway project—the eastern section of the East-West Link. Compensation was paid to the consortium, which was about to start construction of that project. There were concerns around sovereign risk for Victoria and future projects, but since then there has been a steady flow of investment into Victoria. Transurban put in an unsolicited bid to that government in Victoria for a large-scale road project with funds coming in from all over the world. There is no smoking gun that cancellation of a project with compensation paid would lead to a sovereign risk for New South Wales.

The CHAIR: You feel that sovereign risk argument is flimsy, based on what happened in Victoria?

Mr RAWNSLEY: It is a risky argument to run.

The CHAIR: It is the only argument that we have heard.

Ms MOORE: The costs of this project so far outweigh any benefits of this project. What are the benefits of this project, other than for those private investors? What are they for the people of Sydney, the people of the community? What are the benefits?

Ms BARONE: There is a further risk—that the regional plan that the Government has endorsed, which will reorient the city to the west, succeeds. If that plan succeeds and the new airport is built and jobs are created in the west, a lot less people will need to travel to the CBD to work, or go through it. In fact, there may be a risk that the toll road will not yield the revenue that it is anticipated to yield if that plan succeeds. We hope that that plan does succeed because that is the right plan for Sydney. That is the just plan for Sydney—reorienting the city to the west so that more people can work near where they live.

Ms MOORE: We asked some questions in our submission. Could I just go to those? If this inquiry could get answers to those questions it would be very helpful for the community. Why is the Government still justifying all the expense and destruction this project has caused, given the original goals have been abandoned? Why is the Government building a road network of this scale, particularly before they embed their regional plan for their three cities model, which will see more jobs close to where people work? Why is planning for the project not taking the second airport in the west into consideration? Why has the Government not exhausted all other means of getting people around first, such as completing the Metro West, before deciding the scale of motorway projects? Why would the Government risk economic growth by driving more cars into the heart of the CBD—the global city—when every plan about the CBD's competitiveness has been working to get cars out? Why would the Government risk compromising the future of the city's economy and condemning thousands of people to privatised, unsustainable expenses and inefficient, tolled car travel? These are questions, which, I think, if this inquiry can get answers to, it would be very helpful.

The CHAIR: Thank you. We are endeavouring to get those answers. We are not being very successful at this stage. We will move on to the Government members; they may have the answers.

The Hon. SHAYNE MALLARD: Thank you, Lord Mayor, Monica and former colleagues in the City of Sydney. Welcome here today.

The Hon. TREVOR KHAN: That is nice.

The Hon. SHAYNE MALLARD: I am not going to ask nasty questions.

The Hon. GREG DONNELLY: But—

The Hon. SHAYNE MALLARD: No, there is no "but". You have to acknowledge WestConnex in the context of the broader Government strategy on transport. It is clearly a combination of both public transport and road solutions. Are you aware of how much this Government is investing in the next four years in public transport in New South Wales?

Ms MOORE: Yes.

The Hon. SHAYNE MALLARD: I am pretty proud of that figure.

Ms MOORE: Yes, and that is trying to do catch-up because of the inaction of previous governments. I acknowledge that, but there is still much more to do. How much better would it be if moneys that are being spent on the tolled road system were spent on even more public transport that is needed?

The Hon. SHAYNE MALLARD: The Government would contend that it is not one or the other—it is both. It is a balancing act. The Government would argue that the lack of investment on finishing the road network is one of the reasons we are doing catch-up on the roads as well. It is \$51.2 billion over the next four years on capital works on public transport, which way overshadows the WestConnex expense. It is \$20 billion on the new metro rail system, which will alleviate congestion on the heavy rail system; \$2.8 billion on new trains and 1.5 on new metro trains. The Metro West is under planning. I acknowledge the city's contribution to light rail. There was a more positive contribution to the inquiry into light rail from the City of Sydney, I notice. We appreciate that. I put it to you that the Government is looking at the whole State and the whole of metropolitan Sydney in doing these proposals. Your interest, with respect, is in the City of Sydney, the CBD and a fairly limited territory in which residents are impacted. I respect that. Would you acknowledge that?

Ms MOORE: I acknowledge that the Government is undertaking a large number of public transport projects. I do not believe that that is going to provide for the needs of the dramatically increasing population of the city. I think that if the moneys being spent on WestConnex could be directed also to public transport it would be a much greater benefit.

The Hon. SHAYNE MALLARD: I turn to your submission. I know you have a passion about trees and open spaces and you know I share that passion.

Ms MOORE: Yes.

The Hon. SHAYNE MALLARD: I have asked lots of questions, including of Mr Head a few minutes ago, about trees and open spaces.

Ms MOORE: You know all the work we have done in Sydney Park.

The Hon. SHAYNE MALLARD: Yes, I know all about the work in Sydney Park by South Sydney Council and the City of Sydney.

Ms MOORE: Yes.

The Hon. SHAYNE MALLARD: The image on the front of your submission is a familiar image to me. I have seen it on your brochures and newsletters. It is your interpretation of the St Peters interchange, I assume. Is that a government image?

Ms MOORE: No, it is the image of the road network that is proposed without any embellishment.

The Hon. SHAYNE MALLARD: At St Peters?

Ms MOORE: Yes, at St Peters. As I said, it is 27 hectares and that is going to be 38 metres high. As you are very familiar with Sydney Park you can imagine the serious impact it is going to have on Sydney Park and on the community.

Ms BARONE: It is two-thirds the size of Sydney Park.

Ms MOORE: Yes, it is two-thirds the size of Sydney Park.

The Hon. SHAYNE MALLARD: I have got that. In the background of that image you see the lakes. That is Sydney Park?

Ms MOORE: Yes.

The Hon. SHAYNE MALLARD: The foreground is unembellished where the road network, the flyover, is spread out. That is currently under construction. That was the Dial A Dump tip site, is that right? It was a City of Sydney tip once, but not in your period. The Government acquired it and removed asbestos because it had illegal asbestos in it. Whilst it is not A-class open space, it is an improvement to what was there.

Ms MOORE: You know, because of your history with South Sydney Council and the city, that Sydney Park, which is a stunning regional park now, was also a city dump. But, because of the work and remediation we have done and the moneys we have spent, we have created a beautiful public space for the community. Given the numbers of people that are living around the community now, not only in our area but in the Mascot area, how much better would it have been if it was an extension of Sydney Park?

The Hon. SHAYNE MALLARD: In an ideal world one would certainly like that, but it is certainly better than the tip that was there?

Ms MOORE: I beg to differ, because while the tip is there it has potential. Mr Mallard, as you know, all of the sites where we have done projects with South Sydney Council and the City of Sydney have been contaminated because the city was an industrial area and these sites were tip sites.

The Hon. SHAYNE MALLARD: Originally it was a clay quarry that made tiles and bricks for the city.

Ms MOORE: It is the city. The potential here would have been for residential with transport and parkland. Certainly not a 1950s Los Angeles style spaghetti junction.

The Hon. SHAYNE MALLARD: I want to clarify the record. Mr Mookhey referred to the bottom half of Sydney Park being taken over by WestConnex.

The Hon. DANIEL MOOKHEY: Bottom part, not bottom half.

The Hon. SHAYNE MALLARD: Bottom part. That area and the area on the adjoining road, which was assumed to be part of Sydney Park, was in fact an RMS or Roads and Traffic Authority road reserve which the Government took back. Is that right?

Ms MOORE: My understanding from the figures I have got is that we have lost 19,294 square metres of Sydney Park and we have lost 230 trees.

The Hon. SHAYNE MALLARD: I have got that. That would include this area that was government land?

Ms MOORE: As well as those paper barks.

Mr WOODBURY: No, that does not include the 12 metres on Euston Road, which was already a future road reserve.

The Hon. SHAYNE MALLARD: Lake 5 that Mr Mookhey was talking about was on RMS land?

Mr WOODBURY: Part, and part of it is part of the park. There has been compulsory acquisition under leasehold from RMS for part of the park.

Ms MOORE: For part of the park.

The Hon. SHAYNE MALLARD: Do you know if this new open space, whether or not you like it, is going to be transferred to the ownership of the City of Sydney after the completion of WestConnex?

Mr WOODBURY: The 14 hectares has been quoted in previous news releases. That includes everything under the spaghetti junction and most of that will be unusable land—

Ms MOORE: It will be incredibly unhealthy dangerous land.

Mr WOODBURY: —and will be fenced off from public use.

The Hon. SHAYNE MALLARD: It is not ideal, but the flyovers—

[*Interruption*]

The Hon. SHAYNE MALLARD: Mr Chair, I am not going to ask questions if I am going to be ridiculed by the audience.

The CHAIR: I did ask people in the gallery earlier not to interrupt the witnesses giving evidence or those asking questions.

The Hon. Dr PETER PHELPS: To the point of order: Mr Chair, how many more interruptions are you going to allow before you will clear the gallery?

The CHAIR: I have not made a list of them.

The Hon. SHAYNE MALLARD: The flyovers at Darling Harbour still allow for an interesting public space in Darling Harbour. The rail line over Woolloomooloo still allows—the city has done a lot of work there—an interesting public space there. It is not the end of the world. That is all I am putting to you. I am going to move on to something else.

Ms MOORE: Can I respond? What we are looking at here, which is 27 hectares, is not just a rail line like Woolloomooloo or one line like Darling Harbour. This is a huge area carrying polluting trucks and cars right in the heart of the city adjacent to this incredibly important parkland. That is what we are looking at here. I do not think you can compare it with those other examples.

The Hon. SHAYNE MALLARD: If this inquiry can do anything, it can try to give guidance to government about improving the outcome for residents.

Ms MOORE: That is in recommendation B?

The Hon. SHAYNE MALLARD: Yes. Recommendation B on page 5 of your submission states:

Roads and Maritime Services commit to community consultation, and funding of, local traffic mitigation measures along the route of the reduced Stage 3 ...

You and I have experience of the Cross City Tunnel and Eastern Distributor and the impacts on the local street network. Relate to us how that was done in terms of the street changes that were made to reduce the rat runners and give amenity return for what was a big disruption to the community at the time. Going back to your days as the member for Bligh, can you tell us about that?

Ms MOORE: Particularly with the Eastern Distributor there were regular weekly meetings with government representatives. Chesterman was the consultant doing the work for the then government. As a result of the distributor going through South Dowling Street areas of it were lowered and there was substantial tree planting. Whilst we lost a part of Moore Park we got substantial planting in the park. We were able to ensure that Crown Street and Bourke Street became two-way and we had a 40-kilometre zone introduced into the neighbourhood. Yes, we achieved a great deal over a period of time with government representatives working closely with the community. That has not happened now at all. There has been no consultation. The difference is chalk and cheese in terms of getting outcomes of benefit for the community compared with the work on the Eastern Distributor.

The Hon. SHAYNE MALLARD: I am interested in that observation of yours.

Ms MOORE: We have listed here we believe it should be stopped and we have said that.

The Hon. SHAYNE MALLARD: That is not going to happen.

Ms MOORE: If it cannot be, these are the things you need to do.

The Hon. SHAYNE MALLARD: That is what I want to look at. We have had two days of hearings.

The Hon. GREG DONNELLY: Three.

The Hon. SHAYNE MALLARD: Today is the third. I meant two days up to today. We have heard from resident groups from all over the area, not just the city. A common theme is the concern for local mitigation and local benefits. I would be keen to emphasise that. Are you saying on oath that there is no consultation with the developers about mitigation for local streets or any public benefit as a result of the construction?

The Hon. DANIEL MOOKHEY: And/or with the Government, not just with the developers.

The Hon. SHAYNE MALLARD: Government is the same.

The Hon. TREVOR KHAN: No, it is not.

Ms MOORE: What I can say on oath is that the approach is quite different. City staff have had some meetings but we were talking about weekly consultations with me as the local member, with Deirdre Grusovin as the local member, with the South Sydney Council at the time, with the consultants from government, with council's transport staff. That approach has not happened here.

The Hon. SHAYNE MALLARD: I appreciate that.

The CHAIR: Just to sum up your evidence. We have heard from other local councils that are very upset about the WestConnex project and the lack of consultation with local councils. You say there has been a lack of consultation with the City of Sydney as well, even though you are a major part of it, probably the largest part?

Ms MOORE: I want to be quite clear about this. As I said, it is quite different from the process that we went through with the Eastern Distributor and the community then.

Mr WOODBURY: We have had a number of meetings but not regular meetings. They are generally with RMS, not with the contractor of the Sydney Motorway Corporation.

Ms MOORE: But this is just for council staff.

Mr WOODBURY: Yes, with council staff. Usually the situation is that we are trying to get a good outcome from what we are faced with. We are told that the contractors have re-signed and it would require a major variation to the contract so therefore the options we would like to consider usually fall away.

The Hon. DANIEL MOOKHEY: Is there any forum that allows you to negotiate?

Ms MOORE: No.

The Hon. DANIEL MOOKHEY: At all?

Ms MOORE: No. One of the things that is really worrying us too is this continuous flow intersection at Anzac Parade that we described earlier. Together with the mayors of Woollahra, Randwick, Waverley and Bayside we have sought a meeting with the State Minister to have a discussion with us as elected representatives. We represent one million people and we are very much opposed to this project. We would like to meet with her and so far she has not responded to correspondence and she has not agreed to meet.

The Hon. DANIEL MOOKHEY: You are referring to the roads Minister, not the Minister for WestConnex?

Ms MOORE: This is WestConnex.

The Hon. TREVOR KHAN: It is the roads Minister.

The Hon. DANIEL MOOKHEY: These are complex ministerial arrangements we are trying to figure out.

Ms MOORE: The roads Minister.

The CHAIR: Thank you for appearing before the Committee today and for your excellent submission.

Ms MOORE: I hope it gets an outcome.

The CHAIR: The Committee will give serious consideration to all of those matters.

(The witnesses withdrew)

The Hon. Dr PETER PHELPS: Point of order—

The CHAIR: I repeat: Members of the audience who want to clap or boo should restrain themselves from doing so during this public inquiry.

JOHN SHEEHAN, Chairman, Desane Group Holdings Limited, sworn and examined

The CHAIR: Would you like to make a brief opening statement?

Professor SHEEHAN: Not really—I am here to answer any questions today. There has been a significant submission by my company.

The CHAIR: Thank you for your consideration. I am sure the Committee members appreciate that.

The Hon. TREVOR KHAN: I am sorry—the professor said something in his response about there being a significant—

Professor SHEEHAN: I said we have placed a significant submission.

The Hon. TREVOR KHAN: Thank you.

The Hon. GREG DONNELLY: I refer you to your submission, which is No. 383 to this inquiry. Would you like to provide the Committee with an update on any of the information contained in that submission and where things sit at the moment?

Professor SHEEHAN: No. The litigation has finished. There was an appeal by the State of New South Wales and it was upheld by the Court of Appeal. The matter has ceased at that point in litigation.

The Hon. GREG DONNELLY: I understand that the original offer made to the company for this particular site, which is located at 68 to 72 Lilyfield Road, Rozelle, was \$18.4 million?

Professor SHEEHAN: That is correct.

The Hon. GREG DONNELLY: I understand further that Desane Group Holdings Limited [DGH] has now agreed to sell the property to Roads and Maritime Services for \$78 million plus GST. Is that correct?

Professor SHEEHAN: That is correct.

The Hon. GREG DONNELLY: Has the sale to RMS been completed, or is it in the throes of being completed?

Professor SHEEHAN: Contracts have been exchanged but it has not yet been completed.

The Hon. GREG DONNELLY: Can you give the Committee a summary of how the whole matter has resolved itself in this way? Other witnesses to this inquiry have raised concerns about the way in which they were treated with respect to their properties—in many instances their properties were much smaller residential properties—and also an insight into how we started off at \$18.4 million and ended up at \$78 million?

Professor SHEEHAN: What can I say? I refer you to page 7 of our submission. In June 2015 we lodged a planning proposal with the Department of Planning for essentially the residential redevelopment of our site, which is not only industrial but also the head office of the public company. That was essentially an amendment of the regional environmental plans [REP], now State environmental planning policies [SEPP]. As a result of that I can only assume that the valuer for RMS valued the property on the basis of a strictly industrial value, which was clearly shown to be wrong in terms of where we stood because we have had—as we have said in the submission—completely independent valuations done by two senior valuers in the profession who valued the property well in excess of that. The question you asked me was in relation to the process.

As I have said to the Australian Stock Exchange [ASX] in a press release, this company holds property and does redevelopment of property. We are not a firm that makes its business out of going to litigation. Consequently, as I did say, after the first case it was decided in our favour in front of Justice Hammerschlag. It was a bit of a David and Goliath battle because we are only a relatively small public company and we just happened to have a certain amount of expertise and skill set, both within the company and with myself as the chairman, and we were able to zero in, I suppose, on what we felt was an issue in terms of the capacity of RMS to put forward a proposed acquisition notice [PEN].

When they were successful with their appeal, the State of New South Wales—again I come back to what I said before about David and Goliath—we decided as a board and we had been thinking about it for some time, pretty obviously, about what would happen if the appeal went against us, and in any event if the appeal had been in our favour, would we go any further—for example, seeking special leave from the High Court. That is something, as I said as a chairman publically, that was in our interests to do on behalf of the shareholders, and we were obviously negotiating with RMS about a possible private treaty sale.

The Hon. DANIEL MOOKHEY: When you say that you lodged a variation to your local environmental plan [LEP] to change from industrial to mixed use, was that known to RMS at the time that you had lodged that application?

Professor SHEEHAN: With respect it was not a variation of the LEP; it was an amendment to the SEPP 26. That is a zoning in line with what is called The Bays Precinct Sydney Transformation Plan. We were seeking to have the uses moved from a mixed use to something more in line with The Bays Precinct.

The Hon. DANIEL MOOKHEY: But it was known to RMS that you had made that attempt?

Professor SHEEHAN: I do not know, quite frankly. In answer to your question, in January I spent some days sitting in the body of a court in front of Justice Robb seeing discovery of the documents from the Government. I cannot really say offhand, out of the thousands and thousands of documents, that were there whether we would have actually found that out. From a lot of the information that was there in front of Justice Hammerschlag in the court case it was very clear that it was information that was going to be held back on commercial-in-confidence or whatever. We had to respect that decision of the judge. It is very difficult when you are a company holding private property to find out exactly what the Government knows. I have to say, wearing my hat as the chairman of the company, Justice Hammerschlag could not understand, within his decision in the first case, what exactly they wanted the property for. We believed that it was going to be used by placing tunnels underneath it, for which there was no issue for compensation under the legislation.

But we could not understand why they needed the surface. We offered, as we said in the press and say here, to lease the building to them because, as I said before, it is a public company. It is not only an industrial property, and the warehousing underneath it would have suited, we believe, the Sydney Motorway Corporation or whoever the constructing authorities would be to put machinery there. At the same time, it is a very nice office, as you would expect for a small public company. We could not quite understand why they needed to acquire the property, and I say today that we still do not really understand. The State put forward an argument to the Court of Appeal saying that it could do whatever it wanted. Essentially, the submission that was made by the barrister on behalf of the State in the Court of Appeal was that an organisation such as RMS can even land bank. I have no comment on that.

The Hon. DANIEL MOOKHEY: What costs has your company incurred to engage with the litigation process and the negotiation process to date? How much money have you had to spend dealing with RMS?

Professor SHEEHAN: I would rather not answer that question. I think it is within the confines of the company itself.

The Hon. DANIEL MOOKHEY: Would you describe it as being significant?

Professor SHEEHAN: Yes, it is. It certainly was significant. I can tell you that it went into the millions of dollars. We then had to contemplate whether or not it was in the interests of the shareholders to continue with litigation, as I said before, or whether it would be more advantageous to protect the assets of the company—as we have to under corporation laws—and start to speak informally to RMS about the likelihood of, perhaps, a private sale.

The Hon. DANIEL MOOKHEY: Professor Sheehan, if you, as the chair of a publicly listed company, had to spend millions of dollars in significant litigation against RMS and at the end of it you still do not know why RMS wanted your property, how can a resident engage with RMS with any element of hope that it will be a worthwhile endeavour on their part?

Professor SHEEHAN: It is an interesting question. We just happened to be—I suppose you could argue from the point of view of RMS—the wrong company to try to do compulsory acquisition for because we had expertise, as I said, and the financial capacity to fight them and take them to the Supreme Court. There is an imbalance in power between acquiring authorities. If I can be somewhat indulgent and speak within a broader area of my own academic expertise in compensation, one of the clear issues that arises all the time is the imbalance in power between State agencies and private individuals when there is compulsory acquisition. It does not matter whether you are a large public company, a small public company, a private company, a wealthy private individual or an impecunious private individual, there is an imbalance in power. In court, on the second day I was there, I counted that there were 30 people on the Government's side and we had two barristers, two solicitors, myself and a couple of our staff. I am quite certain that Justice Hammerschlag would have been patently aware of the imbalance in numbers.

The Hon. DANIEL MOOKHEY: But you would agree that it is a perverse outcome that your ability to get justice from RMS really depends on how strong you are in your ability to contest it?

Professor SHEEHAN: Yes.

The Hon. DANIEL MOOKHEY: Moving on, you say your company deemed that it was in the best interests of your shareholders to negotiate the sale of the property. When did you make that decision and what attitude did you find from RMS in its willingness to negotiate with you early enough in the dispute to avoid significant costs on its side, which the taxpayers had to pick up?

Professor SHEEHAN: I cannot answer for RMS, but in terms of our company, we had said early on, in both press releases and in interviews with journalists, that it was never the wish of our company to be involved in litigation. It is not a productive thing for us to do. We hold property and we develop property. During the process of the appeal we were, as a board, mulling over—as you would—the prospects of entering into a sale of the property. It became obvious to us that even if we had won and had gone to the High Court—assuming that RMS was absolutely adamant that it wanted to take the property for whatever purpose it needed to take it for—we would probably be talking about this in another 12 months time.

The Hon. DANIEL MOOKHEY: Was RMS willing to negotiate over its initial \$18 million valuation or did you have to sue before it was prepared to talk?

Professor SHEEHAN: No, it was just negotiations.

The Hon. DANIEL MOOKHEY: It started with \$18 million and ended up paying \$78 million for it, which, from the perspective of the taxpayers, does not sound like a great deal—no disrespect to your shareholders. Are you able to explain or give us any insight into how it evolved from its side from taxpayers forking out \$18 million to \$78 million? Was that \$18 million always a fictional number that it was trying to stand over you to get that, or was it somewhere in between?

Professor SHEEHAN: Again, I cannot get into the mind of RMS, but it became obvious to us that the opening figure was purely that—an opening figure. When calmer heads looked at the true value of the property—for example, it was not an amendment of an LEP. It is a common error of people in any part of looking at property to simply go to the screen and see if someone has lodged an amendment to an LEP. With this one, if you had done that you would not have seen an amendment to the LEP in Leichhardt because we were not seeking an amendment to the LEP in Leichhardt; we were seeking a change of the zoning and we were dealing directly with the Department of Planning and Environment, which was appropriate and correct.

Ms CATE FAEHRMANN: This morning we heard from the WestConnex CEO who, among other things, was telling us about the green space that the construction of WestConnex would be providing in the inner west. I think there was a figure of an additional 10 hectares. Is that correct?

Professor SHEEHAN: It has been mentioned a number of times in the press, yes.

Ms CATE FAEHRMANN: I understand that you are a certified practising valuer who specialises in the area of compulsory acquisition law and practice. Do you know if it is the case that some of the 10 hectares of green space may actually be created by compulsorily acquired properties?

Professor SHEEHAN: It is a good question—I do not need to congratulate you on it. There is an issue that weighed on the board and that is that, if there was only going to be tunnels under our property, why would they need to acquire the surface? The whole discussion that emerged in the first case in the court in front of Justice Hammerschlag was whether it was an appropriate exercise for RMS to acquire land on the surface to create a parkland. In some respects, that was never really resolved. I point out that the Court of Appeal said that quite frankly the State can more or less do whatever it wants. An organisation like RMS has a very broad remit and can certainly acquire land that it might need. One of the interesting issues raised in the transcript from the barrister acting on behalf of the Crown Noel Hutley is that there is a very broad remit for organisations like RMS. The problem with acquiring land for peripheral uses associated with infrastructure—perhaps this might be of broader use to the Committee; I am trying to raise it to a slightly higher level than our own property.

When the Government introduced State significant infrastructure as a classification under the Environmental Planning and Assessment Act 1979 one of the difficulties it raised was if, for example, a chairman wanted to put a significant increase on the footprint of his house he has to go to the local council with detailed plans, engineering plans, swatches about the colours and all sorts of things. When the extension of WestConnex stage 3 was approved recently the plan was little more—from what I could make out—than the architectural drawings that were put forward to Justice Hammerschlag earlier in the year. The reason for that is that State significant infrastructure projects do not fall under the category of having to have very, very definite information provided.

I have said to some of my students in property law that this particular class of proposed development—State significant infrastructure—now has furry edges around it. I suspect—not really being someone who believes in conspiracy theories—that if there are going to be furry edges around these major, significant projects and they

do not have a great level of detail about the edges of it, it is very easy to acquire more land than what is needed. There has been a lot of discussion in the Victorian Government recently—and I know there has been discussion in the Department of Planning and Environment—about the whole idea of value capture. I heard with interest the previous speakers speaking about the different projects going on in and around the city. It is fairly obvious that some of those projects are going to result in more land, if you accept what I am saying about State significant infrastructure projects having a larger and a soft edge around them. It is very easy for organisations to acquire more land legitimately and legally. In fact, Noel Hutley in his submission to the appeal court pointed out that you can simply land bank if you were someone like RMS.

Later on, would you decide you do not really need the land—10 years later, "Look, we really did not need all of that land, surprise, surprise, we just might get it rezoned. We will have an amendment done to the"—would I say?—"Regional Environmental Plan [REP] and we might just allow it to be mixed-use or residential or something like that and we stick it up for sale". That is very attractive to government. It does not matter whether it is Victorian Government, New South Wales Government or even the Commonwealth Government. It is a way of offsetting. But the caveat with that is it ought not to be the acquisition on unfair conditions of private property. It has to be properly compensated. The previous questioner asked me about that difference in value. I would like to think that the calmer heads within whatever body it was—whether it was Crown Solicitor's or RMS, or whatever else, had obviously understood that there had been an error made, that there was not a local environment plan [LEP] being applied for—for the Leichhardt LEP—that if they had gone to another form of rezoning, which is an amendment to the REP, they would have found out there was an application in for a year and a half, whatever, before the RMS even came near us.

Ms CATE FAEHRMANN: Thank you, Professor Sheehan.

Professor SHEEHAN: It is my pleasure.

Ms CATE FAEHRMANN: I was very much hoping you would expand on all of that and to go into the broader issue of property acquisitions, because you have included in your extensive submission, not just obviously the impact on you but the broader impact of the WestConnex project. Why do you think there were so many homeowners who seemed to have had evaluation for their properties that was under market value? Why do think that occurred?

Professor SHEEHAN: I cannot answer the mind of RMS. What I do know is that when the next step occurs, when the proposed acquisition notice [PAN] is issued, the Valuer General, who I note will be speaking after me after lunch, is required under the statutory compensation assessment he has to do to undertake—under these 2016 amendments and the administrative arrangements that have occurred—a very independent assessment of compensation, which is quite independent, whatever the mindset might be of the valuer and the instructions the valuer gets from any acquiring authority. Secondly, he has to, under these new administrative arrangements, which, as I said, were brought out in 2016, provide that information both to the dispossessed owner and also to cause exchanges of reports and information between the acquiring authority and the dispossessed owner.

I can imagine that is causing a great deal of grief to some of the infrastructure agencies who have traditionally come in and said, "Look, we are acquiring your property". I think we have all seen some of the stuff on the television in recent years, where you have seen elderly people in Haberfield crying when someone has come to the door. In fairness to the previous Premier, Premier Baird moved to have these changes made. I went along when Minister Perrottet it was the Minister responsible for the legislation. We put some submissions forward—for example, the section 10 (a) (2) amends—which introduced the six months negotiation period. Now, the whole idea—if you read the second reading speech, the Minister is saying that we need people to have some time frame because it is not something that they do. Anyone who buys property, it is a very, very rare event for them for the State or the Commonwealth to come in and take your property compulsorily. It is extremely rare. Consequently, the average person is not skilled.

As I said before, we just happen to be a small public company that happened to have an unusual chairman—in many ways, someone might argue. But that is a particular benefit for us. But those particular issues where someone gets a valuation presented to them by an acquiring authority, I would quite believe that some people would say, "I have got to accept this". But of course, the changes that were made in fairness to the Government in 2016 meant that you did not have to make any decisions until, basically, the exploration of the six months. As we said in the submission, there is this profiling that goes on. We saw that. It came out of the discovery and the documents. That worried me a lot because the whole idea that the Baird Government had, which was to introduce a period where there would be calm thoughts and discussions between the acquiring authority and the potentially dispossessed owner, was to come to an agreement.

When the 1991 Land Acquisition (Just Terms Compensation) Act was brought in, Wal Murray, the then Deputy Premier, in his second reading speech said that we want to introduce an Act to Parliament, getting rid of

all this stuff—Public Works Act 1912 and all of those—which encouraged people to not have to go through a compulsory acquisition process and to come to it by an agreement. Obviously, it did not happen because between 1997 and 2016, you can argue towards the end, it became very obvious to the then government that there was a problem, because people were not being able to enter into that negotiation process. The problem we found, of course, which is in our submission, is that that profiling goes low risk, medium risk and high risk. I am concerned about that because that means that a company like ours—

The Hon. DANIEL MOOKHEY: Low, medium and high risk of what?

Professor SHEEHAN: The individuals they were going to be dealing with in the negotiation period.

The Hon. DANIEL MOOKHEY: Right, so they are profiling.

Professor SHEEHAN: Yes, they are profiling. I am concerned about that because the second reading speech by the Minister makes no mention of looking at the classes of people whose properties you are going to take and saying, basically, "Low risk." Does that mean easy target? Or high risk, we are going to do nothing? As we said through our own experience for six months, there has been very little interaction. We basically had people turning up at the door, saying, "We are here representing the acquiring authority", and there was a minimum attempt to comply with the six-month period, and that was because I am certain they are moving us towards litigation, which is something we never wanted. But if you were a small owner in somewhere like St Peters or Haberfield, whatever, and it is your primary asset, it is very difficult. Then you find out you have been put in the low-risk category, and what does that mean? That is something which, as we have said in the recommendations, needs to be closely looked at.

The CHAIR: Thank you again for coming in and sadly, for you, to have the firsthand experience of this whole dilemma. I still remember the debate on the legislation of the Land Acquisition (Just Terms Compensation) Act, because I was very much involved with that with some of the Labor members, because of the complaints we were getting about acquisition and how unfair it had been. That is why the legislation had in its title "just terms compensation". It had to be fair and just for that particular person. You mentioned there were 40 or 30 people on the other side of the court?

Professor SHEEHAN: I counted approximately 30 people sitting on the Government. That was Sydney Motorway Corporation's—

The CHAIR: How many Queen's Counsels were there and others?

Professor SHEEHAN: I do not know but there would have been a significant number of barristers and juniors, I think, on the taxpayers' side.

The CHAIR: We should try and find out from the Government how much it cost the Government to defend that case against just one small company?

Professor SHEEHAN: True.

The CHAIR: We thank you again for your submission and particularly the way you have drafted it with recommendations. We will certainly pay close attention to those recommendations, which have come out of your experience and are very practical. Each one seems to me on the surface to be a very important recommendation that we will certainly give serious consideration to in our final report and recommendations. Is there anything else you wanted to add to your submission?

Professor SHEEHAN: No, I appreciate your questions. Thank you.

The Hon. Dr PETER PHELPS: Between the time of your submission there was the Court of Appeal decision.

Professor SHEEHAN: Yes.

The Hon. Dr PETER PHELPS: Did the Court of Appeal decision overturn Hammerschlag's decision in its entirety?

Professor SHEEHAN: No, it did not, because one of the peculiarities of the Court of Appeal decision—and I am not giving any legal advice here, let me say; I know there is parliamentary privilege—was that it narrowed onto specifically Desane's property in Lilyfield Road. Then they went through the process of whether or not there would have been a proper public purpose for the acquisition. But the Court of Appeal did leave open—I think it might be clause 113 of the Court of Appeal decision but I can take that on notice and give the secretariat a reference to that—where they said but if there had only been a partial acquisition, the PAN actually has to have a public purpose because clearly if you have got only half your property taken, the rest of the property, for the valuer to come along—the valuer for RMS for example or the Valuer General, or even the court for that matter—they have

to know the potential use on the Government acquired land so you can work out the injurious effect upon the rest of the land.

The Hon. Dr PETER PHELPS: The residual amount.

Professor SHEEHAN: The residual land but the Court of Appeal actually highlighted—they basically said they did not have to address that because we totally owned the property and there was no adjunct property, no adjoining property but to that extent they reversed Justice Hammerschlag's decision by saying that really in the six-month period all the correspondence provided to the potentially dispossessed owner would enable he or she or the company to understand what the use is. Well my comment on that is that we spent many, many weeks, together with our lawyers, going through vast amounts of information that was begrudgingly provided because there is Cabinet-in-confidence. We even saw one letter, which was from our company to—I cannot remember who it was—stamped "Cabinet-in-confidence". It was our letter that was stamped "Cabinet-in-confidence". It gets a bit ridiculous when you think about that. But the Court of Appeal in its wisdom—and I certainly do not criticise it—had decided on the basis of the facts provided to it that an owner in the six months, the 10A (2) period, would ascertain the potential use of the property. I have great reservations about that.

The Hon. Dr PETER PHELPS: Ultimately would you say Desane is happy with the final settlement?

Professor SHEEHAN: We would have rather not had our property acquired by them even though we willingly entered into a private treaty sale to them. The company's intention when we bought that property 20 years ago and built it both as income earning and also as the head office of the company was not to ultimately sell it to the Government. So, in answer to your question, I suppose it is something that we really did not have any opportunity to reverse the intention. It was clear that RMS, irrespective of what happened, wanted that property. As I said to one of the earlier questioners, the reality was that even if we had gone to the High Court or if RMS had gone to the High Court and the decision had been, say, in our favour reversing the Court of Appeal's decision, reinstating Justice Hammerschlag's decision, I mean it is in the capacity of RMS to get a new PAN and we would have started the whole process all over again. As I said earlier, that is not something we do as business.

The Hon. Dr PETER PHELPS: In relation to compulsory acquisitions, you would recognise that at times compulsory acquisitions of privately owned land are needed on the part of government?

Professor SHEEHAN: Absolutely.

The Hon. Dr PETER PHELPS: The key question in that circumstance is: Is fair and just compensation paid?

Professor SHEEHAN: Yes.

The Hon. Dr PETER PHELPS: New South Wales does not have the comparable section 51 clause, does it?

Professor SHEEHAN: No, it does not. Can I just interpose? I always had difficulty with the words "Land Acquisition (Just Terms Compensation) Act" because if it was a private organisation putting the words "just terms" you would say, "Gee whiz, this is misleading conduct."

The Hon. Dr PETER PHELPS: Of course the Government at any time can move an Act of Parliament which overrides that because it is not an entrenched provision; it is just an ordinary Act of Parliament.

Professor SHEEHAN: Absolutely. For my sins, I was manager of sales and acquisitions many years ago before I went into academia. One of my sins was acquiring property for the eastern suburbs railway. Unlike the chairman, I do have grey hair. We were acquiring land 10 years after, under the City and Suburban Electric Railways Act 1967, in Charing Cross at 10-year-old values.

The Hon. Dr PETER PHELPS: In relation to the possibility of government allocating land for various purposes and then subsequently selling it off, is that not what happened in 1977 when the land corridor for the M4 link from Piermont to Strathfield had been reserved and then was sold off for property development at that stage? So it is not a new thing.

Professor SHEEHAN: Yes. No, it is not.

The CHAIR: By the Wran Government?

The Hon. Dr PETER PHELPS: The Wran Government in 1977, yes.

Professor SHEEHAN: There have been a lot of properties, even going back many years when I was manager of sales and acquisitions for the then Department of Railways. We would often not intentionally acquire more land but sometimes it would be, "We had better acquire all of that property for the power station because

we want to be certain exactly what it was." One of the criticisms the valuation profession has of engineers is that they always leave the property bit to the end and then all of a sudden they turn around and say "Look, can you organise all those properties in the next six weeks?" "No".

The Hon. Dr PETER PHELPS: In relation to the categorisation of various people who are having their land acquired from them is it not fair to say that, and we will use the Haberfield example, an elderly person living by themselves in a four-bedroom Haberfield home who ultimately wants to down size, move out and the opportunity for them to get, in most cases, above market rates for their property is very attractive. Others on the other end of the scale, who might be called *The Castle* sort of home owners who, irrespective of the amount offered, are simply unwilling to budge. If they are required to offer a position as to what sort of acquisition costs they would accept, they markedly increase it above market rates that there could be no reasonable acquisition. Is it fair to say that people do fall into a spectrum in relation to their willingness to sell?

Professor SHEEHAN: As I said earlier, the compulsory acquisition of private property is a rare event that happens to a citizen and that is exactly why the six States and the Commonwealth and the two Territories have the ability to do compulsory acquisition. Quite often a land owner says, "I simply do not want to sell. I do not care what you want to use this for, I do not want to sell." But the State has a broader public need to acquire the property. The problem though is that in that process of the six months which was introduced, I believe very wisely, by the Baird Government in those amendments—I hope I am correct it was the Baird Government?

The Hon. Dr PETER PHELPS: Yes it was.

The Hon. TREVOR KHAN: I do not think there was a lot of debate on it in the Parliament.

Professor SHEEHAN: I think it became accepted there needed to be a period—

The Hon. DANIEL MOOKHEY: It was the Russell review.

The Hon. TREVOR KHAN: Yes, indeed.

Professor SHEEHAN: It came out of the Russell review, that is right. There definitely needed to be a break between "Hello, I'm from the acquiring authority", and, "Here's your offer and a valuer will come in two weeks time." People who were very unfamiliar with that process, which is the average person who is not involved in some profession that is maybe law or architecture or planning, often people think: I've got this letter from them. It is \$18 million. I have to take it. Of course, if you do not agree, and the letter says, which is appropriate, "If you don't agree we will pay some amount of money for you to gain legal advice or valuation advice". In the event there is a standard format attached behind it which advises you what your rights are. Of course, it has the magic words there, "You have a right to go to the Land and Environment Court", which, of course, strikes fear in a lot of ordinary people's minds. I am trying to answer your question. I apologise for going around and about.

The Hon. Dr PETER PHELPS: Is there a foreseeable step that if there is a concern about the tendered price from the Government there could be an independent administrative arrangement before you actually go to court? It is not necessarily an arbitration but a conciliation process of an administrative nature before that point?

Professor SHEEHAN: I can shortcut your question in the sense that with the Australian Property Institute, the valuer's institute, I have been involved for the past couple of years in looking at the possible harmonisation of the compensation provisions in the six States, two Territories and the Commonwealth. I had a meeting about three years ago or 2½ years with the then Valuer General in Tasmania. I say with great respect, it is not in our submission, but I am happy to mention this to you. In Tasmania, they have a process whereby the acquiring authority simply advises the owner that there is going to be, for example, a six-month period of negotiations and, as a result of which in the case of Tasmania—I do not know if it has six months—the Valuer General, in his role as a State resumption officer, comes in just like our Valuer General and does an assessment of compensation upfront. There is no valuer employed by the acquiring authority and that stops this business of \$18 million and then a valuation later on when someone gets better details. Personally—I am not saying it is the view of the company—my view as an academic and a valuer, I think that is an excellent system in Tasmania. It removes one chance of someone not being fully appraised—

The Hon. Dr PETER PHELPS: And one side has a positive advantage in reducing the amount to the minimum that it has to actually pay.

Professor SHEEHAN: Exactly. Whether the acquiring authorities in Tasmania are happy with that I do not know and I cannot answer for them, but personally I do like the system because it removes one possible step there which I think adds a lot of angst to the person whose property is being acquired. The current Valuer General, Simon Gilkes—I know he is on leave at the moment because he is ill, but I know that he has been assiduous in putting in administrative arrangements that came with the 2016 amendments.

The Hon. Dr PETER PHELPS: Did the Valuer General do any work in relation to Desane's property?

Professor SHEEHAN: No, because we never went that far, of course. The PAN was struck out.

The CHAIR: You mentioned earlier that you were a bit puzzled why, if the Government was putting tunnels under your property, it was insisting on acquiring the land and removing your head office. Was there any discussion about subsidence and possible damage to the land by the tunnel?

Professor SHEEHAN: There is a provision in the legislation if there is any damage, dilapidation or whatever to any improvements on the surface there is compensation which is triggered for that to repair the buildings. But we had had some independent advice early on when we offered to lease the building—and it is in our submission—to RMS because we understood they might have wanted it and we think they wanted it as a head office and as a construction depot. We still do not know, really. But if they wanted that we wanted to be certain that, if it could be then given back to us as the landlord in five or seven years time or whatever, the tunnels would be deep enough and that the rock was good enough. We understood it was in sandstone and it was very stable. But, yes, if there would have been any damage done, but that is covered in the Act at the moment.

The Hon. Dr PETER PHELPS: Which is why you get pre-build reports done.

Professor SHEEHAN: Exactly.

The CHAIR: Thank you again for appearing at our inquiry and for your submission. You are the only witness coming from a unique position. It was probably sad for you when the Government was compulsorily acquiring your land and you have had all those headaches and trouble with court cases and so on. It is a very stressful situation.

Professor SHEEHAN: It is.

The CHAIR: We thank you for coming and sharing your story with us.

Professor SHEEHAN: It is my pleasure.

(The witness withdrew)

(Luncheon adjournment)

MICHAEL PARKER, Acting Valuer General, Office of the Valuer General, affirmed and examined

PAUL GOLDSMITH, Principal Valuer—Compensation, Valuation Services, Property NSW, affirmed and examined

The CHAIR: I welcome the next witnesses, Michael Parker and Paul Goldsmith. Does either of you wish to make a short opening statement?

Mr PARKER: I have an opening statement, Chair.

The CHAIR: Thank you. Proceed.

Mr PARKER: Thank you for the opportunity to make this opening statement. The Valuer General apologises for not being able to attend in person. I am the Acting Valuer General, and I have with me today Paul Goldsmith, who is the Principal Valuer—Compensation for Property NSW. Firstly, it may assist the Committee if I provide some information about the role of the Valuer General and the New South Wales valuations system. The Valuer General is an independent statutory officer appointed by the Governor of New South Wales to oversee the State's land valuation system. The Valuer General is responsible for providing independent and impartial valuations for use by councils and State Government for levying rates and taxes and for ensuring landholders are fairly compensated when land is compulsorily acquired by government. The independence of the Valuer General is important as the Valuer General is required to determine the amount of compensation an acquiring authority must pay a landowner whose land is compulsorily acquired. The Valuer General's role in compulsory acquisition is limited to matters where the landowner and acquiring authority cannot reach agreement by negotiation and the acquiring authority compulsorily acquires the property. The Valuer General sets the standards and policies for the valuation system to deliver a system that is fair and transparent, has the highest professional standards and is focused on meeting the needs of our customers.

Valuation Services, which is a business unit of Property NSW, operates the valuation system on behalf of the Valuer General. Valuation Services' responsibilities include the quality assurance of the valuations for the determination of compensation, providing customer service to landholders and acquiring authorities, and the issue of determinations of compensation on behalf of the Valuer General. The majority of valuations are outsourced by Valuation Services to external valuation contractors. Since 2013, following recommendations from the Joint Standing Committee on the Office of the Valuer General and the Government's response in 2016 to reports of Mr Russell and Mr Pratt concerning compulsory acquisition, the Valuer General introduced a number of improvements to the determination of compensation process. These focus on procedural fairness, transparency and customer service, and include the following: all information used to make the determination of compensation is shared with the owner and the acquiring authority; a preliminary valuation report is provided to both the owner and the acquiring authority for consideration before the determination is finalised; more opportunities have been introduced for owners to provide information, ask questions and raise concerns; conferences are available at any time during the process to discuss issues and concerns and, where possible, attempt to settle any disagreements over matters of fact prior to the determination being made.

Information about the lands acquisition process is available in plain English and also provided in 10 different languages. There is also the appointment of a coordinator as a single point of contact for each owner. The Valuer General's policies provide guidance to valuers in determining compensation. When determining compensation, valuers must consider the market value of the land but also the value of other factors including special value to the person, loss attributable to disturbance and disadvantage due to relocation. The Valuer General also requires that where there is any reasonable doubt, it should be resolved in favour of the owner. Since 2016 the Valuer General directly surveys all landowners following the determination of compensation. The survey aims to monitor and report on the quality of service provided and identify where any improvements could be made. A total of 13 surveys have been returned. Although the response rate limits analysis, each survey is individually considered by the Office of the Valuer General. I hope this information is of assistance for your inquiry.

The CHAIR: Thank you. It has been very helpful.

Ms CATE FAEHRMANN: Could we please have that statement tabled, Chair?

The CHAIR: Yes. Could you supply a copy of that statement to the secretariat?

Mr PARKER: No problem.

Document tabled.

The Hon. TREVOR KHAN: Forensic cross-examination, is it?

Ms CATE FAEHRMANN: We all appreciate having that.

The Hon. DANIEL MOOKHEY: Thank you for your appearance today, Mr Parker and Mr Goldsmith. Just to be clear, RMS is required under the concession agreements to undertake all acquisitions before they are handed on to the contractor, or SMC in this regard. Do you do the acquisitions? Do you run the acquisition process for RMS?

Mr PARKER: No, the acquiring authorities run the acquisition process. The Valuer General's role is when the inquiring authority and the owner cannot reach agreement through negotiation.

The Hon. DANIEL MOOKHEY: Sorry, that was more for Mr Goldsmith than the Valuer General. Does Property NSW undertake the acquisition process, day to day, or is that RMS?

Mr GOLDSMITH: Absolutely not. That is RMS. They manage the acquisition process from start to finish. The Valuer General's role is quite narrow. As Mr Parker said, when RMS and a landowner cannot reach agreement is when they compulsorily acquire land. Then we step in and do an independent determination of compensation.

The Hon. DANIEL MOOKHEY: How many have you done?

Mr GOLDSMITH: One hundred and forty-nine.

The Hon. DANIEL MOOKHEY: Over the life of the whole WestConnex project?

Mr GOLDSMITH: Yes, that is correct.

The Hon. DANIEL MOOKHEY: By stage, are you able to give us the figures?

Mr GOLDSMITH: I can I have tried to keep it simple by saying all up it is 149. In the Valuer General's submission I have broken it up into stages.

The Hon. DANIEL MOOKHEY: You have. You have said 149 determinations of compensation, but I am trying to understand. How much of that is stage 1A, stage 1B?

Mr GOLDSMITH: There are different names of all the stages. It becomes a little bit confusing.

The Hon. DANIEL MOOKHEY: We understand that. Let us go, first, to the M4 East. How many?

The Hon. GREG DONNELLY: On the page before, you have a long list—

The Hon. DANIEL MOOKHEY: You have 13 listed stages.

Mr GOLDSMITH: If I could start with 1B, that was the main acquisition project. We determined 51 matters, there. In the WestConnex motorway stage 2, the M5 East-airport link we determined three matters. They were the big numbers. At Rozelle, for example, WestConnex stage 3, we determined 24 matters.

The Hon. DANIEL MOOKHEY: Twenty-four matters in stage 3, the Rozelle interchange component?

Mr GOLDSMITH: That is correct.

The Hon. DANIEL MOOKHEY: And the airport component was three, did you say? And do you have one for 3A—the M4-M5 Link?

Mr GOLDSMITH: I do not have any project described as 3A.

The Hon. DANIEL MOOKHEY: Have you got the project that you are describing as 11 in your submission: WestConnex stage 3, M4-M5 motorway?

Mr GOLDSMITH: If you refer to my tab C, on the WestConnex M5 motorway we determined 13 matters.

The Hon. DANIEL MOOKHEY: Thirteen matters?

Mr PARKER: Yes.

The Hon. DANIEL MOOKHEY: As a percentage of acquisition, what are we looking at per stage? How many are going to dispute?

Mr GOLDSMITH: For the entire WestConnex project we registered 597 matters. Of those 597 we only determined 149.

The Hon. DANIEL MOOKHEY: That is a pretty high proportion, would you agree?

Mr GOLDSMITH: Normally—

The Hon. TREVOR KHAN: It is about one-quarter, is it not?

The Hon. DANIEL MOOKHEY: Close to one-quarter of all acquisitions are leading to disputes.

Mr GOLDSMITH: It is around 25 per cent.

The Hon. DANIEL MOOKHEY: So 25 per cent of acquisitions being undertaken are leading to disputes.

Mr PARKER: That is in relation to the 13 projects identified as WestConnex.

The Hon. DANIEL MOOKHEY: Yes. What is the nature of disputes that people are having?

The Hon. TREVOR KHAN: Money.

The Hon. DANIEL MOOKHEY: Is it money?

Mr PARKER: Yes, typically. They disagree with the quantum of compensation that we determine.

The Hon. DANIEL MOOKHEY: In terms of the position that is claimed at first instance by RMS, in general what is the discrepancy between that and the final determined figure?

Mr GOLDSMITH: That is a really broad question that is somewhat difficult to answer.

The CHAIR: You can take questions on notice if you wish to do research on the answer.

The Hon. GREG DONNELLY: Perhaps I could start. Where do you say RMS establishes its price? What do you understand is its process for establishing a price to open up the negotiations?

Mr PARKER: The Lands Acquisition Act applies to RMS the same way it applies to the Valuer General. The Act sets out the heads of consideration that RMS has to take into account. So they are required to determine the current market value, and all the other associated costs that are relevant to the acquisition.

The Hon. DANIEL MOOKHEY: How are they doing that? Are they using their own valuers or are the contracting that out? Presumably they are not using your office.

Mr PARKER: No. We cannot exactly say what the RMS practices are, but generally they have a panel of contractors, I understand, the same as we—

The Hon. TREVOR KHAN: A panel of valuers?

Mr GOLDSMITH: Yes, that is correct.

The Hon. GREG DONNELLY: Sorry, a panel of what?

The Hon. TREVOR KHAN: Valuers.

The Hon. DANIEL MOOKHEY: We just heard evidence that a company that was involved in the litigation, the Desane company, turns up with the first valuation of \$18.5 million and ends up settling for \$78 million. That is a huge discrepancy in value. In respect of the 149 matters that you have determined, is the same discrepancy still showing up?

Mr PARKER: We have not done a study to determine what the difference is between our figure and the RMS figure or what the landholder obtains in the end.

The Hon. DANIEL MOOKHEY: No, okay. How long is it taking to reach the determinations, on average? If you are functioning as a sort of conciliator in a de facto way to see if the parties can reach agreement, how long would a typical dispute run?

Mr PARKER: We come into the process officially when the landholder and the acquiring authority cannot reach agreement.

The Hon. TREVOR KHAN: So you are not coming in as a conciliator?

Mr GOLDSMITH: Absolutely not.

The Hon. DANIEL MOOKHEY: No, I did not say you were—as a de facto.

Mr PARKER: It is an independent role to determine the compensation in accordance with the legislation after the acquiring authority and the landholder fail to reach agreement.

The Hon. DANIEL MOOKHEY: But before they get to you how long are they spending with each other?

Mr PARKER: There are requirements, now, that the acquiring authority enter into at least six months of negotiation. The proposed acquisition notice [PAN] will run for a further 90 days. So you could basically add those two periods together.

The Hon. GREG DONNELLY: Once that period of 90 days has expired what is the procedure for the formal notification to yourself or the organisation that there is a need for your involvement?

Mr PARKER: We have been informed about the process all the way through, from the proposed acquisition stage. Then when the land is officially gazetted, through approval from the Governor, that gazette notice would be provided to the Valuer General.

The Hon. GREG DONNELLY: In terms of the need to have the involvement, to have that valuation made, when is that tripped?

Mr PARKER: We make our own decision on how much work we put into the valuation process as soon as the proposed acquisition notice is delivered. For complex matters the valuers may already start the work. Because we have such a limited time to deliver the determination between the gazettal period and the legislation, which only gives us 45 days, the valuers will commence work at the PAN stage.

The Hon. GREG DONNELLY: Just turning to the example of the site located at 68 to 72 Lilyfield Road, Rozelle—this is the property owned by DGH—what was your involvement in that in terms of valuation?

Mr PARKER: I have no particulars on specific cases that I could provide to the committee, without taking that on notice.

Mr GOLDSMITH: Is that the Desane property?

The Hon. GREG DONNELLY: Yes, that is right.

Mr GOLDSMITH: We did not issue any determination of compensation. You mentioned before that there was a valuation of \$18 million. That was prepared by RMS, not by the Valuer General. We are absolutely independent of the acquiring authority. Because of the court proceedings with the Desane matter that property never proceeded to compulsory acquisition. Once a property is compulsorily acquired, by publication in the Government gazette, that is the trigger for us to issue a determination of compensation. But it never reached that point. So really our involvement was nil in that matter, apart from a meeting with landowners in the early stage, and talking to them.

The Hon. GREG DONNELLY: Forget the specific case, let us just consider a small property owner in Haberfield. The gazettal takes place. Is the issue of the value that you have described contained in the gazettal? Forgive me for not knowing this, but where is the piece of information about that value retained?

The Hon. DANIEL MOOKHEY: Or published?

Mr GOLDSMITH: We determine a valuation once a property is gazetted.

The Hon. GREG DONNELLY: Yes.

Mr GOLDSMITH: After that point one of our contract valuers would prepare a valuation report. Contained within that valuation report would be a market value and other heads of compensation. That report and the certificate of determination gets issued to the landowner. So that is where it is documented.

The Hon. GREG DONNELLY: With respect to that landowner, they have that information in their possession. In terms of the negotiation that happens with the Government over that property do they then just get on with that themselves?

The Hon. TREVOR KHAN: There is no negotiation.

The Hon. GREG DONNELLY: No, I am talking about the process. Take us through what happens. After the valuation has been provided what happens next?

Mr GOLDSMITH: After we determine compensation the landowner has the right to accept that determination or reject it and go to the Land and Environment Court.

The Hon. GREG DONNELLY: Yes. That is fine. That is one avenue.

Mr GOLDSMITH: That is correct.

The Hon. DANIEL MOOKHEY: Have any of them actually gone to the Land and Environment Court?

Mr GOLDSMITH: Yes, they have.

The Hon. DANIEL MOOKHEY: How many?

Mr PARKER: One of the steps we are missing is we do send a preliminary report to the landholder and the acquiring authority. They have that determination in front of them to either dispute or offer more information or talk to us about providing the rationale behind that. That happens for all determinations now.

The Hon. DANIEL MOOKHEY: To the extent to which a resident is able to challenge the valuation that you produce, that can occur between the preliminary and the final stage, is that what you are saying?

Mr PARKER: A challenge. They can talk to us about the process and provide more information.

The Hon. DANIEL MOOKHEY: Mr Goldsmith, do you have an answer to that question as to how many have gone to the Land and Environment Court?

Mr GOLDSMITH: Yes, I do. There were 43 matters that went to the Land and Environment Court.

The Hon. DANIEL MOOKHEY: Of the 149?

Mr GOLDSMITH: Around 29 per cent. I have some statistics that may assist the Committee. Of those 43 per cent there are still 16 matters that are yet to be heard and only five of those matters ended up being heard before a judge. Often they get settled in section 34 conferences or during negotiation. Of WestConnex, only five matters were heard.

The Hon. DANIEL MOOKHEY: Have they been concluded?

Mr GOLDSMITH: Yes.

The Hon. DANIEL MOOKHEY: What was the outcome?

Mr GOLDSMITH: When you say "the outcome"?

The Hon. DANIEL MOOKHEY: Was it a net increase in the value of compensation paid or a net decrease?

Mr GOLDSMITH: All five received more compensation than what the Valuer General determined. Two received 7 per cent increases and another two were around 20 per cent increases. It is an important point to understand, and back to what Mr Donnelly mentioned, it is a confusing process. We are one part of that process. We are actually not part of the Land and Environment Court process.

The Hon. DANIEL MOOKHEY: RMS is.

Mr GOLDSMITH: Absolutely not. It is a matter between the acquiring authority and the landowner. The Valuer General is not represented nor are the Valuer General's experts cross-examined or any of our evidence tabled.

The Hon. DANIEL MOOKHEY: It is RMS that does the acquisitions?

Mr GOLDSMITH: Absolutely. They manage the process from start to finish.

The Hon. GREG DONNELLY: I am not reflecting on you in any way. I am trying to understand precisely the role and the connectivity with the key parties.

Ms CATE FAEHRMANN: Mr Parker, you were talking before about a situation that may have changed in the last couple of years. Is that correct? There is a new framework with which you provide an assessment to the landholder and the acquirer.

Mr PARKER: Yes, that is right.

Ms CATE FAEHRMANN: You said "now". Does that mean that lots of people who have concerns about what has happened with WestConnex acquisitions had it before this "now" that you are talking about? They experienced that framework beforehand?

Mr PARKER: There has been a lot of reform in the lands acquisition area both in the Office of the Valuer General and the acquiring authorities. I listed some of the reforms that we have put in place since 2016 and one of those improvements was the delivery of a preliminary report to all landholders.

Ms CATE FAEHRMANN: When we are talking about some of the complaints that we have received in submissions, when you are responding it might be helpful to talk about whether something has changed in terms of the framework now or whether we are talking about concerns that have been addressed. I have a couple of questions about outsourcing. In your statement you suggested that you outsource many of your valuations, is that correct?

Mr PARKER: That is right. Valuation services run the process on behalf of the Valuer General. Those valuers within valuation services are delegated the authority of the Valuer General to make the determinations. They outsource the actual valuation to the panel of valuers that they have on their books.

Ms CATE FAEHRMANN: How many valuers approximately do you rely on? Let us keep to WestConnex. How many valuers, do you know?

Mr GOLDSMITH: We used around 15 valuation firms who are members of the valuation services panel.

Ms CATE FAEHRMANN: There are 15 valuation firms that are members of the panel?

Mr GOLDSMITH: Yes.

Ms CATE FAEHRMANN: What was your process to ensure that every valuer that these 15 firms employed were 100 per cent independent of the acquirer of RMS?

Mr GOLDSMITH: Every member of our panel is contracted to that panel and they have to sign a contract and one of the requirements of that contract is to sign a code of conduct and a conflict of interest form. On top of that, whenever we ask for a request for quote [RFQ], part of that RFQ process is to declare a conflict of interest. I want to get my terms right. They are not to advocate for anyone and are to act independently at all times. It is a witness guideline in accordance with the Land and Environment Court. They are our processes that we undertake to ensure independence.

Ms CATE FAEHRMANN: Can you guarantee the Committee that no valuers were working or undertaking work for RMS at the same time that they were valuing for the Valuer General?

Mr GOLDSMITH: Absolutely. They were all independent. On top of that, apart from the conflict of interest and code of conduct that they have to adhere to, within valuation services we sign off on the determinations ourselves. If we had any doubt whatsoever we would not engage them in the first instance. Plus, all determinations are signed off by a member of the valuation services compensation team. We have rigorous processes.

Ms CATE FAEHRMANN: The 50 valuers, what do they have to sign or commit to as individual valuers in terms of their professionalism?

The Hon. TREVOR KHAN: Fifteen valuation firms.

Mr GOLDSMITH: Fifteen firms.

Ms CATE FAEHRMANN: No, I am talking about the individuals. There are 50 valuers as individuals. Do they have to sign anything to say they are not undertaking work for anybody else?

Mr GOLDSMITH: Their firms make that undertaking on their behalf.

Ms CATE FAEHRMANN: It is the firms that do?

Mr GOLDSMITH: Yes.

Ms CATE FAEHRMANN: We have had one submission that suggests that there was one property consultant, Omega Property Consultants, that potentially was an employee of the RMS valuers Lunney Watt and Associates while also working for your valuers. Does that ring any bells?

Mr GOLDSMITH: Yes, I know that contractor and I know that scenario. That scenario was brought to our attention for the WestConnex stage 1B. Just to put it in some context here—

Ms CATE FAEHRMANN: When it was brought to your attention, what happened?

Mr GOLDSMITH: We reviewed that. We look very carefully at conflict of interest. We did review that circumstance and we decided it was not a conflict of interest.

Ms CATE FAEHRMANN: Therefore, was this gentleman working for the RMS company and for the Valuer General?

Mr GOLDSMITH: No. He was employed at Lunney Watt at one point in his career. Then he left Lunney Watt and started his own company. That company was then part of our panel and they went through the process of adhering to conflict of interest and code of conduct.

Ms CATE FAEHRMANN: At no time was he working for both companies?

Mr GOLDSMITH: No, that is right.

Ms CATE FAEHRMANN: How do you place values on properties once we have a major project such as WestConnex coming in and reducing property values. We have heard that people have wanted to move into the same suburb and are unable to because of market valuations. Lots of people have had to move. I am confused as to how that is still market value when people have good houses in these suburbs but when they sell they are unable to get similar houses in the same suburb. Quite a few people have suggested that to us.

Mr GOLDSMITH: I understand that and we have great sympathy, but we have to operate within the confines of the Act, the just terms Act. We can only ever determine market value and I accept there is a broad opinion about what constitutes market value. Our valuers go through a process. They look at comparable market evidence and then they determine market value from that. You made a statement before, or part of your question before was about the WestConnex devaluing properties; is that fair to say?

Ms CATE FAEHRMANN: Yes. St Peters interchange, for example, and places that are a block away.

Mr GOLDSMITH: That is right. We set aside any consequences of the acquisitions. We would look at market evidence that is not actually impacted directly by an acquisition project so we can achieve proper market value. I think back to your point about people not being able to relocate in the same area, that is a concept called reinstatement. Government went to great lengths to address reinstatement in the Pratt and Russell review reforms. It is an incredibly complex argument. The Act only allows us to determine market value of a specific property. There is no reinstatement provisions in the Act. There have been some changes in the Act that allow reinstatement provisions in certain circumstances. But, we are bound by the Act. We can only ever determine market value of a specific property. Unfortunately, some of those properties at St Peters, for example, were on busy roads. In terms of the range of market value for properties, they were probably towards the bottom end of the range and it would have been very, very difficult for those people to relocate and I have great sympathy for them. All we could do is determine market value for that specific property. We could not determine market value for a higher property, if you like, such as a property not on a main road.

Ms CATE FAEHRMANN: I have a point of clarification. If people were aware, say, in 2012 that WestConnex was coming to St Peters in some way it would have affected the market. Do you take the market value of years of knowledge into your considerations?

Mr GOLDSMITH: That would be a hard one to prove in terms of market evidence.

Ms CATE FAEHRMANN: Exactly.

Mr GOLDSMITH: There is an example of a pocket in Rozelle where they acquired a number of properties just near the Iron Cove Bridge, and a lot of properties actually sold there as a consequence of the acquisition work and the proposals for stage 3. We would look at market evidence outside that area of influence, if you like, to ensure there was not any decrease in the value of the market. So we would then determine a true market value, if you like.

Ms CATE FAEHRMANN: How many recommendations of the Russell review have you implemented?

The Hon. TREVOR KHAN: That resulted in an Act of Parliament.

Ms CATE FAEHRMANN: Sure. There were still recommendations.

Mr PARKER: Many of the Russell review recommendations have led to either legislative or administrative change. I could tick them off one by one. I think there were over 20—

Ms CATE FAEHRMANN: Could you provide that on notice?

Mr PARKER: No problem. The Government obviously produced a response to the Russell and Pratt reviews and that response deals with all those recommendations.

The CHAIR: In the document that you tabled with the Committee entitled, "Compensation following compulsory acquisition", it says, "When determining the market value of land the subject of acquisition any reasonable doubt should be resolved in favour of the former owner, ensuring that the compensation will not be less than market value." Have there been any cases where owners have been forced to accept an offer for acquisition below market value?

Mr PARKER: The requirement of the legislation and the object of the Act is to determine the market value, not less than the market value. The courts have said that in determining that figure the valuers should not be miserly. What our policy says to the valuers who make the valuations on behalf of the Valuer General is that they should cast all doubt in favour of the landholder. So if there is any doubt as to the impact of the acquisition or the sales evidence that is in place, they are required to deliver a determination that casts any doubt in the favour of the owner.

The CHAIR: What happens when you get a stalemate and the owner says, "I am not happy with that so-called market value?" I get the impression that there are owners in that category.

Mr PARKER: We try and work with the owner as much as possible to understand their position and provide information to them. The valuations are evidence based and the rationale is provided in plain English. We try to provide as much information as we can to satisfy them that we have made the right decision. Obviously from time to time landowners will not think that the determination is significantly high enough and then they have the opportunity to take the matter to the Land and Environment Court.

The CHAIR: Some of the decisions that have been made have caused a dramatic decrease in the value of some properties because of the WestConnex project. How do you compensate for that when you estimate the market value? For example, the market value could have been at that level and now it is at this level.

Mr PARKER: As Mr Goldsmith has said, we try and remove the effect of the acquisition process from the determination of the valuation. So if there is an area that is totally impacted by the proposed acquisition we would need to look at evidence outside that area.

The CHAIR: And you do that?

Mr PARKER: Yes.

The Hon. DANIEL MOOKHEY: You said if one region is heavily impacted then you have to isolate the effects of the acquisition by using another region. How do you choose that, and do residents have an opportunity to weight in on it?

The Hon. TREVOR KHAN: I do not think he used the term "region".

The Hon. DANIEL MOOKHEY: No, he did not.

Mr GOLDSMITH: We would look at evidence as far removed as reasonable from that particular acquisition. If you think about Haberfield, there was a block of many homes and apartments that were acquired. We would still try to look at evidence within that suburb. We would not want to be too far removed because they have to be comparable. We would look at evidence outside that zone of influence.

The Hon. DANIEL MOOKHEY: Can residents weigh in? Can residents nominate areas? Can they ask you to look at certain pockets for the purpose of the valuation?

Mr GOLDSMITH: Absolutely. Residents are represented by their own experts and they have legal representation. They go and get their own valuations done and they are generally well represented. They can use whatever evidence they choose to best support their case in terms of market value.

The Hon. DANIEL MOOKHEY: When you use sales history how far back do you go?

Mr GOLDSMITH: That is a broad question as well. It depends on the market—for example, WestConnex Stage 1B was around December 2015 and the market was running hot, if you like. We wanted to use evidence that was very close to the date of acquisition because the market was moving. In fact, we paused all our valuations just before the date to make sure that we had the most current market evidence, but in a flat market you could go back a lot further.

The Hon. DANIEL MOOKHEY: What typical period are you using in those you are currently doing?

Mr GOLDSMITH: Again, that is a broad question. We would like to be as close to the date of acquisition as possible within 12 months but, for example, if we think the market is moving then we will adjust sales to the market. So if we use an old sale—let us say 12 months old—we would adjust that for market movement to make sure that the sale is truly at the date of gazette or the date of valuation.

The CHAIR: What options does the owner have if they will not accept the valuation that you have estimated? Is the only option that you make them go to court?

Mr GOLDSMITH: Just to get the language correct there, we do not make them go to court. Negotiations happen between the acquiring authority and the landowners before it gets to us. They would be offered a certain amount of compensation, and if they do not reach agreement that is when we determine compensation. Our determination of compensation is a final amount; it is not a negotiation. That is not the role of the Valuer General. The Government's reforms now mean that they receive a preliminary report and then they can respond to what we have determined in our preliminary report. There is quite a period there where they can make submissions to try and convince us that we are right or wrong, but after that they have the right to either accept the determination of compensation or proceed to the Land and Environment Court.

The CHAIR: You do not recommend that they go to court?

Mr GOLDSMITH: That is a decision really for them. We have to keep out of that.

Mr PARKER: The Land and Environment Court has a number of steps as well that involve mediation and a process less formal than the hearings. As Mr Goldsmith said earlier, many of the cases do not actually get to formal hearings. They go through that mediation process and are often resolved in that step.

The Hon. TREVOR KHAN: If a resident chooses to proceed to the Land and Environment Court, who pays any legal costs incurred in that process?

Mr GOLDSMITH: The acquiring authority does.

The Hon. TREVOR KHAN: Do they pay all expenses or all reasonable expenses?

Mr GOLDSMITH: Generally they pay reasonable expenses. There are some circumstances where, if the Land and Environment Court determines less compensation than what they are offered, I think the court has the ability to not award costs but generally speaking the authority pays all those costs as a consequence of the acquisition.

The Hon. TREVOR KHAN: Is there any risk that the resident could get stuck with, say, the Government's costs out of the proceedings or are they in a sense quarantined from those costs?

Mr GOLDSMITH: I am not 100 per cent sure; we are not part of those proceedings. We keep a close eye on Land and Environment Court proceedings but what happens in terms of costs—you are suggesting they would have to pay the acquiring authority's costs?

The Hon. TREVOR KHAN: I am not suggesting anything; I am asking.

Mr GOLDSMITH: My apologies—I do not have the exact answer for that.

The CHAIR: Could you take that on notice or do you not wish to be involved in that?

Mr PARKER: That is generally a matter for the acquiring authority dealing with the court process and generally the court will always cover the cost, but we cannot say that there would not be circumstances where a court could find against a landowner.

The Hon. TREVOR KHAN: You spoke of something in the order of 45 or thereabouts matters that had gone to the Land and Environment Court. I think you gave a lesser figure for the number that has actually gone through to a final hearing. Was that about five?

Mr GOLDSMITH: Correct.

The Hon. TREVOR KHAN: In at least one of those matters there was a disparity between the valuation and the amount awarded of some 20 per cent, is that correct?

Mr GOLDSMITH: That is correct.

The Hon. TREVOR KHAN: What sort of review process do you or your body go through to examine why there would be that style of disparity in terms of the assessed value of the actual award?

Mr GOLDSMITH: Although we are not party to Land and Environment Court matters, we keep a close eye on them—case law is very important and case law determines, in many instances, how we arrive at our final compensation. For example, between 2002 and 2016 there were around 50 court matters and we have reviewed all of those, trying to learn from those decisions. With WestConnex there were five matters. You mentioned one in terms of WestConnex where there was a large difference. I have reviewed all of those cases. The one with the largest difference was because our determination was based on specific planning advice. Planners, just like valuers, can have differences in opinion. In this instance, we relied on particular planning advice but the court relied on a different set of planning advice. That made a significant difference in the amount of compensation.

The Hon. TREVOR KHAN: Essentially it was a use issue and they had changed it?

Mr GOLDSMITH: Correct. Often there are disputes about what the highest and best use of land is and the timing of developments and things like that. We would defer to an expert in that matter but, like all experts, they often have differences in opinion.

The Hon. TREVOR KHAN: I am not being critical, I understand, but I would assume that is not normally the sort of discrete issue that would apply to a resident who is being confronted with an acquisition process?

Mr GOLDSMITH: That is right. If we think about a normal house, for example, it is more straightforward. But, nevertheless, experts have differences in opinion on market values, just like people bidding

at an auction. For example, people might bid at an auction on a house and they are all going to have different end points. They all have different ideas about what the market value is. Valuers are exactly the same. Often, the Land and Environment Court picks one set of evidence over another. Just to reiterate, our evidence does not get tested in the Land and Environment Court.

The CHAIR: Have there been more disputes connected with the WestConnex project? Is that what you just suggested?

Mr GOLDSMITH: I would not say more. Of the 149 matters that we determined compensation for, 43 landowners rejected the determinations of compensation and five were heard before a judge and there were judgements on those five.

The CHAIR: Which ones were WestConnex?

Mr GOLDSMITH: All of those matters.

The CHAIR: All were WestConnex?

Mr GOLDSMITH: Yes.

The CHAIR: Is that higher than usual?

Mr GOLDSMITH: Around 30 per cent rejected our determinations of compensation. Normally—as a really rough figure—80 per cent of matters settle via negotiation and 20 per cent do not. I think these statistics are not too dissimilar.

The CHAIR: I was trying to establish whether there are more problems with the WestConnex project than other projects. There does not appear to be.

Mr GOLDSMITH: I would not say so, no.

The Hon. SHAYNE MALLARD: You may have been here earlier today and heard evidence from a property owner—who demonstrated vast experience in this area—who drew our attention to the Tasmanian system of acquisition where the Valuer General is upfront at the beginning with the valuation. Do you know much about that system? In a sense, with the way it is now, it is a bit like a roulette wheel where you guys give a concrete valuation and then you go to court or take it. But up to that point you are pushing through a negotiation. Are you familiar with the Tasmanian model?

Mr PARKER: Not directly, no. But it sounds very similar to the process we go through in delivering a preliminary determination report. We are upfront with the owner about where we are heading with the determination and what it is going to look like. They then have the right to respond to that.

The Hon. SHAYNE MALLARD: The six-month negotiations with the—

Mr PARKER: That is an entirely different process with the—

The Hon. DANIEL MOOKHEY: The difference is that the acquiring authority has to use the Valuer General first.

The CHAIR: The witness will answer the question. Mr Parker, can you clarify the answer?

Mr PARKER: Could I have the question clarified?

The Hon. SHAYNE MALLARD: I will move on to another question. In your assessment do you take into account rezoning activity or applications to councils to rezone the land to a higher use and higher value?

Mr PARKER: The Act requires us to determine the current market value. That is usually dependant on the zoning that is applicable at the time. The current market value is the highest and best use of the land and that is what we determine. For example, there is a case on the edge of Sydney where there is a lot of redevelopment and rezoning. The market will start to show an increase in value in that land and the potential for it to be rezoned. That would be considered part of market value.

Mr GOLDSMITH: There were some really good examples in Rozelle of exactly what you just asked. The answer is, yes, absolutely we considered the rezoning potential of that land. In fact, we went to great lengths to consider the rezoning potential of particular plots of land at Rozelle and Lilyfield.

The Hon. SHAYNE MALLARD: In your submission you referenced "hardship." Can you outline what "hardship" refers to and what support there might be in those cases?

Mr PARKER: An application for hardship is made when land is identified by an acquiring authority as land required for a particular public purpose. An owner can make an application to have the land purchased by

the acquiring authority on the basis of hardship. One of the improvements in the system is a merit-based review by the Department of Finance, Services and Innovation on those applications if the acquiring authority has not agreed with the owner.

The Hon. Dr PETER PHELPS: Mr Parker, in the valuations that are done on private residential properties, do you factor into your valuation a residual, personal or emotional value to a property? For example, if it has been in the family for three or four generations or if the original building was built by the one of the owner's forebears, does that factor into the calculation of the value?

Mr PARKER: The short answer to that is no. The valuation is the current market value. It is what the market would pay for that land or property. The comparable sales evidence is then used to determine what someone would pay for that particular residence. Whether someone is personally attached to that property is not a factor in the market.

The Hon. Dr PETER PHELPS: Following on from that, in those instances where property valuations have been agreed to by the Land and Environment Court at a higher level than what was proposed by the Valuer General or a proponent, has the court taken that element into consideration of the revaluation of the property to a higher level?

Mr GOLDSMITH: I would say no. The courts operate under the same Act that we operate under. They are bound by the heads of compensation, the same as what we are bound by. Unfortunately, there is no scope for that. There is the relocation payment. That is an amount that was increased from about \$26,000 to \$75,000. I think that amount is to try to cover those aspects of emotional attachment. Is it enough? That is another discussion point. But we are bound by the Act and we are limited by the Act, unfortunately.

The CHAIR: That concludes the time allocation for this section of the hearing. We have to hear from the other witnesses who are waiting. I thank you for your help and the work that you do. We appreciate it very much.

(The witnesses withdrew)

JIM DONOVAN, Secretary, Action for Public Transport, affirmed and examined

JOHN LOZANO, No WestConnex: Public Transport, affirmed and examined

The CHAIR: Thank you for coming in. Do either of you want to make an opening statement?

Mr DONOVAN: I am happy to.

Mr DOHERTY: I will also follow.

Mr LOZANO: I will also.

The CHAIR: Keep them brief so we have time for questions.

Mr DONOVAN: The word WestConnex does not appear in the draft transport masterplan dated September 2012 but yet the final masterplan dated December commits \$1.8 billion to WestConnex. You cannot plan a project that size and the business case et cetera in three months. Our submission looks at how the planning processes have been twisted in favour of roads and against public transport. It is still happening. The Government is trying to advance the Western Harbour Tunnel, Beaches Link and stage 1 of the F6 by 1 March, but not public transport. We want Sydney built to work well with public transport. That means minimising cars, especially the longer trips. Separately, I made a personal submission about road excess pricing. There was a diagram attached, which does not seem to be on the website. Finally, I point out that the Intergovernmental Panel on Climate Change report last week has obvious implications. It should be very important to determine, in my view, whether WestConnex will make us use more fuel or less fuel.

The CHAIR: Thank you. Could you give us a copy of your opening statement and a copy of that document that has disappeared, or whatever it was?

Mr DONOVAN: I can send that.

The CHAIR: Are you going to attach it to your submission today?

Mr DONOVAN: Yes.

The CHAIR: Thank you. Mr Doherty?

Mr DOHERTY: We at EcoTransit thank you for the opportunity to address this inquiry. WestConnex is propping up the incumbent toll road system for the next 50 years. It is building infrastructure intended to line private sector profits when world's best practice would have our planners transitioning the city toward better mode share balance favour in public transport. There are four key principles that I would like the inquiry to bear in mind as you finalise your report. The first of these is impartiality. This is where we have seen some of the most egregious transgressions. I do not believe I have time to go into all of those, but the conflict of interest of persons who are either political decision-makers and/or members of companies, consultants to the private sector and shareholders of interested parties is quite extreme and I will table some documents later about that. The second principle here that has been trashed is transparency. From the outrageous shielding of such individuals and relevant information from public scrutiny, to the creation of the Sydney Motorway Corporation as a private body so as to avoid freedom of information [FOI] requirements. This is been a tremendously cynical exercise.

On a personal note, I did my law degree in the 1990s. Back then, we admired the reforms of the 1970s in public law, admin law and environmental law such as the Environmental Planning and Assessment Act, freedom of information and the creation of the Ombudsman. Yet, it is now clear that these protections are no longer fit for purpose in our State when it comes to major projects and oversight of them. There has been a near-total absence of information on these projects other than we can source through leaks to journalists and others. The next principle that is fundamental here is accountability. We need a rigorous regulatory regime on major projects. Yet the Government is holding the community in contempt. Indicators of this include the situation with the Rozelle Interchange, when more than 13,000 submissions were put in and within a couple of days, the decision was approved. There was barely even time to record receipt of these submissions. I personally put in a submission, as did our organisation.

There are other aspects to this decision, which have not had a justification. The use of a P50 methodology instead of a P90 methodology is addressed in our submission. Why are public transport alternatives being decidedly ignored, deliberately ignored in relation to the F6, which is a related project? Finally, back to our home turf at EcoTransit, we are an organisation concerned with the sustainability of our city. It is a city that we do all love but we want to see it be its best and it cannot be its best when traffic is backed up. I will happily defer to some others about the enormous missed opportunities with this non-solution to Sydney's transport future, but the last point is that we face the dystopia of what Houston faces with their Katy Freeway, a freeway that was enormous

when it began at six to eight lanes, but has since metastasised to 23 lanes. Metastasising is a very good analogy here.

The CHAIR: Thank you.

Mr LOZANO: Thank you for the opportunity to speak at this inquiry. In 2012 a New South Wales transport masterplan was commissioned, planning experts summoned and public views canvased. What started out as a plan with a strong public transport focus somehow morphed into "a masterplan with almost every motorway that had ever been suggested since 1948". They are not my words; they are the words of Dr Michelle Zeibots' submission to your inquiry. She appears here later and I hope that you ask her to expand on what the sudden shift was from public transport to toll roads. However, it is not uncommon for governments to propose a solution they desire and then set about trying to justify it. WestConnex was no different. Connecting the west to the airport—well, it does not actually go there. That is being done by the Sydney Gateway at an additional cost. Solving congestion, reducing travel times, getting people to their families quicker—sure, but if this was the prime objective of your solution, would not choosing a mode of transport independent from that mode of transport that actually causes the problem be more optimal? Removing 10,000 trucks off the roads—yes, but trucks that carry dangerous goods are not allowed in tunnels. So we are keeping the dangerous trucks on the roads. Creating jobs—the fallback benefit when no other benefit exists. Simply put, irrespective of what infrastructure you are about to deliver, you are going to create jobs.

Finally, it comes, "Sydney needs infrastructure", to which we say, "Absolutely. Yes, we do." But it needs to be independently planned. There is nothing wrong with contracting infrastructure delivery thorough a public-private partnership but there is something intrinsically wrong in getting that partnership to be involved in the planning process. If you ask a toll company for a solution, you are going to get a toll road as the answer. That is why, thanks to WestConnex, Sydney will become the most tolled road city in the world, bar none, by 2023. It is not because we need it but because that is where the money is. That is why you never see a private toll road called BathurstConnex, Coffs HarbourConnex or BegaConnex. There is no money in the bush, not for this type of infrastructure anyway. Toll roads need money. To generate money you need people in cars, and lots of them. In Australia that means cities. The rural community is the big loser here.

As for solving congestion, largely that is irrelevant, because whether you are sitting on a toll road parked or moving along it, the toll is the same. Introduce a performance-based toll and let us see how popular that solution becomes. Congestion occurs everywhere. It is basically lots of people trying to do the same thing at the same time. It could be at a teller machine, a supermarket checkout, traffic leaving the city for a long weekend or trying to get to a sporting event. A sporting event is where there is a mass movement of people that need to get to a specific location by a specific time—something that also occurs twice daily every day of the week. It is called "getting to work". But what is the first thing the Government asks you to avoid at a sporting event to avoid congestion? What is the first option they give you and the thing they want you to avoid the most? Leave the car at home, take public transport. We have heard it a thousand times before. You see, the solution is known; it is just unpopular in certain quarters.

Then we come to the delivery of the project itself. When State significant becomes politically significant, a way to expedite delivery because the next election is coming, the project takes on a degree of self-importance, which is simply very dangerous. When the role of the public institutions the people of New South Wales rely upon shifts from safeguarding us to justifying the existence and delivery of a project, something is wrong. When private citizens have to buy pollution monitors because they have no confidence in the information being supplied by the institution who is responsible for protecting our health, our environment, someone needs to be held accountable. When a project supposedly being delivered to improve the lives of its citizens destroys so many of their lives in the process, someone has lost touch. When an institution responds to someone who has lost their home by saying be thankful we are digging tunnels or more homes could have been lost, we need more humility. When a government sets up a private company to manage its infrastructure project placing it out of reach of the GIPA legislation, who benefits? When councils are amalgamated and stripped of their powers to fast-track construction, they are also stripping our rights.

When returning local streets back to local communities means levelling homes in that same community, someone has lost sight. And when the best we can say to someone suffering from the immense construction impacts is, "No pain, no gain," I say "Put down that gym brochure." No four-year-term government should ever be permitted to sign contracts committing the people of New South Wales to half a century of tolls and possibly government subsidies. We have been assured that WestConnex is safe. WestConnex is a product that was conceived in the 1970s. We have been told the pollution it will generate is safe for human consumption. I recall two other products of that era that were deemed safe for human consumption: leaded petrol and asbestos cladding. The people of New South Wales simply deserve better than they are getting, and that is why we are calling for a royal commission into infrastructure planning and infrastructure delivery in New South Wales, please.

The Hon. GREG DONNELLY: Mr Lozano, you made mention of possible government subsidies.

Mr LOZANO: Yes.

The Hon. GREG DONNELLY: I thank members of the panel for your very detailed submissions. Mr Lozano, is it on the bottom of page two, continuing on page three, where you refer to possible government subsidies with respect to the forecasting or misforecasting of travel flows to guarantee investment returns?

Mr LOZANO: It really depends on the contract that was signed for the WestConnex. In these cases what has happened is that investment decisions have been made based on forecasting figures by a transport modeller. What has happened is investors have gone into that investment thinking that a specific return is going to be achieved. Those cases ended up in legal action because that was never received. In some cases what we had is a forecast of below 75 per cent of the actual figure actually achieved once the toll road opened. Now it depends on the contract that the Government signs with the toll road operator. They may have a clause in there that says, "If the actual toll road revenue that we are expecting is not generated then we demand compensation from the Government to meet the shortfall." I believe the Sydney Harbour Tunnel falls under that category.

The Hon. GREG DONNELLY: Is it your understanding that any part of the WestConnex project falls into that category?

Mr LOZANO: I am not privy to what has been signed but it is quite common practice. If there is a shortfall in revenue someone has to meet the difference, otherwise a lot of these schemes will just go belly up—and they would close down because the toll road does not generate the income that is required.

The Hon. GREG DONNELLY: Mr Donovan is astute with these matters of detail. Are you aware of obligations to pay if certain traffic numbers are not met?

Mr DONOVAN: I am not aware at all.

The Hon. DANIEL MOOKHEY: I think the Hon. Greg Donnelly may be asking, in addition, about the revenue forecast contained in the base case financial model for the WestConnex. Is it your understanding that that is what we have guaranteed to pay the acquirers of WestConnex, regardless of whether those revenue figures are met?

Mr LOZANO: If that is what has been signed, yes, that is what the revenue needs to be when they open.

The Hon. DANIEL MOOKHEY: Do you agree that keeping that base case financial model secret for 40 years means that no-one will know whether we have to pay that money and what money we, as taxpayers, have guaranteed to pay? And do you think it should be public?

Mr LOZANO: Absolutely. It is, in the end, our own tax dollars, our revenue. If we are subsidising a toll road for the next half a century that money does not just magically grow; it has got to come out of some other budget, be it health, police or education. We have a right to know.

The Hon. GREG DONNELLY: The whole issue of papers being commercial-in-confidence has been raised time and again in our questioning of witnesses, primarily those involved in the project either directly or indirectly. What are your views about using commercial-in-confidence as a way to deny access to reasonable information about a huge infrastructure project like WestConnex?

Mr DOHERTY: I think it is despicable. It is incomprehensible.

The Hon. DANIEL MOOKHEY: Have you made applications under the Government Information (Public Access) Act about anything to do with WestConnex?

Mr DOHERTY: Investigative journalists that we are in contact with, including Michael West, whose article I will table, have made repeated requests, as have other journalists. It is just scraps from the table, as far as I can see, the information we get.

Mr LOZANO: Quite a few of our community members have also made requests. It is a longwinded process. There are fees involved, and even more fees involved when it does not hit the mark the first time. It can be quite off-putting.

The Hon. DANIEL MOOKHEY: Have your members ever had a request refused for commercial-in-confidence reasons?

Mr LOZANO: Personally I am not aware of one.

The Hon. DANIEL MOOKHEY: Mr Doherty, you made some comments about the F6 and the lack of evaluation of public transport options. You said that it connects into WestConnex. Are you aware that notionally

under the Infrastructure NSW assurance framework guidelines they are meant to examine whether there are like public transport options? Are you aware of that?

Mr DOHERTY: I was not.

The Hon. DANIEL MOOKHEY: But you are aware that such provisions did not exist when the business case was being prepared for WestConnex?

Mr DOHERTY: Yes.

The Hon. DANIEL MOOKHEY: Is it your submission that the absence of such a requirement means no-one ever tested whether a public transport solution was feasible to meet the same challenges?

Mr DOHERTY: Yes, that is true.

The Hon. DANIEL MOOKHEY: Is it your view that perhaps the western metro project should have had a higher priority—that is, the duplication of the rail line from Parramatta to the city?

Mr DOHERTY: There are a number of different solutions that you can address to relieve capacity on the trunk line of the western Sydney Trains network. But as far as the F6 is concerned, the complete absence of competing public transport proposals clearly is a matter of sweetening this deal, if you will.

The Hon. DANIEL MOOKHEY: Are you saying that that process has not been conducted properly or at all?

Mr DOHERTY: Yes, at all.

The Hon. DANIEL MOOKHEY: On what basis?

Mr DOHERTY: The disclosures to journalists that we are aware of in relation to that F6 contract.

Mr DONOVAN: If I could answer that?

The Hon. DANIEL MOOKHEY: Please.

Mr DONOVAN: There was a story in the *Herald* in June in terms that there was a Cabinet directive in force precluding a public transport consideration in the F6 question. I would add to that, stage 1 goes from Marsh Street to Kogarah and by chopping the thing up you can put public transport out of it: It just does not work that way. You should be looking at something like, I do not know—

Mr DOHERTY: This is a holistic transport plan—

Mr DONOVAN: Sydney to Wollongong or something like that.

The Hon. DANIEL MOOKHEY: I have heard it being raised in Parliament as well. We have also asked questions whether Cabinet did issue such a directive and why, given that much song and dance has been made about having to have these options tested, the first time that they are meant to be applied in practice they seem to have been ignored. Do you have the same concerns about the Northern Beaches link and the Western Harbour Tunnel?

Mr LOZANO: I would have the same concerns about any business case that puts forward a solution that is sole purpose. The value of a business case is for someone to sit down and analyse what are we going to do to get the best value for money and to meet a problem—a solution to a problem. It does not lock you into a solution in the beginning. It is somewhere you arrive at the end by doing a thorough analysis of all the possible solutions that could solve that problem. If you eliminate that, what value is the business case except as a statement that confirms where you wanted to get to in the first place without any challenges?

The Hon. DANIEL MOOKHEY: Are you aware that the WestConnex business case was the last business case for a major infrastructure project in either the road or rail space that was published in full by this Government?

Mr LOZANO: I am not aware of that personally, no.

The Hon. DANIEL MOOKHEY: Do you know that now the standard practice is simply to publish summaries of the business cases and not the full business cases? Do you think that is a concern, even if it is a public transport project or a road project, that somehow we cannot get the information publicly? Do you think that one of the recommendations we should make is that all business cases should be published?

Mr LOZANO: Absolutely. You are using public funds and we are entrusting the Government to deliver the best possible solution for the people of New South Wales. If they have done their due diligence and they have documented that in the business case, why not publish it to the public?

The Hon. DANIEL MOOKHEY: I am not critical of RMS. They published a 300-page business case for WestConnex, but they only published a 12-page business case for the Western Harbour Tunnel as a result. Does that concern you?

Mr LOZANO: It is very concerning. There should be this disclosure. This is, after all, the money of the people of New South Wales.

Ms CATE FAEHRMANN: Thank you all for coming along and for your incredible work over many years in advocating for public transport. Mr Lozano, in your opening statement you said a couple of things. One was that if you ask a toll company for a solution you are going to get a toll road. Could you please expand on what you mean by that?

Mr LOZANO: It is just strange how there was a dramatic shift from where we were in 2012 to where we arrived with WestConnex. We are not privy to how that shift occurred. What were the underlying facts that were uncovered that said we were wrong in 2012 and now we are right in 2013? But that statement relates to how we really have to have independent advice when we do our planning. It is simply to get people to think if you have people in the room who have an interest in a particular solution or a company that delivers a particular solution, it is inevitable that you are going to get a solution that meets that company's need and probably not the need of the people of New South Wales.

Ms CATE FAEHRMANN: To get a bit more specific, you are saying when you have people in a room. You are suggesting a toll company here. I have asked a few questions of different witnesses over the last few days of hearings about the involvement of the private sector in all of this, particularly the concept approval. Do any of you have any more information in terms of the concept approval stage and the companies that were involved and your views on that?

Mr DOHERTY: Yes, I do. As examples of these apparent conflicts, we have a situation where Goldman Sachs one day is advising the New South Wales Government on the sale of this mega project and then it switches hats shortly thereafter to be advising—

Ms CATE FAEHRMANN: Transurban?

Mr DOHERTY: No, in fact to be owning a significant chunk of Transurban shares. It is Macquarie Bank who were in fact advising the Government on the scoping study for WestConnex and then they too changed hats and were advising Transurban on their WestConnex bid. Then we have the revolving doors phenomena of politicians and/or public sector employees transitioning into corporate and/or consultancies and/or boardrooms. I also refer you to the case of the inaugural chair of Infrastructure NSW, who I believe is now advising Transurban New South Wales.

Ms CATE FAEHRMANN: Nick Greiner, are you referring to?

Mr DOHERTY: I do. It has mysteriously dropped off his website that he had that role.

Ms CATE FAEHRMANN: You were suggesting that we have got some investigative journalists trying to find out a lot of information, putting in *Government Information (Public Access) applications* and doing a heap of work on the issue that you have just referred to. I understand one of them was Michael West. Who are the other investigative journalists that you are referring to that have been looking into this that it would be useful for the Committee to interview perhaps?

Mr DOHERTY: To my knowledge, Wendy Bacon. Ian Bell is one of the experts cited in Michael West's documents.

Ms CATE FAEHRMANN: A couple of issues have come before the inquiry that we have had a lot of submissions about but have not discussed too much with witnesses. I thought you would be a good panel to talk about the selection of AECOM as a traffic modeller and what the issues are with that. I am just opening it up to the three of you.

Mr LOZANO: This goes to the heart of the submission that we put through. AECOM had a chequered past in delivering non-correct data for a variety of toll roads, not only in Australia but also in the United States. What we question is if you are doing a robust tender process is it not safe to assume that you undertake a history of the people who are applying to be the modeller on the toll road? It is all public record. I actually have transcripts here which I can submit to you from the actual legal cases that ensued where AECOM has produced traffic figures that were just woefully inadequate. If the Government did not do its due diligence and investigate how AECOM's past performance was, then that is a case of maladministration.

Ms CATE FAEHRMANN: A clarification in terms of "woefully inadequate", that does not mean too little traffic, does it?

Mr LOZANO: No. If you look at the Clem7 project, I believe it was a third.

Ms CATE FAEHRMANN: What was a third?

Mr LOZANO: The actual traffic that was experienced on opening was a third of what they projected and there was a class action suit that was taken on by RiverCity. So you do your due diligence, you see that this is an operator who has had very poor performance in the past, yet you still select them. So it is incompetence or an un-robust tendering process or—sorry to add—is it something you wanted to achieve? Do you want to have a known quantity here? Do you want a company involved who is quite happily giving overestimated traffic modelling figures as the basis for your business case to bolster your BCR?

The CHAIR: You have given a lot of detailed material in your submissions. No WestConnex: Public Transport has given us a summary of donations made by various companies from 2000 to 2015. What are you implying by these donations; that these companies are buying favouritism from the Government for these projects?

Mr LOZANO: I am not implying anything. I am just stating that there is a strange correlation with the contracts that people were awarded and that table there. I can nominate—I mean, look at one of the highest donors on that list.

The CHAIR: Macquarie.

Mr LOZANO: They have a very, very long-term contract, I think 70 years, offered to them. They were also, and I can table the document—when I said that AECOM had had legal action against them, they did in Australia but in the US it was actually Macquarie because Macquarie engaged AECOM and it was Macquarie who had to defend that position. They used AECOM's figures and they were giving them incentive payments. The higher the actual traffic modelling the more incentive payment they got from Macquarie.

Ms CATE FAEHRMANN: Macquarie was giving to AECOM?

Mr LOZANO: Yes, it was—

Ms CATE FAEHRMANN: What was that in? Where is the evidence?

The CHAIR: It is in the No WestConnex submission.

Mr LOZANO: I am sorry—I have got it out of sequence, but I can give you the name. It was the case of *Syncora Guarantee Pty Ltd v Alinda Capital Partners* before the New York Supreme Court. It was a case in which they had alleged fraud on the part of Macquarie. I can quote from the summation:

This case involves causes of action for fraud, aid and abetting fraud, and negligent misrepresentation in connection with an approximately \$500 million bond and interest rate swap financing. Macquarie Securities (USA) ...

Basically the case is that, in order to sell the product, Macquarie needed some financial guarantees and they used the income that was going to be generated on a portfolio of toll roads, for which AECOM—it was called Maunsell at the time—did the traffic modelling. Those incomes did not eventuate because the traffic figures were overinflated and the fraud aspect comes where Syncora, which was the financing company that was going to give the financial insurance, found out that Macquarie had an incentive payment arrangement with AECOM, or Maunsell as they were called at the time, meaning that they would be rewarded for the better traffic modelling figures that they produced.

Ms CATE FAEHRMANN: How fascinating.

The CHAIR: It is interesting. I am not sure whether you have all shared or compared your submissions.

Mr LOZANO: I have the transcript of the case here and I can table that to the Committee, if they wish it.

Ms CATE FAEHRMANN: Yes, please.

Document tabled.

The CHAIR: The case you have made in your submission, No WestConnex: Public Transport, is very similar to Matthew Dougherty's submission, EcoTransit, where he has similar questions in his submission to have a spotlight shone on the proponents of WestConnex and their conflicts of interest.

Mr DOHERTY: That is right.

The CHAIR: Could you cite any examples of what you are referring to?

Mr DOHERTY: Certainly. Well, there were what were referred to earlier in relation to Goldman Sachs advising the New South Wales Government on the sale. There was also Macquarie Bank's role. Then there are

specific actions taken in regards to WestConnex contracts by Lend Lease, by Leightons, and all of their partner firms. At the moment, I am going to have to take that question on notice, however, to give you more details.

The CHAIR: Okay. Good. You will take that question on notice. We will move now to questions from Government members.

The Hon. Dr PETER PHELPS: Thank you, Chair. Firstly, I direct question to Mr Lozano. I take it you do not accept that the modelling undertaken by AECOM was thorough.

Mr LOZANO: I put it to you that, given past performance, it might not be.

The Hon. Dr PETER PHELPS: Would you agree that Transurban has a pretty good grasp of traffic flows on Sydney's motorways?

Mr LOZANO: They own seven out of nine, so they should, but they were not involved in the business case construction.

The Hon. Dr PETER PHELPS: No, but are you aware that the Sydney Transport Partners [STP] Consortium agreed with SMC's traffic forecasts on the WestConnex when they recently acquired it?

Mr LOZANO: I was not at that meeting, no.

The Hon. Dr PETER PHELPS: Are you aware that Transurban is part of the STP Consortium?

Mr LOZANO: Yes, I am aware of that.

The Hon. Dr PETER PHELPS: Do you think that Transurban would act irrationally or illogically for its shareholders in procuring an investment to which they did not believe the traffic figures for?

Mr LOZANO: That depends on the contract they signed with the New South Wales Government to provide guarantees. If there are guarantees in place that they are going to meet the shortfall, then irrespective of the traffic modelling their income is assured.

Ms CATE FAEHRMANN: Maybe you can look into that for us, Peter.

The Hon. Dr PETER PHELPS: Are you aware that SMC-STP are taking full traffic risk on the WestConnex project?

Mr LOZANO: I am not aware of that.

The Hon. Dr PETER PHELPS: Would that ameliorate your concerns if that were the case?

Mr LOZANO: If there was no financial incentive to bolster the income, that would; but I think you are missing the gist of what I am saying here. There is a contractor who has a poor performance record and has faced legal action. The New South Wales Government has seen fit to offer them a contract. I am really concerned that the tendering process is just not sufficiently robust, if that occurred.

The Hon. Dr PETER PHELPS: But assuming that is the case and there is no make-up provision in the contract with STP, therefore STP bears the full responsibility of any financial implications from an under-calculation of traffic flows. Does that not alleviate the taxpayer issue?

Mr LOZANO: I am simply not privy to those documents.

The Hon. Dr PETER PHELPS: Okay. That is fine.

Mr LOZANO: I believe they might be commercial-in-confidence.

Ms CATE FAEHRMANN: Have you seen the contract?

The Hon. Dr PETER PHELPS: I am just trying to set the situation. If we get to the situation where we find out that is the case, and STP—

The Hon. DANIEL MOOKHEY: No, the contracts are public. The revenue model is not. That is the difference.

The CHAIR: Order!

The Hon. TREVOR KHAN: The contracts are public—online.

The Hon. DANIEL MOOKHEY: The contracts are public. You can look at them now.

Ms CATE FAEHRMANN: Not anymore, though.

The Hon. TREVOR KHAN: No, now.

The Hon. DANIEL MOOKHEY: They are still there.

The CHAIR: Can you table the document?

Mr LOZANO: Perhaps he could table the document for us and then we could read it.

The Hon. Dr PETER PHELPS: Am I a member of the Executive, Chair?

The CHAIR: No. I am just asking you to table the document.

The Hon. Dr PETER PHELPS: Am I a member of the Executive?

The Hon. GREG DONNELLY: You should be.

The Hon. TREVOR KHAN: I agree.

The Hon. Dr PETER PHELPS: Do I look as though I am a member of the Executive?

The CHAIR: You are quoting something.

The Hon. Dr PETER PHELPS: Would I be on this Committee if I was a member of the Executive?

The Hon. SHAYNE MALLARD: This is descending into farce now.

The Hon. GREG DONNELLY: You should be. You are underappreciated, Peter.

The Hon. Dr PETER PHELPS: On that basis then—

The CHAIR: The witness has asked what document are you quoting?

The Hon. Dr PETER PHELPS: I am not quoting from any document. I am simply asking a question. If it were the case that there were no financial burden on the taxpayer from an under-calculation of traffic flows on the WestConnex project, would that alleviate your mind?

Mr LOZANO: I do not mean any disrespect by this comment I am about to make but, given the performance of the Government of late in concealing facts, I guess what would make me more comfortable is if you could table a document with those details to the public so that we can actually read it and make our own judgement.

The Hon. Dr PETER PHELPS: Well, considering that I am not part of the Executive, that is impossible for me to do.

Mr LOZANO: If it is impossible for you, sir, imagine—

The CHAIR: Otherwise it becomes a hypothetical.

Ms CATE FAEHRMANN: We could recommend it.

The CHAIR: The witness is not accepting your hypothetical.

Mr LOZANO: I hear what you are saying but, if it is impossible for you, sir, how impossible would it be for a member of the public?

The Hon. Dr PETER PHELPS: Do you understand how government operates? The Executive is a separate part. It is not part of the Parliament other than the fact that members of the Executive are part of the Parliament.

Mr LOZANO: I was not aware of that. I am not a member of Parliament.

The Hon. DANIEL MOOKHEY: Not yet.

The Hon. Dr PETER PHELPS: Next, a question to Mr Doherty. Would it be fair to say that EcoTransit is an organisation that supports further investment in public transport?

Mr DOHERTY: Most certainly, but well-considered investments.

The Hon. Dr PETER PHELPS: And that it has never advocated for increased road or motorway capacity?

Mr DOHERTY: Not to my knowledge.

The Hon. Dr PETER PHELPS: Thank you. Do you know how much this Government is spending on public transport over the next four years?

Mr DOHERTY: I am familiar with some of your presentations from last week. Yes, I am aware of the sums you discussed.

Ms CATE FAEHRMANN: How much is it?

The Hon. Dr PETER PHELPS: It is \$51.2 billion over the next four years.

Ms CATE FAEHRMANN: Point of order: To clarify, that includes roads as well.

The Hon. Dr PETER PHELPS: No.

Ms CATE FAEHRMANN: Yes, it does. I have the budget papers in front of me.

The Hon. Dr PETER PHELPS: No. That is on public transport.

Ms CATE FAEHRMANN: It is \$51.2 billion delivering over three and a half thousand road and rail projects. I have it in front of me. This figure has been bandied about over the past two days and it is not correct.

The Hon. Dr PETER PHELPS: Do you know how much is being spent on the new Metro system? It is over \$20 billion. Do you know how much is being spent on the new Intercity Fleet?

Mr LOZANO: Can I say something?

The Hon. Dr PETER PHELPS: I was actually asking Mr Doherty, who is the advocate for public transport, but—

The CHAIR: Any witness on the panel can answer.

Mr DOHERTY: Certainly I think Mr Lozano is well qualified to answer.

Mr LOZANO: I hear what you are saying: "We're spending a lot of money on public transport." Again, you are missing the gist of what we are saying. Is it the best that we could have done for the people of New South Wales? Yes, we are building a Metro from Norwest to the city, but you are using actual rail lines that exist so you are not actually increasing and creating new rail links. You are basically replacing what we have with something else. We could sit here and argue—

The Hon. TREVOR KHAN: Really?

Mr DOHERTY: And, frankly, which is suboptimal.

The Hon. Dr PETER PHELPS: To that point: Are you unaware that there is planned to be another harbour tunnel on which those Metro trains will be travelling?

Mr LOZANO: I was about to get to that. The only actual additional increase to that is the point from Chatswood down into the city and Martin Place. That is an increase in transport options.

The Hon. SHAYNE MALLARD: And Waterloo.

Mr LOZANO: But when you go from the Epping line out to Norwest, it just seems logical—and I am not a planning expert—that if you had a double-decker long journey system in place, just extend it and go out west.

Mr DOHERTY: I also think this question could be well directed to Dr Zeibots in the next session. She knows extensive amounts about the adequacy of Metro for long-haul operations, and I do not think it is suited to the project.

The Hon. Dr PETER PHELPS: Would you agree that one of the problems which the current system faces in relation to rail transport in the city is the constricting effect of Wynyard and Town Hall and the time taken to unload passengers from double-decker transports at those stations?

Mr DOHERTY: Yes, I would.

The Hon. DANIEL MOOKHEY: Point of order: I think we are starting to stray from our terms of reference if we are looking at Wynyard station's capacity. It is a totally different transport project.

The Hon. Dr PETER PHELPS: They are offering alternative proposals, as I understand it, to WestConnex as a means to alleviating the difficulties of travelling into the city.

The Hon. DANIEL MOOKHEY: Perhaps you could connect your question to WestConnex.

The Hon. TREVOR KHAN: Come on. It is going to be over shortly, so just remain—

The Hon. Dr PETER PHELPS: Do you agree that is a problem?

Mr DOHERTY: In relation to the suggestion that cannibalising the Bankstown line will somehow free up the City Circle, that is patently false, because trains that go through the City Circle from the Bankstown line, when they get to Circular Quay and come around the other side of the circle they are inner west trains. Where are all those inner west trains going to go? Are they going to be directed down another line? The City Circle will remain congested under your plan.

The Hon. Dr PETER PHELPS: But it will be less congested because it will have the additional stations and the additional through route for the Metro.

Mr DOHERTY: That is conjecture.

The Hon. Dr PETER PHELPS: If you take rail passengers off one—

Ms CATE FAEHRMANN: It did not have anything to do with WestConnex.

Mr LOZANO: Yes. It is not really relevant to WestConnex. I encourage you to talk to Michelle Zeibots, who is a planning expert, on this matter. I am sure she can answer all your questions.

The Hon. DANIEL MOOKHEY: If the question is should we have invested all this money on fixing Wynyard station, that is a good question.

Mr DOHERTY: Indeed.

Mr LOZANO: The heart of what we are saying here is that we agree that public transport needs funding, and we agree that you are funding public transport. Is it the best we could have done? Where were the experts that you consulted that said, "Sure, rip up the Epping to Chatswood line—it is only eight years old—and put in a Metro"?

The Hon. Dr PETER PHELPS: I would like to ask Mr Donovan a question. You are critical of the benefit-cost ratio which was undertaken for WestConnex. Are you aware of Infrastructure NSW's subsequent 30-odd assessments, all of which give a positive BCR for the project?

Mr DONOVAN: The whole point of our submission was that BCRs are very easily cooked. No, I am not aware of 30 others.

The Hon. Dr PETER PHELPS: Are you suggesting that the independent public servants in Infrastructure NSW were in some ways leaned upon or manipulated by the Government to produce that series of positive BCRs?

Mr LOZANO: No, I do not think we would go that far, but we are suggesting: garbage in, garbage out. You have figures that are questionable coming from a traffic modeller with poor performance. If you put that into any assessment model it will come out trumps. It is as simple as that. Now, if you wanted to do a true assessment of the BCR then you would start from scratch and say, "Okay, we don't like those traffic modelling figures over here; let's put another set of figures into the system and see what we get out." Then you do a true comparison and you say, "Right, we do have a BCR that is genuinely above one and is workable."

The Hon. Dr PETER PHELPS: Except the fact that the people who bought it accepted the traffic modelling figures—

Ms CATE FAEHRMANN: Point of order—

The Hon. Dr PETER PHELPS: Indeed, they probably thought that those traffic modelling figures were understated—

Ms CATE FAEHRMANN: We are out of time.

The Hon. Dr PETER PHELPS: —given that they paid \$9.2 billion, which was above the Government's estimate, for the share of WestConnex.

Mr LOZANO: I will take that as a comment because you have already asked me that question twice.

The CHAIR: We have to conclude there, even though it is very interesting and very controversial. It is two minutes past three o'clock so we have to move on. The next witness is the lady you keep telling us to listen to.

Mr LOZANO: I would like to say one last thing. A lot of community groups are asking, "Have we got this right, and can we stop stage 3?" It would be invaluable to the people of New South Wales if, somehow, an independent assessment could be made as to the actual cost of stopping stage 3—that we could have something on the table. A lot of people talk about sovereign risk and all of this, but no-one has given us any evidence to say

that if this is not what we want and we want an independent assessment—maybe you have a committee that could do that in Parliament—this is the genuine cost of stopping stage 3. That would be great.

The CHAIR: Thank you for that thought. We will note that.

(The witnesses withdrew)

MICHELLE ZEIBOTS, Research Director, UTS Transport Research Centre, University of Technology Sydney, affirmed and examined

Dr ZEIBOTS: I am also a senior lecturer in the School of Civil and Environmental Engineering, in the Faculty of Engineering and Information Technology.

The CHAIR: Do you wish to make a brief opening statement?

Dr ZEIBOTS: Yes, I would.

The CHAIR: We have just had a second document from you in addition to your submission.

Dr ZEIBOTS: Yes. I have endeavoured to make things a bit simpler, but it might be that I am repeating things that have already been covered, so I will leave it to your discretion as to whether any more needs to be said about that.

The CHAIR: Some witnesses have referred to you as an expert witness.

Dr ZEIBOTS: Yes, I am aware of that, now.

The CHAIR: So we are looking forward to hearing from you.

The Hon. SHAYNE MALLARD: No pressure.

Dr ZEIBOTS: No pressure.

The Hon. GREG DONNELLY: Tell us about the black arts of modelling.

Dr ZEIBOTS: The black arts of modelling—all right. By way of an opening statement I would like to point out that there have been a lot of legal proceedings over motorways in Australia in recent years. I was involved in some of those legal proceedings back in the late nineties, over the Eastern Distributor. That was a project where there were some disputes over the traffic volume estimates. So I have, on and off, followed professionally what has happened on this front with the methods and the approaches—the black arts on the one hand and the science on that other. So by way of opening I would like to point out that there is a history of that. I believe that what we are seeing with the traffic volume estimates for WestConnex stage 3 in particular is a continuation of that history.

So I think there is a lot more caution now about estimating volumes for tollways because of the payouts that have occurred. I note that AECOM has been responsible for the volumes that are listed in WestConnex stage 3. The key point that I would want to make is that the volume estimates for the mainline tunnel, in particular, seem to be quite low, or relatively low. In the morning peak period they are not filling the tunnel to its ceiling capacity. They are not coming close to that. If it was helpful I would be happy—that is what the handout is about—to briefly go over how it is we calculate a ceiling capacity for a motorway. The reason is that the calculation of ceiling capacities is the one thing that we do that I would call a science. It is not modelling. It is based on observation and it is based on many decades of observation—not just here in Australia but on roads throughout the world. Generally, we have—

The Hon. DANIEL MOOKHEY: Sorry. Just before you go on could you give us a definition of "ceiling capacity"?

Dr ZEIBOTS: Sorry. The "ceiling capacity" is the maximum number of vehicles that would pass a point on a road within a given time period—within an hour, usually. It is the maximum volume that you can get past a point on a road facility. Those volume estimates differ for different types of road configurations. This is all listed in something that we call the Highway Capacity Manual. Most countries have their own versions of that.

The Hon. TREVOR KHAN: I am sorry to interrupt. Just before you go on, are you saying that the estimates that have been presented are, using my word, conservative? Is that what you are saying?

Dr ZEIBOTS: They are low in the main line tunnel, or they appear to be low. I believe we are looking at a result that may be similar to what we have seen with the Cross City Tunnel. What I would highlight here is that a network and how much traffic you get on it, and to some degree how much traffic comes up in a model, is dependent on the choke point. The choke point is the point of least capacity in any network. I am anticipating your question.

The CHAIR: When you say "low", you mean they are not accurate?

Dr ZEIBOTS: I suspect they might be accurate. There are a lot of things we cannot tell about this model because it is obscure generally the way it is reported. This has been the trend in the last couple of decades with a lot of motorways. The reporting is becoming more and more obscure and a lot of that happened since the Eastern

Distributor when it was realised that—and at that time in 1997 I was working with community groups—community groups would look at these estimates and perhaps do something about it. In that particular instance we were concerned that the estimated volumes were above what I would professionally call the ceiling capacity of the motorway.

They were over estimates. That trend got worse with the Cross City Tunnel, the Lane Cove Tunnel and the two tunnels in Brisbane. It has been a trend. What we were asking for in those legal proceedings was corrective advertising. The implications of course are if the volumes are going to be significantly lower than what is being put in the prospectuses given to shareholders and people who would invest money in it then the estimate for revenue flow is going to be higher than what it could. I would go further and say what the trend was—

The Hon. TREVOR KHAN: This is under the previous projects. If we take the Cross City Tunnel, it had high estimates that turned out to be rubbish?

Dr ZEIBOTS: Yes. They could not be that high because the choke point or feeder roads that fed into that motorway were actually constricting it. I think you will find that is probably what is happening with WestConnex.

The CHAIR: Those higher unrealistic figures attracted investment?

Dr ZEIBOTS: The higher volumes were necessary in order for those projects to look good on paper and look as though they were going to make a return on investment. I think the profession learnt that it was not a good idea to do that.

The Hon. TREVOR KHAN: You might get sued, apart from anything else?

Dr ZEIBOTS: You might and many did. When you look at the sums of money involved and you think about a consulting company having fines, for want of a better term, of that magnitude levelled at them it is quite frightening. If you were the individuals responsible for that I cannot imagine how stressful and the pressure that would be.

The CHAIR: Is that relevant to the WestConnex?

Dr ZEIBOTS: My argument is this: If you know how to look at the volumes that are there, that are given in the environmental impact statement, the volumes are not sufficient to justify the investment in capacity that is being made. A lot of that capacity is not going to be used, as far as I can tell. I think the reason why it is not going to be used is because there are choke points, restrictions in the amount of traffic that can get on to that motorway in what we call the distribution network. For example, the main line tunnel has four lanes in each direction. If that is not going to be used, why—

The Hon. DANIEL MOOKHEY: Dr Zeibots, when you say "main line tunnel" can you clarify to which part of the project you are referring?

Dr ZEIBOTS: I hear you. On the handout that I have given you.

The Hon. DANIEL MOOKHEY: You are talking about stage 3A?

Dr ZEIBOTS: Stage 3, yes. I have not numbered my pages. I am remiss there. The main line tunnel is what is referred to as stage 3 generally.

The Hon. DANIEL MOOKHEY: Not the M4 East?

The Hon. SHAYNE MALLARD: No. You have written the "main line tunnel"?

Dr ZEIBOTS: Yes. The main line tunnel, if you like, is the section of motorway that connects the M4 to the M5.

The Hon. DANIEL MOOKHEY: I get that. On your map there is M4 East main line tunnel, M4-M5 main line tunnel and new M5 main line tunnel. I wanted to be clear which one you were referring to.

Dr ZEIBOTS: It is the section that connects—

The Hon. DANIEL MOOKHEY: It is the M4-M5 link?

Dr ZEIBOTS: Yes, that one generally. There are parts in it that might have sub-names. Generally speaking, that section of stage 3 has four lanes in each direction and when I searched and searched through all of the volumes and documents that were being cited, what I could find was a set of graphs. I will also make this point: I have not provided a lot of feedback or information to you because I wanted to look at one thing. I think one short brief succinct point is probably better than a whole lot. That is what I have endeavoured to do.

The Hon. DANIEL MOOKHEY: Thank you for doing so.

Dr ZEIBOTS: In my mind, this is what says that I am not confident this is a development that should go ahead. I cannot see the merit in it. If you look at the following pages there are bar graphs that have come from the "WestConnex M4-M5 Link. Technical working paper: Traffic and transport."

The Hon. TREVOR KHAN: The one that has down the bottom 217 and 208?

Dr ZEIBOTS: Yes, that is correct. They are the page references. This is where it comes from. The one from page 217 shows the north-south screen line and it is showing the traffic volumes for the a.m. peak period over one hour. We know from the highway capacity manual, or its Australian variant, that the maximum number of vehicles that you would see pass a point on a road generally at motorway standard is about 2,000 vehicles per hour. Sometimes you might get a whopping 2,050. It is never exact but it would sit on that number and it is not going to vary too much from that. Therefore, the maximum volume you would get through a four lane section of tunnel would be 8,000 vehicles per hour.

The Hon. TREVOR KHAN: Sixteen thousand?

Dr ZEIBOTS: Eight thousand for one-way and 16,000 for both. These diagrams here are for two-way. It is not distinguishing how much is northbound tunnel or southbound tunnel. It does not give us that information. What it is telling us here is that at the lower north-south screen line point, which is down more towards the St Peters end, is that with the project, after opening, we are looking at about 5,200 vehicles per hour. That is 5,200 vehicles that could fill a potential 16,000 vehicles per hour space. If you add the Western Harbour Tunnel and the F6 main line tunnel to the model that number goes up. It is higher. The point I would make here is that it seems to me in order to justify WestConnex stage 3 you need to go and build those other expensive and elaborate sections of motorway.

I am questioning the merits of that from a transport planning perspective. It seems to me that we are building motorways in order to try and then have an opportunity to pursue further motorways that will generate further traffic. WestConnex stage 3, in and of itself, at four lanes capacity in each direction—I do not think that can be justified. The volumes are very low. If that was all that was built it is reasonable to say that according to the folks that did the traffic model for this they would anticipate there would not be a lot of traffic on that motorway. I suspect the reason why is because the feeder roads to the motorway are acting as a choke point. They are not letting as much traffic on to the motorway.

The CHAIR: Have those figures been used to attract the \$9.62 billion investment?

Dr ZEIBOTS: I would assume so. I am not across how the financing works in detail and I am not going to try to comment on that, but I gather that a lot of the documentation around that has not been provided. But what I learnt if I go back to the Eastern Distributor days is that the way a lot of the financing for these motorways works is that they have a portfolio of motorways and they will cross-subsidise or they will—

The Hon. DANIEL MOOKHEY: It is funny that you should mention that because I was going to ask you that question.

The Hon. TREVOR KHAN: She is almost finished her answer. Let her finish and then you can ask your question. I am very interested in this.

The Hon. DANIEL MOOKHEY: Are you finished?

Dr ZEIBOTS: I will have a drink of water and then I will continue. What I think happens—and this is without being privy to what goes on in detail—there is a portfolio of motorways that are invested in. Some of those motorways are more profitable than others for various reasons and you try to stitch them together—

The Hon. DANIEL MOOKHEY: Staple them.

Dr ZEIBOTS: Yes, you staple them together and get one to subsidise another. You might be on the lookout for another motorway further on down the track; it is a very fluid sort of thing.

The Hon. DANIEL MOOKHEY: Doctor, are you aware that the business case for the WestConnex project says that stage 1A, which is the M4 widening, forecasts 169,000 daily users by 2031 and stage 3A forecasts 33,000? Are you aware that some people have said that is the actual cross-subsidising mechanism you have just described—that is, without stage 1A, the M4 widening, stage 3 is not financially viable therefore the two have to be bundled and that is why the people of Western Sydney will have to pay tolls for 40 years?

Dr ZEIBOTS: That sounds quite reasonable to me. When the first round of motorways or tollways were introduced to Sydney the M4 was the one that made a lot of money. When that section from Mays Hill to Prospect was built it was not a very long section of motorway, it was all above ground and it was relatively cheap to

construct. It was all beer and skittles in lots of ways. It was very easy to do and you could make a lot of money out of it because there were a lot of sections of that motorway that had already been built. People who were attracted to that road were not just using that one small section that was being tolled; they were using the whole M4 motorway. When that motorway was lost—because the toll period I think was only 15 years—I would imagine there was a considerable amount of revenue that would have been lost from those who were in the tollway business.

If you were in the tollway business I would imagine that you would want to have that tollway back in your portfolio because it is an access within Sydney that has a lot of demand at either end—the volumes are quite high—so if you could come up with a reason to re-toll that road that would be good for your business. As a transport planner I do not believe that you would want to increase the capacity of a tollway going into the centre of a city. I do not believe in increasing the lane capacity on the M4 as it gets closer to the central business district from a transport planning perspective, which is very different from a tollway business perspective and we need to keep that in mind, and I would have pursued other strategies. I think even in relation to the M4 motorway other strategies could have been pursued that would have brought about a better transport outcome than the one that has been pursued.

The Hon. GREG DONNELLY: My question relates to the matter of toll fatigue for the people of Sydney, given the manifest number of toll roads. In terms of trying to grasp the relative accuracy of the numbers for predicted traffic volume numbers—this is asking you to speculate and if you are not comfortable in doing so then please say so—do you think some consideration is being given to the reality that the Committee has heard a lot about; namely, that people are feeling the weight of tolling coming down onto their shoulders in view of the number of toll roads in Sydney?

Dr ZEIBOTS: Logically you would imagine that there would be. The responses of users to tolls and what have you is not an area that I specialise in but my colleagues Professor John Rose at the University of Technology and Professor David Hensher at the University of Sydney would be the people you would ask about that. However, I know that Professor Hensher has recently been commenting on the problem with the accumulation of tolls and toll fatigue, as you have phrased it. What exactly will happen as a result of that I do not know but I think you will see different responses given the general state of economic activities. So in a recession or when there is a big squeeze on petrol prices the issue of toll fatigue would become greater on households and individuals, but the degree to which having a large succession of very high tolls and what the merits of those are—I do not think that is really very well understood generally. A lot of people talk about road pricing in order to ease congestion and I have to say I am not a big fan or a big advocate of it. I think the way in which you combat congestion is through providing better levels of service on the transport network. There is another equilibrium that works in that relationship but I think you can have too many tollways. I think that would be possible and we are a little bit in unknown territories to know how well that is going to work.

Ms CATE FAEHRMANN: In your submission you say that you have prepared the science of traffic modelling but I think the first part is actually about the politics of the decision and the fact that you were a part of the consultation around the 2012 Sydney transport master plan. You describe in your submission what eventually came out of that consultation process—namely, the 400-page document that was very different to what you had consulted on in terms of transport solutions. Would you like to expand on that? If you want to tell the Committee I would be really interested in hearing why you think that changed so much to include every motorway that had ever been considered since 1948?

Dr ZEIBOTS: I will be very plain speaking about this and I very much hope that it is not going to be interpreted wrongly.

The Hon. TREVOR KHAN: I would not go that far.

Dr ZEIBOTS: Alright, we will see how we go. I am of the view that the changes that were instigated by Gladys Berejiklian when she was transport Minister were really quite wonderful. There were improvements made to public transport, they were made very quickly and they even surprised me—and I am on record as saying that. They were on an even par, if not better than, some of the reforms that were brought in by Alannah MacTiernan over in Perth. The whole bringing together of all of the transport portfolios, taking the planning powers out of the Roads and Traffic Authority—members will recall that whilst Minister I think the word might be not scuttled but she abandoned the RTA or disbanded the RTA.

The Hon. SHAYNE MALLARD: Restructured.

Dr ZEIBOTS: Restructured. The key thing was that the strategic planning powers were taken away from them and they were put into Transport for NSW. That had all happened during 2011 and by 2012 my colleagues and I were asked to go and sit on the expert advisory panel. I had seen the Minister prior to that in

relation to the process, so this was without input or even knowing that I would later be asked to be on the expert advisory panel. We went to see her about the way in which a transport policy could be created. To cut a long story short, we believed that all of the parties, including motorway and tollway companies, road construction interests, all needed to be brought together and we all needed to sit down to talk about what it was that we could agree on. We could then leave the motorway building, which is the 5 per cent to 10 per cent of decisions that we probably do not agree on, to fight that out afterwards.

We know from looking at what has happened in other jurisdictions overseas that as a decision-making process it is a very good way to proceed because you will get a lot of good things done as a result of that. It was in that spirit and in that light that we went into the expert advisory panel. As I have mentioned, Associate Professor Garry Glazebrook, who had been the head planner at the City of Sydney, the Director of the Institute for Sustainable Futures at the University of Sydney Professor Stuart White—my boss—and Ron Christie were asked to go onto that as expert advisers. We were all delighted by the fact that there was all this talk of public transport after many years of seeing motorway development go ahead that did not make us particularly happy. The reasons we were of that view I have stated in our submission and I will not go over them now, but it is suffice to say that it seemed that on the part of government public servants—in particular Les Wielinga, who was the then director of Transport for NSW—there was all this talk about the need to improve public transport, particularly the rail network, in order to alleviate road traffic congestion.

Finally, the connection or relationship between road traffic congestion levels and public transport service levels was being made and it looked as though it was being embedded in policy and in the strategic considerations. During that time, we never had a meeting where we were sitting and talking about motorway construction and motorway corridors. When we were finally given the first drafts we were not allowed to take the drafts away with us, which is perfectly understandable, but it was a very meaty document—it was 400 pages long. We were able to go in and have a look at it, and looking through the diagrams I was really quite surprised to see that there was all of this motorway development that was being recommended. My PhD is in an area called "induced traffic growth". It is a very serious problem in many different ways. As a motorway expert in that area I was disappointed that I had not been asked about the motorway development, especially given the detailed analysis I have done on previous motorway developments. None of that featured in the considerations as far as I could tell.

The CHAIR: You were on an expert panel but you were not asked to give expert advice?

Dr ZEIBOTS: No, and that is where it gets difficult, because I do not believe that within Transport for NSW—and I am very sincere about this—there was any great desire or appetite to go and build the motorways that we are now seeing built. I also believe in good faith the comments made by Gladys Berejiklian when she was transport Minister that she wanted the technical people to go and work out what it was that was needed to be done and that she did not want to see political interference. I believe that she was quite sincere about that. That was the flavour or the atmosphere in which a lot of us were doing that.

We were consulted about the metros and I note that there were previous comments about the metros. I understand that many people in community groups are not in support of them or in favour of them. I do have reservations about them. Generally speaking, the view that I took was that any public transport improvements, especially significant public transport improvements on trunk routes, were better than no public transport improvements.

I understand the real politics that later emerged, which was that there needed to be a counter within industry to the industry groups that were in favour of motorway developments so that if there was a private sector interest in metro development or rail development, it would help to counter the effects of the private sector interests in tollway development, which is another way of looking at it. It is not a nice view. It sends the message or paints the picture that our city is one that is having most of its transport decisions made by private sector interests without a lot of care or consideration for what is best for the general community and the business community. But that was what we were led to believe would be the case, and then we were shown these motorways that just came out of nowhere and there were a lot of them. I was quite shocked at the time.

The Hon. Dr PETER PHELPS: Is it fair to categorise your submission that, to put it roughly, four lanes in each direction is an over-engineering for the expected capacity?

Dr ZEIBOTS: Yes, I think so.

The Hon. Dr PETER PHELPS: When the Sydney Harbour Bridge was built it had six traffic lanes and was, at the time, accused—by none other than the *Sydney Morning Herald*—of being over-engineered because we would never need that level of capacity. Do you agree that, over a period of time, some infrastructure projects are built with but not for—in other words, to allow for expanded capacity in future years?

Dr ZEIBOTS: Earlier I made comments about the choke point in the network. The difference with the Sydney Harbour Bridge is that the approach roads—or the distribution network, the feeder network and the roads either side of it—do not have a capacity that is lower than the number of lanes on the bridge. Therefore, there is the possibility for the traffic to grow to fill that capacity. If we look at something like the Cross City Tunnel, the choke point in the network there is on the approach road. Unless we were to go and demolish half of Rushcutters Bay and make the roads that feed the Cross City Tunnel, we can never see the capacity in the Cross City Tunnel filled. The point that I am making is that I think we are looking at a similar outcome with stage 3 of WestConnex.

The Hon. Dr PETER PHELPS: Unless you also factor in the expected level of road use flowing from the northern beaches?

Dr ZEIBOTS: If you go and increase the number of motorways that feed that motorway, it will increase. But then there are other questions about whether those motorways are the best things to be building for those sectors. I believe that the northern beaches would benefit far greater by the extension, in this case, of the metro line from Chatswood through to the hospital precinct, Mona Vale and Brookvale. There are all sorts of reasons for that. From a strategic transport planning perspective—and I understand the point you are trying to make—I think there are better options and they are more important options for the development of centres and economic productivity across areas like the global economic arch.

The CHAIR: Thank you very much for your expert contribution to our inquiry. We appreciate it very much. We will now adjourn for afternoon tea.

(The witness withdrew)

(Short adjournment)

JANET DANDY-WARD, Treasurer, WestConnex Action Group, sworn and affirmed

RHEA LIEBMANN, Spokesperson, WestConnex Action Group, affirmed and examined

JANE DURIE, Spokesperson, WestConnex Action Group, affirmed and examined

The CHAIR: Thank you for your attendance and for the submission you have supplied. We have also been given a lot of photographs that we are checking. What do you want us to do with the photos, just look at them or do you want to give us a description of them?

Ms DANDY-WARD: We will refer to them.

Ms LIEBMANN: We will refer to them.

The CHAIR: You will refer them as we go along.

Dr DURIE: Entertainment.

Ms DANDY-WARD: I have a ninth copy. I sent eight around. I have got the ninth copy in front of me. I will give that to you afterwards.

The CHAIR: Do you wish to make an opening statement?

Ms LIEBMANN: Yes, please, Mr Chair. WestConnex Action Group would like to thank the Committee for convening this inquiry and for giving the people of New South Wales the first real opportunity to be heard. WestConnex has been characterised by secrecy, a failure to follow due process, lack of proper due diligence, a disregard for the public interest and taxpayer money, and a disregard for the community and environment. Over 35,000 objections to the various Environmental Impact Statements [EIS] seem to have been rejected by RMS and ignored by the Department of Planning, including the Environment Protection Authority's [EPA] recommendation that approval should not be granted for stage 3 without further assessment of impacts. All of these aspects of WestConnex have had serious, continuing and lasting impacts.

The conditions of approval are woefully inadequate to protect the community from construction impacts. Additional conditions have been included for stage 3, which are a recognition of this, yet RMS has refused to apply these to the first two stages. The perpetual noisy night and weekend works have terrible health impacts on residents. The noise management plans and the noise modelling approved by the Department of Planning are ineffective to protect residents. Recently these approved plans permitted five consecutive nights of work at two sites less than 750 metres apart. Very few residents are offered alternative accommodation. A few more are provided with noise cancelling headphones, but not every member of the family; only one or two people within the family and that is primarily students. Most are only given foam ear plugs.

Even the design of the road has failed to properly consider the safety of residents and pedestrians. The RMS design for the widening of Euston Road, which was referred to this morning, in Alexandria to accommodate traffic exiting the St Peters Interchange, which was approved by Planning, allowed the widening of road to seven lanes and brought the seventh lane and the road's edge—and potentially 60,000 cars a day—to within 1.6 metres of residents' bedrooms with no barriers between the road and the footpath. These are the photos that you have been provided, which show a young child lying on the road—on the footpath—and his feet are at his front door. His head is less than 30 centimetres from the road. No barrier or safety barrier was proposed. How can this be approved or considered safe by RMS? Only after community protest and objections from City of Sydney, members of Parliament [MPs] and the shadow Minister for Transport did the Department of Planning require Roads and Maritime Services [RMS] to redesign the road, but even still residents do not have a final design.

It must be remembered that each of the stages of WestConnex has been designated as critical State infrastructure. This gives RMS enormous powers and exempts WestConnex from the checks and balances of normal planning and legislative requirements, and from enforcement. The EPA cannot issue a stop work order on a construction site of WestConnex, no matter how serious the safety issues. This was the case at St Peters when serious health risks were occurring because of the leachate odours from the site for about four to five months. This has now been prosecuted by the EPA. We would like to table a letter from the then chairman and chief executive officer of the EPA, together with the letter we sent to him, confirming that he was unable to issue a stop work order in relation to this.

The Government has permitted the devolution of public powers and obligations to the private sector by allowing the Sydney Motorway Corporation [SMC] to subcontract its community protection and consultation obligations to its construction subcontractors. We heard Mr Cliche give evidence this morning, when he refused to accept any responsibility for the actions of the construction companies. In February 2017 we wrote to

Mr Cliche, the Premier and all relevant Ministers and agencies, highlighting serious health and safety issues around dust, noise and asbestos removal during the demolition of homes and businesses at St Peters. I would like to table his and the Premier's reply.

Document tabled.

Ms LIEBMANN: Mr Cliche merely replied that SMC and all of its contractors have always complied with the law. He did not address any of the issues we had raised and simply fobbed it off. We know that this is not true. The EPA has issued licence variations and penalty notices. The police also, I believe, have fined trucking contractors. As I said, the EPA is currently in court with the new M5 contractor over the leachate odours at St Peters Interchange. It is worthwhile remembering that Mr Cliche gave evidence to the tollway inquiry in May last year that the site had been remediated. Odours were still emanating from the site a month after that—up to two months after that. There are serious questions also to be answered about the links between the Government and private investment interests. There has been a revolving door of people working on the project between government agencies and private corporations, which are directly involved with WestConnex, all of which have a potential conflict of interest. We would also like to refer to the Michael West article on this, which was published last Friday, which I believe is called Revolving Doors, and we would be happy to provide the Committee with a copy of that. Interest that happened to be about roads, profits and privatisations, not planning and environmentally sustainable transport infrastructure for the future. This has serious impacts on democratic accountability.

About We also reject RMS's assurances on air quality, the safety of unfiltered stacks and health impacts. We have requested a qualitative research to be undertaken with local residents and affected communities but the Department of Health for methodological reasons refuses to engage with our request. We are able to table our letters to the health department in this regard and its responses. We find it hard to believe that construction in people's backyards sometimes for 24 hours at a time or exposure to concentrated unfiltered stacks do not have any health impacts. On this basis we also call for Dr Noel Child, an independent tunnel engineer, to be called before this inquiry. No other major city is building tollways similar to WestConnex. We must take stock now, before this becomes the way public infrastructure is undertaken in this State. We welcome this inquiry but would suggest it is not sufficient. We join with other groups in asking for a royal commission and request that you recommend a full investigation and review of the approval of stage 3 and a halt to any further contracts being signed for WestConnex. We thank you for the opportunity to address the Committee.

The CHAIR: Thank you for your opening statement. If you have a copy of that, hand it to the secretariat. Thank you for the amount of detailed information in your submission numbered 436. I advise members of the public that Parliament House will close at 6.00 p.m. Our session will close at 5.45 p.m. Members of the public will have to leave the building promptly. We may be able to take you out after 6.00 p.m. through the back doors, which is far more complicated.

The Hon. GREG DONNELLY: I thank you for your detailed submission No. 436 to this inquiry. Unfortunately we have limited time to ask questions. I am not being rude but I will fire some at you and together with my colleague, the Hon. Daniel Mookhey, we will work our way through. You have made 10 recommendations in your submission for the Committee to consider. In the course of three days of public hearings for this inquiry, construction of WestConnex is continuing, which we have to acknowledge as a matter of reality. In trying to ameliorate your concerns as construction is going ahead, what actions can the Committee take to ameliorate the effect of this project which sits on the ground out there as we speak? Will you talk to those recommendations you want the Committee to pay particular attention to?

Dr DURIE: Before we get to that I would like to make a response. We know that WestConnex is currently continuing as we are sitting here. However, I want to reiterate the call by John Lozano in the earlier submission that we believe that there should be an independent inquiry to actually investigate—

The Hon. GREG DONNELLY: How it got to this point—

Dr DURIE: —the cost of closing down work on WestConnex and reviewing the whole process of WestConnex. I think it pre-empts the outcomes of this inquiry to suggest that it is ongoing, therefore, nothing can be done. I just want to reiterate that.

The Hon. GREG DONNELLY: I understand the point you are making but we will wake up tomorrow and the concrete will still be poured and it will probably be the case the next day. Things can happen, directions can change, but we are trying to grasp the key priorities of ameliorating the impact of this project which has already been built at least in parts of Sydney.

Dr DURIE: I am sure my colleagues have further responses but I would say again that while the work continues, that is fine. However, we want it to be stopped while there is a royal commission inquiry into how WestConnex came about and how the relationships between private industry, corporations, the investments in

what seems to be just investment interests that just happened to be a road came about, and whether or not this is in the best interests of the residents of Sydney and of New South Wales in general in terms of what is being lost outside of Sydney in terms of infrastructure.

The Hon. GREG DONNELLY: I accept that that forms some of your recommendations. I appreciate that point, yes.

Dr DURIE: The others may want to talk to you.

Ms DANDY-WARD: I was just going to mention the photographs. If you take a look at what has actually been happening—this is particularly St Peters. We have a set of photographs of four, which look like this, with the roof coming off. We have set of photographs which were a dust incident and you have got a set of slightly blurry photographs that were actually taken from a video. We want that kind of behaviour by contractors to stop, absolutely. I agree totally with what my colleague Jane has said just then that that needs to happen but, at the same time, if this work is continuing then these sorts of breaches, very serious safety breaches, need to stop. We are really struggling as a community to find ways to stop this. Myself, my neighbours—and this is all across the development, so across Haberfield, Kingsgrove, Ashfield, St Peters and about to hit Rozelle—have taken these photographs. I have personally been told by the EPA to go out and take photographs.

The Hon. GREG DONNELLY: Can you recall when were you told that or, on notice, can you come back to us with that date?

Ms DANDY-WARD: It was on the phone—I can. It was not in writing.

The Hon. GREG DONNELLY: Was that relatively recently?

Ms DANDY-WARD: Yes.

The Hon. GREG DONNELLY: Focus on this for a moment. You rang the EPA with respect to your observation of some concern, which was about to happen or was happening?

Ms DANDY-WARD: It was happening. It was the noise at St Peters Interchange.

The Hon. GREG DONNELLY: What did the EPA say to you?

Ms DANDY-WARD: They said I should be recording and taking photographs.

The Hon. GREG DONNELLY: Once you had done that—

The Hon. TREVOR KHAN: Sorry, I am not cutting across you, Mr Donnelly, and I am happy if you take a bit of our time. Were you calling the hotline? What were you calling?

Ms DANDY-WARD: I was speaking to the EPA after calling SMC.

The Hon. TREVOR KHAN: I am not doubting. I am just wondering what the actual mechanism for contacting the EPA is.

Ms DANDY-WARD: Typically you call the SMC hotline.

The Hon. GREG DONNELLY: Which is the Sydney Motorway Corporation, and they directed you to?

Ms DANDY-WARD: They did not direct me to but I was told by somebody there, "Oh yes, we're dealing with the noise." Then as a matter of course I rang the EPA because I was really concerned about the level of noise that was going on on the interchange. It was disturbing me. I work at home sometimes. It was not at night, it was during the day. I was told that it would be useful if residents could take recordings and photographs.

The Hon. GREG DONNELLY: But if it was a noise matter you did not presumably have on hand or readily accessible noise monitoring equipment.

Ms DANDY-WARD: No, exactly.

The Hon. GREG DONNELLY: So what did they expect you to do, just simply record it on your iPhone or something? Is that what they were suggesting?

Ms DANDY-WARD: I guess they were suggesting that.

The Hon. TREVOR KHAN: Then replay it at whatever is the relevant volume.

Ms DANDY-WARD: Exactly.

The Hon. GREG DONNELLY: Having completed the recording of this noise, what were you then asked to do or expected to do?

Ms DANDY-WARD: That was not explained to me but the EPA—

The Hon. GREG DONNELLY: It was meant to make you feel better by just recording it, was it?

Ms DANDY-WARD: I guess the person was saying that the evidence that as a community you are gathering is really useful. And it is really useful, but it has got to stop.

The Hon. DANIEL MOOKHEY: Did you ever give it to the EPA or did they ever ask for it?

Ms DANDY-WARD: No, they did not ask for it. Nor did SMC.

The Hon. DANIEL MOOKHEY: Did SMC act or get back to you? Because the CEO of SMC said it was all great. He said, "Every time we get a complaint we act and I get told and it's wonderful."

The Hon. GREG DONNELLY: He said this morning that he personally gets a text message when there is a complaint. That was his evidence this morning.

Dr DURIE: Did he say what he did with the text message?

The Hon. DANIEL MOOKHEY: He says that they have had multiple meetings with people who have been complaining about it. He calls the contractors in and he counsels them not to do it, effectively was what he was telling us.

Dr DURIE: Yes, because under the Act they are not allowed to order them to do anything. The companies can continue to do what they are doing, they can be taken to court but the example we are giving— what is that example about St Peters?

Ms LIEBMANN: The leachate.

The Hon. GREG DONNELLY: This is one of the concerns you have about the SMC governance model and what it does not permit.

Dr DURIE: Absolutely.

Ms LIEBMANN: If I may, I think there are two issues here. One is breaches, and that in itself is a sign that there is insufficient on-the-ground compliance monitoring. There is no independent monitoring whatsoever. I sit on the community reference group, the WestConnex Community Reference Group, which was run by SMC but is now run by RMS, and we have raised time and time and time again that we want at least one officer on each significant construction site so that residents have somewhere to go and that that has to be an independent person who can say, "Hang on, this noise isn't right," or, "You're not due to do this," or, "You shouldn't be sawing concrete in front of someone's bedroom window at 5.30 a.m."

The Hon. DANIEL MOOKHEY: The Department of Planning says that they have eight of them collocated with Inner West Council. Are you suggesting that is not adequate?

Ms LIEBMANN: It is definitely not adequate. I think there is a big difference between post-fact investigation of issues and having people on the ground to ensure compliance at the time.

The Hon. GREG DONNELLY: Who can respond immediately.

Ms LIEBMANN: That and also remember that we have subcontractor after subcontractor after subcontractor. In the case of the new M5 you have CPB joint ventures, which is the primary consortia that is building it. It subcontracts everything. You have got noise modelling consultants for the noise works to be done on people's homes or to decide the impact, what is significant noise for us to offer someone alternative accommodation. That is something I would like to address as well. There is compliance with the existing conditions and at the time compliance. There is no point in fining somebody two months after you have put people through hell.

The Hon. DANIEL MOOKHEY: Can you tell us about night-time construction at St Peters and what effect it has had on your community?

Ms LIEBMANN: It has been terrible. You will be getting some evidence after us of people who have actually lived with this. I myself am not directly in the path.

The Hon. DANIEL MOOKHEY: We were told by residents last week that effectively the exceptional provisions in the planning approval are being used as routine behaviour that is permissible.

Ms LIEBMANN: That is correct and there are two reasons for that. One is because the model that RMS and CPB and SMC have proposed and which has been approved by planning is so small in the radius in which it looks at sensitive receivers that you can have two separate sites in St Peters two nights, three nights. It is not allowed to do five nights in a row but because of the way the model is so restrictive, that is permitted.

The Hon. TREVOR KHAN: Can you explain what you mean by "two nights, three nights"?

Ms LIEBMANN: My apologies. At St Peters you have got a site on May Street and you have got a site on the highway. They are as the crow flies about 750 metres apart. My understanding is that—again, it took me 12 months to get these rules from SMC and CPB about how many nights work you are allowed. You are not allowed to do more than three nights night work in a row. So what they are doing is doing two nights at Campbell Street on one side and then shifting it to the other. Because the noise model that has been approved has such a small radius of what they consider sensitive receivers, they will say that the people in the middle of both those sites get nothing.

The Hon. DANIEL MOOKHEY: There is a park on May Street that diminishes the amount of residents.

The Hon. TREVOR KHAN: Just let her finish. I am interested that there is a park, but anyway.

The Hon. DANIEL MOOKHEY: The point is it limits the amount of people.

Ms LIEBMANN: Yes, but the real issue here is that what the Department of Planning has allowed in these conditions of approval is simply not sufficient to protect people. Those conditions have been permitted—

The Hon. TREVOR KHAN: But you were saying something about the people in the middle. Are you saying that the people in the middle get the noise all the time?

Ms LIEBMANN: Correct.

Ms DANDY-WARD: In our submission on page 12 is case study 3. St Peters resident Dr Jacinta Green has specifically said that I could refer back to this. She did give her permission. There is a quote there from her. I will read it if you would like me to. This is her direct submission:

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

This is the weekly email that states what work is happening—

I dread hearing the reversing beeps at 5:30 in the morning as it signals works I haven't been notified about. There needs to be a third party that channels the complaints and doesn't dismiss, ignore or downplay phone calls from residents in distress."

Dr Jacinta Green, 5th September 2018

Dr DURIE: One of the things that we discussed as a group is that we would highly recommend that members of the Committee come to St Peters and have a look at the damage that has been done to that community and the massive construction site that people in the region—and not just in St Peters but in Newtown, in Alexandria and surrounding suburbs—live with on a daily basis. We highly recommend that you come down and have a look at that as well as the other sites that have been affected by WestConnex.

Ms CATE FAEHRMANN: Thank you for appearing today and for all of the work that you have done to represent your communities and to protect them essentially against the impacts as best as you can. That leads to my first question. How many hours does this take and what does this look like for each of you in terms of the last couple of years? We have heard from so many residents that it has absolutely uprooted their lives, changed their lives and impacted their relationships. How has it been for each of you?

Ms DANDY-WARD: I do something for the WestConnex Action Group pretty much every day and that has been for four years. I was one of the original members of the group. It came about because I discovered this thing was happening. I had to investigate it myself, a bit like Dr Ray Nassar in a sense. I found this thing was coming towards me and I thought, "I had better find out more about this", and I searched and searched. I mentioned this in my own submission which I believe has been published but I do not have a number. I will let the secretariat refer that on to you. But, yes, a number of hours. We are talking street stalls, correspondence and meetings of the action group to make decisions. We are talking about preparing statements for things like this along the way and

submissions to the environmental impact statement along the way. There has now been four of those. It is hard work.

The Hon. GREG DONNELLY: It is submission number 485.

Ms DANDY-WARD: Thank you.

Ms CATE FAEHRMANN: Thank you. I might just move very quickly or I will run out of time.

Ms LIEBMANN: It has been thousands and thousands and thousands of hours. In my case, it is probably a lot of research and trying to get information out and also compliance—ensuring complaints are made and letters are written, most of which are ignored.

Ms CATE FAEHRMANN: Has it impacted your work? We have heard from some people who have had to take days off work or time off work.

Ms DANDY-WARD: Absolutely.

Dr DURIE: Yes.

Ms LIEBMANN: I work part-time partly because I want to spend the time on this because I think it is such a critical issue—that people are protected from the sort of treatment that they have been getting, both in terms of construction, what they will be left with, and the compulsory acquisitions. The treatment of individuals has been appalling. I am ashamed to live in this State that will allow individuals en masse to be treated in that way. I think it is dreadful.

Ms CATE FAEHRMANN: Dr Durie?

Dr DURIE: I have to say that I only have been involved two years.

Ms CATE FAEHRMANN: Only?

Dr DURIE: Not as long as some of my colleagues, but it certainly takes up quite a bit of my time, on and off at different times. It depends also on what is going on at work. I work full-time. But I wanted to say that the reason I got involved is that there is a park that I planted trees in when my daughter was three and two, and that was being destroyed. It was more than 1,000 trees that came out of that park.

Ms CATE FAEHRMANN: Which park?

Dr DURIE: Sydney Park, in order to widen Euston Road as a lead-off from St Peters Interchange. I think that for many community members that was a point at which it engaged community members and really made us see what is happening; how WestConnex is eating into our community and pulling apart—cutting us in half in terms of how it is impacting on people in the local area.

Ms CATE FAEHRMANN: One of the key themes that is coming out of all of our questioning of residents and their frustrations, I suppose, with not being able to get answers and not knowing who to turn to and being fobbed off is around responsibility. In fact the Committee is finding that with our questioning of most of the officials that come before this inquiry as well. Is it the situation that SMC in some ways also has abrogated its responsibility to the web of contractors? Is that the response that you are getting from SMC when you are asking them to act on things?

Ms LIEBMANN: When you make a complaint, the first stage is to ring up their hotline. We found very quickly that they would then transfer you to the construction consortia for that particular stage. So our complaints—when I say "our", I mean the St Peters area—would go straight to the new M5 contractor. If you send an email to SMC, you get a response that says they will reply within 21 days or five days. They never do. They never, ever respond. So your complaint is shoved from SMC to the contractor.

The Hon. TREVOR KHAN: Is that by way of phone?

Ms LIEBMANN: It is seamless. There are two different email addresses and we have learnt that we have to send to info@newonefive as well as info@westconnex. When you make a phone call, there is a WestConnex hotline, but the people who answer that phone will transfer you to the community relations people—and I use the term "public relations" quite advisedly—who will then take your complaint. But we have already given examples of situations where the people on the phone will say, "No, no. We're not working now", when there is work going on in front bedrooms.

Ms CATE FAEHRMANN: I am sorry, back to the community relations people. Are you saying that they are working for the contractor or SMC?

Ms LIEBMANN: For the contractor. They are employed by CPB Contractors.

Ms CATE FAEHRMANN: Got it.

The CHAIR: I just want to follow up some of the points that you have made in the documents you have sent to us. In one you say that over 35,000 objections to the various environmental impact statements seemingly have been rejected by the RMS and ignored by the Department of Planning. What evidence do you have for that? I am not questioning it. I am just saying how do you know?

Dr DURIE: We have the evidence based on the enormous research and work that went into providing submissions in the form of objections to the EIS and that, within a very few weeks, the EIS announced that WestConnex was fine. It was hard to believe that in a period of time between the closure of receipt of submissions and the time at which the agreement was made that it would go ahead—

The Hon. DANIEL MOOKHEY: Do you mean the ministerial approval?

Dr DURIE: Yes.

The CHAIR: You mean they did not have time to read the submissions?

Dr DURIE: They could not possibly have.

Ms CATE FAEHRMANN: It was two weeks, I think. Was it about two weeks?

Dr DURIE: Yes.

Ms LIEBMANN: Two weeks, yes. I think you will find that if you look at the processes in which submissions are made, Planning looks at those submissions. It sends those objections or concerns to RMS, the proponent, who is then required to answer to Planning in order for Planning to make its decision. If you look closely at RMS's response to each of those objections, all they do is repeat the paragraphs of the environmental impact statement in the first place. There is no genuine consideration. It is a process, but there is no genuine and independent look at: What are the impacts on people, the environment? Is this a decision that we really should be making?

Dr DURIE: It is a very circular process.

The Hon. DANIEL MOOKHEY: When you said that Planning makes its decision, you mean the Minister?

Ms LIEBMANN: Correct, or the secretary.

The CHAIR: In your document you also stated—and you are repeating it now—the conditions of approval are woefully inadequate to protect the community from construction impacts. Some of the photographs show buildings half demolished, roofing on the road and on the footpath, and I imagine that any of that could have actually injured people.

Ms LIEBMANN: They could have easily killed someone. That was blown off in a storm in the middle of the night. It required the fire brigade and the police to attend to clear the road. That sheet of iron actually flew across. It is a small road. It hit the building on the other side and then bounced back. And that was a resident.

Ms DANDY-WARD: And that resident contacted us via our Facebook page and said, "This is just happened. What do I do?"

The CHAIR: It is quite dangerous for a house to sit there on a construction site when nobody lives there.

Dr DURIE: Yes.

Ms DANDY-WARD: Exactly.

Dr DURIE: Could I just add to that, Chairperson? The Valuer General was here speaking about the housing prices before. I do think that something needs to be raised about the impacts. This is an inquiry looking at the impacts of the construction of WestConnex as well as the eventual existence of WestConnex. I think two comments need to be made. We know of cases in St Peters where working-class people live in houses that may have not been of a standard inside that would fit or go well if you were going to sell it in Newtown in a rising house market. Even though they were selling it in Newtown, they did not get the kind of price—even though they had been living in Newtown, they did not get the kind of compensation for that house that would enable them to buy in Newtown.

The Hon. TREVOR KHAN: Is this because of the gentrification factor?

Dr DURIE: Yes, but it is also about pensioners living in houses or renting—

The Hon. TREVOR KHAN: Yes, I know.

Dr DURIE: They are then forced to move out of the area. That is one thing. Another point that has been made to me is that, in Rozelle, the moment that the construction was announced for WestConnex, house prices in Rozelle dropped dramatically. That drop was then used as the basis for compensation for housing.

Ms CATE FAEHRMANN: They refute that, though.

The Hon. TREVOR KHAN: Did that then go through? It depends when the valuation exercise went through. Were you here when the—

Ms CATE FAEHRMANN: This morning.

The Hon. TREVOR KHAN: You were here when the Valuer General was here.

Dr DURIE: Yes, I was here. That is why I wanted to make those points. We can provide evidence. We can provide more information about that.

The Hon. TREVOR KHAN: I think we accept what you are saying.

The CHAIR: Just one last quick comment. I think you have already made it: Even though we are having this inquiry, you are saying that you believe there should be royal commission and you recommend a full investigation and review of the approval of stage 3, and a halt to anymore contracts being signed?

Dr DURIE: I think, Chairperson, that what WestConnex brings up is a question about the notion of democratic government and what has been going on that has led to the arrangements that have led to WestConnex. We have heard about the revolving door. We have heard about needing to build more roads in order to justify this road. The way I think about it is that there just happened to be a road that private investment wanted to put their money into; it could have been something else. This is not about planning future environment-proof transport for our city.

Ms LIEBMANN: If I can add to that, it is not just the lack of proper assurance at the time of the decision, but what we have seen all the way through, with the Government's haste to privatise or to sell SMC, is the complete devolution of responsibility and public accountability around—I really want to emphasise this point—State significant infrastructure. The Minister has certified that this project is in the overall best interests of the State, and yet we have private corporations who are not just running it, but deciding who is doing the work, deciding how people are going to be treated, and deciding how these conditions, which I still say are woefully inadequate, are interpreted. That all comes down, on the ground, to a terrible experience. And it is not the way that this State should be making decisions around serious government expenditure of public money.

The CHAIR: Thank you for your comments and submissions. The Government now has the difficult job of asking questions.

The Hon. TREVOR KHAN: Actually, no, Chair, that is quite unfair. I am interested, as you are, in the outcome.

The CHAIR: I mean, you have the difficult job of answering their complaints.

The Hon. TREVOR KHAN: That shot was inappropriate. I think what interests me was what Mr Donnelly was asking you about—the practical steps that can be taken. At least Mr Mallard and I are both on the light rail inquiry as well, which is an interesting run. What we are seeing is that people do not have appropriate communication mechanisms when there is a problem. I suppose I will pick up what Mr Donnelly was asking you about. In a practical sense, what do you see—I am not being derogatory—as the complaint mechanism that would allow the issues that arise to be dealt with promptly?

Ms LIEBMANN: I would certainly say that you would need an independent complaint monitor. There is no point taking your complaint to the party who is causing the issue—the subject of the complaint. To give you an example of obfuscation, in St Peters, quite a few months ago, two workers had a fist fight. This was in a small cul-de-sac where kids play—well, they used to play. I am talking about a punch-up, knock-'em-down fight in the middle of the day. The resident who rang to complain did not say, "This is a complaint." When she and I met with the community public relations person a couple of months later we asked, "What ever happened with respect to that fight?" and she said, "Oh, was that a complaint?" We had to remind her that we would not be ringing her just to have a chat. That is a really serious issue with respect to worker behaviour. On the ground they are standing outside people's bedrooms smoking at 7.00 or 5.00 in the morning because that is when they start. They are having top-of-the-voice conversations at 2.00 in the morning because they are working.

The Hon. TREVOR KHAN: Do I take it that what you see is that the point of receipt of that—

Ms LIEBMANN: It needs to be somebody totally away from the contractor.

The Hon. TREVOR KHAN: Or is it the head contractor that takes responsibility for the actions? I can see some people behind you do not agree.

Ms LIEBMANN: The head contractor is not doing it. That is what is happening now.

The Hon. TREVOR KHAN: Is that what is happening now? Are they fobbing you off?

Ms LIEBMANN: The SMC has totally disappeared from community connections. We never see them anymore. It is only RMS or the construction joint venture.

The Hon. TREVOR KHAN: Well, is the answer, then, that the oversight body that puts a stop to a fight or some other issue is RMS? I am just trying to look for—

Ms DANDY-WARD: Not the RMS.

Ms LIEBMANN: I think we are talking more about a protection authority. I do not think the proponent is the appropriate person. But in terms of your question about the head contractor, SMC, there are subcontracts, legally, between those companies and their subcontractors. You can bet your bottom dollar that they have fixed time, fixed price. So there is going to be a conflict of interest there in terms of the head contractor dealing with those complaints because time is money, investigation is money et cetera. So, no, I think it needs to be completely outside the construction and the planning. It needs to be an ombudsman, effectively.

The Hon. DANIEL MOOKHEY: Are you talking about an inspector-general?

Ms LIEBMANN: I am not aware of the different bodies.

The Hon. DANIEL MOOKHEY: Someone with the powers of an inspector-general—which is usually the one that the Federal Government uses for Commonwealth construction projects?

Ms LIEBMANN: That sounds like a good idea, as long as it is away from the proponent, away from the people doing the work and away from the Department of Planning, which approved it.

The Hon. TREVOR KHAN: I take it that you are saying that that person should have the capacity to issue a stop work order?

Ms LIEBMANN: Absolutely.

Ms DANDY-WARD: Absolutely.

The CHAIR: Any more questions from the Government?

The Hon. TREVOR KHAN: Thank you.

Ms LIEBMANN: We have plenty more to go!

The Hon. TREVOR KHAN: If you want to have another shot, go ahead.

Dr DURIE: I would like to add, if I can, one issue that has not been raised. We have talked about the devastating impact in terms of breaches and loss of sleep. What I wanted to raise is that loss of sleep is not just having a bad night's sleep—it is a serious health issue. There are many health issues associated with the construction of WestConnex. We have, as an organisation, spoken with the Department of Health. We have been a little bit fobbed off. What we have asked for, and what we believe should be happening, is that we need to have research into the local impacts of WestConnex in its construction phase. We are not talking about something that will be going on for 12 months or even two years. We are talking about something that is going on for four, five or six years in people's lives.

Ms LIEBMANN: Ten years, in the case of Haberfield.

Dr DURIE: That has serious health impacts over a number of years. For example, if we look at the sleep issue we see that it can lead to serious mental problems. We need to be able to assess and ameliorate, immediately, those issues. People are seriously struggling, where they live, to deal with these problems. It is not a simple case of saying, "Well, move."

The CHAIR: We thank you for coming in and for your comments as a doctor. It is important to us.

(The witnesses withdrew)

SARINA KILHAM, Spokesperson, WestConnex Subcommittee, St Peters Public School P&C, affirmed and examined

TAMARA REGAN, Resident, St Peters, sworn and examined

KATE COTIS, Resident, St Peters, sworn and examined

The CHAIR: Do you have an opening statement?

Ms REGAN: Each of us have written a statement from our personal experience of WestConnex. The three of us each have a statement.

The CHAIR: Please keep them brief so there is time for questions.

Ms COTIS: I would like to start by thanking the Committee for inviting me to give evidence. I am not here as an expert on the building of major projects like WestConnex. The expertise I bring here today in relation to WestConnex is in the impact it is having on my family and I. Even if I accept everything the RMS, the Sydney Motorway Corporation, the Department of Planning and the Environment Protection Authority have to say in support of WestConnex, it makes no difference to our life and our very real lived experience—no difference at all. Compliance or otherwise on any requirements, conditions or obligations does not change the very awful situation my family and many of our neighbours find ourselves in because of WestConnex.

WestConnex has ruined our home and essentially will make it unlivable. So far, despite our desperate pleas, nobody with any authority to help seems to care. The emotion I am trying to contain today ranges from anger and outrage to powerlessness and distress. What is happening to us is truly awful—distressingly, heartbreakingly awful. How can the RMS believe it has discharged its responsibilities to protect us from the pollution and noise created by WestConnex by proposing to replace the fresh air we get from our 15 windows and three doors with five mechanical air ventilators? In doing so the RMS is expecting us to live in an inadequately sealed box. Our home is completely ruined by WestConnex.

How is it possible that the New South Wales Government and/or the RMS can think it is acceptable to intrude on our lives, our very private lives, by attempting to impose its view on how we should live inside our own home? How can this be considered remotely reasonable in a country like ours? We expect the Government to protect our right to live as we please inside our own home. Instead, it is telling us to close our home and breathe through mechanical air ventilators. We are being treated by the RMS with contempt because we are standing up to it and saying that this is not okay. An example of that contempt can be seen in a letter recently received from the RMS. It is a letter I have asked the Committee to consider as part of our submission. I have copies of that letter here if you have not already received it. This letter is not only factually wrong; it is patronising, dismissive and disrespectful.

In this letter the RMS attempts to respond to our very grave and real concerns by reducing them to a dispute about air conditioning. This letter was written by one of the most senior people within the RMS responsible for WestConnex. That person is Camilla Drover, Executive Director, Motorways Division. This is the same person who gave evidence to this inquiry last Tuesday 9 October—evidence on the noise and mitigation measures the RMS claims it provides to my community. This evidence can be found at page 13 in the transcript from the hearing on that day. Ms Drover claims that the RMS takes "... a very bespoke approach. We work with the residents and the businesses to work out what is going to best suit them".

At no stage has anything remotely resembling a bespoke approach been applied to us. At no stage has the RMS approached us to work out what will best suit us. The RMS has not consulted with us in any way—in fact, our experience and our submission shows the exact opposite has occurred. This is just one example of how difficult, if not impossible, it is to accept anything the RMS has to say. This is one of the main reasons we are asking this Committee for your assistance today. Thank you again for providing me with this opportunity.

Ms REGAN: Thank you for providing me with the opportunity to speak at the inquiry today. For a local resident to talk to the disastrous effects WestConnex has had on our lives as we live it every day is so important for the community to feel represented. I must apologise as I feel I am not prepared as I should be because I was only informed on Thursday and briefed this morning about my opportunity to speak today. I work full-time in a demanding career as a special education teacher. I am attempting to study my masters as well as raise my busy family of five. It has been completely overwhelming and time consuming having to deal with WestConnex on a daily basis for the past four years.

For me it began on Melbourne Cup Day in 2014 when my family was handed an acquisition package for our home. I could speak to the extensive emotional and mental health impacts this project has had on my family,

but I will stick to the facts. WestConnex has been a complete operational and management disaster from the outset. From that day I have dealt with constant construction noise, dust and air pollution enveloping our home, with WestConnex not being accountable for any of their incompetent work practices. Houses in my street were demolished without Safe Work practices. I have filmed demolition and you have seen some photos today. These homes contained asbestos that resulted in plumes of contaminated dust enveloping our homes. There were no procedures in place to wet down and remove the asbestos in a safe manner. The building should have been encased and no fibres allowed to escape. Complete disregard has been shown towards residents as we were not informed of the asbestos removal.

I have filmed the intended demolition of a home that belongs to my neighbour—a home which was not even acquired. I have had to relocate my family to alternative accommodation due to the hydrogen sulphide pollution our suburb experienced on the orders of my GP. I became extremely unwell when the hydrogen sulphide polluted St Peters and out of my own finances paid for accommodation so that my family would not be exposed to any further damaging toxic fumes. The dust in St Peters is completely infiltrating our homes. There are no management strategies in place for the containment of dust to the site. One of the major battles I have had with WestConnex has been the noise abatement package that was stipulated in the EIS for our home. The EIS stated that my home would receive type two abatement. This was removed and WestConnex reneged on that offer. While they reneged on this offer I have seen my neighbours homes be fully treated and have type two installed. It has taken numerous meetings with all key stakeholders, speaking at Inner West Council meetings, emails to planning and ministerial letters over two years to have my type two abatement reinstated—and still, in a condescending manner, WestConnex has agreed to "upgrade" my property and I will now receive what was originally promised in the EIS.

There has been a complete lack of transparency with the noise mitigation measures in St Peters. For some homes to get everything and others nothing and leaving it up to us to have to negotiate for what we were entitled to in the first instance has been exhausting. How come some residents get all and others get nothing? Such a stressful process with no clear guidelines. In my submission I included an appendix of a sample of the complaints I have emailed to WestConnex over the last four years. Safety and environment issues need to be raised repeatedly daily due to breaches every day. It has reached the point where I now have complaint fatigue. I no longer email about the illegal idling of work vehicles outside my home. I no longer email about the workers who stand around at 7.00 a.m. smoking cigarettes and dropping their butts on the ground in front of my bedroom window. I no longer email about the construction workers who have engaged in physical altercations on my street in front of my children.

I do not lodge formal complaints anymore because nothing gets resolved and there is absolutely no accountability. I know the toll road is being constructed. I am leaving the effects of stage 2 where construction is ongoing. But it is not accurate to say, as we have heard over the last couple of days, that concrete is being poured as we speak for stage 3. Stage 3 is not happening yet. It can be stopped. There needs to be some level of accountability for the incompetence of the management and operational aspects of this already defunct white elephant road-building exercise. To add to the distress of the current road building, St Peters residents are living under a cloud of fear of our suburb now being rezoned an infrastructure corridor. We are already in a 1950s road widening corridor, but WestConnex is far more than that. Surely residents are entitled to some sort of compensation for dealing with the effects of it every day. Thank you.

Dr KILHAM: My name is Dr Sarina Kilham. I am a member of the St Peters Public School Parents and Citizens Association, WestConnex subcommittee. I am the parent of a seven-year-old at St Peters Public School and a three-year-old at St Peters Community Preschool located within the school grounds. St Peters Public School also hosts Playgroup NSW, so the entire site accommodates around 120 primary school children, 60 preschool children and around 30 playgroup children each week.

Today I would like to focus on the ongoing tensions, stress and ramifications for our children and family arising from WestConnex. Our experience to date with the WestConnex project has been overwhelmingly negative. From the early days of demolition when children from our school lost their homes and friends were forced to move away, the social and emotional impact on the children who have left and the children who are left behind has been very profound. I have heard stories of five-year-olds packing their toys into a special bag because they were worried that WestConnex would come and take their home too. The loss of friends has not only been through forced acquisitions but also those families who have decided they cannot live through the construction, the dust and the long-term implications of their children being exposed to high levels of air pollution and knowing the impacts of this on young children's health—excuse me for a minute.

Ms CATE FAEHRMANN: You are doing very well.

Dr KILHAM: This is a slow ripping apart of our community and it is ongoing. Everyone knows that St Peters Public School will effectively be under the emission stacks that are right next to the massive spaghetti junction. The St Peters' Facebook pages have streams of discussion about concerns from potential parents about sending their children to St Peters Public School. I have spoken to new kindergarten parents who last year tried to get into three other public schools rather than coming to St Peters, and this concern was 100 per cent because of WestConnex and the air pollution. It leaves those of us with children at St Peters Public School wondering if we have done, and indeed if we are doing, the right thing by our children. Some people in our school community have become wary and at times are reluctant to speak out about the ongoing problems because we are concerned that our experiences will drive away more families.

For many our trust in the WestConnex hit rock bottom when the high levels of particulate matter recorded at the school were not communicated to the school community by the WestConnex Delivery Authority until a media report was released—this is three years after WestConnex assured us that we would get all the data. So we put on a brave face for our kids. The staff of the school, the preschool, the playgroup volunteers are wonderful—if you are looking for an election day sausage sizzle, the P&C at St Peters Public School does some of the best sausages in town—but the ongoing impact of the construction phase, the looming disaster of the unfiltered emission stacks and the loss of trust cannot be emphasised enough. Thank you.

The Hon. GREG DONNELLY: Thank you all for coming along today. Your submissions to this inquiry have been incorporated into evidence but it is great to have the opportunity to ask you all some additional questions today. Dr Kilham, how close are these unfiltered stacks expected to be to St Peters Public School?

Dr KILHAM: A couple of hundred meters. I do not know the exact distance off the top of my head.

The Hon. GREG DONNELLY: Earlier in this inquiry the representatives from Transport for NSW who appeared before the Committee said that as far as they were concerned the tunnel ventilation of these stacks was equivalent to world's best practice—notwithstanding the fact they did not have any filtration components. Obviously your school community is very concerned about the proximity and the effect of the unfiltered ventilation from the WestConnex project. Can you believe that statement asserting world's best practice when the tunnels are not filtered?

Dr KILHAM: I am not an air pollution specialist but as a layperson it seems difficult to believe that in 2018 unfiltered stacks are considered world-class practice.

The Hon. GREG DONNELLY: Let me put it another way. With respect to the ventilation of tunnels, which obviously have vehicular traffic and trucks in other parts of the world, the ventilation system extracts the pollution and filters it before being released into the atmosphere. Is it your submission that that is a better way of having a filtration stack close to the proximity of your school, rather than just having the pollution released via a ventilation stack?

Dr KILHAM: Yes. One of our key requests to this inquiry is that the exhaust stacks to be located within the vicinity of our school have what is considered to be best practice world-class filtration systems. That would go a long way towards alleviating the concerns of the community and parents about having those stacks in such close proximity to the school.

The Hon. DANIEL MOOKHEY: Thank you for appearing before the Committee today and for having the courage to share your stories. Ms Cotis, my question relates to the letter you tabled today. Last week Ms Drover appeared before the Committee and in response to a question from either Ms Cate Faehrmann or myself she made mention of the bespoke approach she has adopted. In this letter she makes reference to a scope of work in relation to an acoustic treatment that she says was provided to you.

Ms COTIS: Yes.

The Hon. DANIEL MOOKHEY: Did you have any meaningful opportunity to talk to them about the scope of work?

Ms COTIS: No. That is something I have been trying to do for at least six months. That was emailed to me and my partner.

The Hon. DANIEL MOOKHEY: It was emailed to you.

Ms COTIS: Yes, with a deed of release.

The Hon. DANIEL MOOKHEY: With a deed of release?

Ms COTIS: Yes, and a sales brochure on the mechanical air ventilators.

The Hon. TREVOR KHAN: AeroPac.

Ms COTIS: Mechanical air ventilators. I think they are known as AeroPac.

The Hon. DANIEL MOOKHEY: The environmental impact statement says that your property is eligible for soundproofing or acoustic treatment and you got emailed a scope of works and a deed of release. Did you infer that was on a take it or leave it basis?

Ms COTIS: Yes.

The Hon. DANIEL MOOKHEY: Who did you make contact with afterwards?

Ms COTIS: The person who emailed the offer.

The Hon. DANIEL MOOKHEY: The correspondence says that you wrote to the Premier, the Minister for WestConnex, the Sydney Motorway Corporation and Roads and Maritime Services.

Ms COTIS: Yes.

The Hon. DANIEL MOOKHEY: What did you ask them?

Ms COTIS: For a whole range of information about the offer, including how the mechanical air ventilators worked.

The Hon. TREVOR KHAN: What did the deed of release ask you to release whoever from?

Ms COTIS: The contractors. My understanding of the deed of release is that you accept the offer of the mechanical air ventilators being installed by the contractors and you release them from any further claim in relation to the acoustic treatment.

The Hon. TREVOR KHAN: So it is not a deed of release simply to release the contractor from damaging your place; it is of a more extensive nature than that?

Ms COTIS: That is right.

The Hon. DANIEL MOOKHEY: So you cannot effectively come back in five years' time and say, "Hey, it did not work. Can we have some more?"

Ms COTIS: In fact it is very clear. Well, that is one of the questions I have asked and the answer, about "What if they do not work, they are installed and we do not want them anymore?" The response to that questioning—it is contained somewhere in my submission and I will find you the exact attachment if you need me to—was, "You will have to have them removed at your own cost."

The Hon. DANIEL MOOKHEY: What we are told is a bespoke approach is, in fact, a take it or leave it?

Ms COTIS: That is what has happened to us.

The Hon. DANIEL MOOKHEY: Where are you up to now?

Ms COTIS: Nowhere. That is why we are here.

The Hon. TREVOR KHAN: Can you tell me approximately when you were emailed the proposal and deed of release?

Ms COTIS: On 3 March this year.

The Hon. TREVOR KHAN: I am not drawing any judgement but this letter is dated 5 September.

Ms COTIS: Yes.

The Hon. TREVOR KHAN: Does that mean between March and September there was some toing and froing or a big black hole?

Ms COTIS: A lot of toing and froing. For the first few months, there was no toing and froing—there was nothing. Then when the RMS advised me that it had reviewed the offer, there was no change to the offer and, again, reduced, as Ms Drover did, our real concerns and issues to a dispute over air conditioning. That is when I started to become more active about questioning how and why this offer was being made.

The Hon. DANIEL MOOKHEY: So effectively, in this correspondence, Ms Drover says that you have not accepted this as you requested air conditioning to be included. Is that the only change that you asked for?

Ms COTIS: Absolutely not.

The Hon. DANIEL MOOKHEY: What else did you ask for?

Ms COTIS: At this stage, we have not got to the point—other than questioning and trying to find out what the offer is and the basis on which it is being made and the inadequacy of it all—where we have asked for anything in relation to that offer, because we do not understand it.

The Hon. DANIEL MOOKHEY: Right. So when Ms Drover says, "I am further advised that RMS have previously written to you to explain this ...", I cannot help but infer, as a lay reader, that the intended message of that is, "stop writing to us." Is that how you read it?

Ms COTIS: Absolutely—"You are being a nuisance. Go away and leave us alone."

The Hon. DANIEL MOOKHEY: Did you get a reply from RMS before you got this from Ms Drover?

Ms COTIS: All I keep getting from RMS is inaccurate information about how those mechanical air ventilators work. I can talk to you about that.

The Hon. DANIEL MOOKHEY: So when Ms Drover says, "I am further advised that RMS have previously written to you explaining this," what is she referring to?

Ms COTIS: She is referring to some toing and froing between—

The Hon. DANIEL MOOKHEY: Emails?

Ms COTIS: Emails, yes, which are all contained in my submission.

The Hon. TREVOR KHAN: Are they in your submission?

Ms COTIS: Most of the relevant documents are in my submission, yes.

The Hon. TREVOR KHAN: And the AeroPac is on the website of AeroPac? There is nothing particularly remarkable—it is a white box.

Ms COTIS: It is something that is installed inside that is roughly about that big. It is drilled into your walls, so there is about a 10-centimetre hole that needs to be drilled to install it and then there needs to be a power point that it is run off, so that needs to be installed as well.

The Hon. DANIEL MOOKHEY: Who pays for the power?

Ms COTIS: We do, apparently.

The CHAIR: We move on to questions from The Greens representative, Ms Cate Faehrmann.

Ms CATE FAEHRMANN: I thank you all for your statements and all the work you have done. It is very distressing to hear how much of an impact it has had on all of you and your families. If I could apologise on behalf of the Government I would, but I am not the Government. Let us get to some of the issues. I have been waiting for the St Peters Public School P&C to come before the Committee to ask questions about the air pollution monitoring that has or has not been undertaken. I am aware of the promise made in July 2015 when the monitors were installed that you would get monthly reports, which you did not get. Is that correct?

Dr KILHAM: As far as I am aware, yes.

Ms CATE FAEHRMANN: Do you have access to air quality data now?

Dr KILHAM: We only have the same access that the general public has. When that data is placed on the WestConnex website, that is the type of access that we have.

Ms CATE FAEHRMANN: So it is not in a format that is very easy to understand?

Dr KILHAM: No, there is no layperson interpretation of that data. We have not been sent it separately to date.

Ms CATE FAEHRMANN: You were promised that by SMC, were you not?

Dr KILHAM: In 2015, yes. Three years ago we were told that we would have that data regularly and that the data would be able to be understood by a layperson.

Ms CATE FAEHRMANN: Okay, so you now have some people—volunteers and parents—trawling through this data trying to find out how the air quality is at your school. I take it that you have people looking at that regularly?

Dr KILHAM: No, we do not. Our school community is completely exhausted with trying to deal with the ongoing impacts of WestConnex. St Peters Public School has three access points and two of them are through the WestConnex site—you actually have to walk or drive through the site to get to the school. The most that we

know about the data has come from Wendy Bacon, and we do have some members of our WestConnex subcommittee who have recently started to try to get better access to the data and have started to interpret it. I do not know if you have seen it—it is very dense.

Ms CATE FAEHRMANN: Yes. So what Wendy Bacon has revealed—I think it was the media piece you were referring to earlier—is when the data was found and analysed, alarmingly high —

Dr KILHAM: Levels of particulate matter in St Peters.

Ms CATE FAEHRMANN: Particulate matter 10, which was the highest of the top five highest points in all of Sydney. Is that correct?

Dr KILHAM: As far as I am aware, yes. And there is no known safe levels of particulate matter.

Ms CATE FAEHRMANN: That is right.

Dr KILHAM: Especially for children. Their younger bodies make them much more susceptible to the effects of particulate matter.

Ms CATE FAEHRMANN: That is right. You have got this data that is being released and it was revealed that you have got extremely high levels of particulate matter. If you did have access to it every day in a format you could understand, what have you been advised of what you are supposed to do? If you do realise that the air quality is through the roof and is unsafe for your children, what are you being advised you are supposed to do with the children?

Dr KILHAM: We are not really being advised anything. The position that the principal and the school has taken is that we have air-conditioned classrooms. Last year when we had multiple doses of noxious rotten egg odour, which was leachate gas coming across the school, the principal chose to not release the children into the playground and the children stayed inside their classrooms for the entire day so that they did not have to breathe that gas in. I assume that if we had notice of bad air quality the principal would keep the children inside for the day.

As a parent, if I had access to that, I would keep my children out of school. I did that in 2017 when we had the rotten egg gas. I withdrew my daughter and I left the suburb for the day. For several days on end we took trips to other parts of town because we could not stay in school. I was not going to send her to school with leachate gas going through the school, and I certainly was not going to stay at home because my little terrace house, which was built in 1875, does not offer much protection against leachate gas either. The point is that at the moment we do not have a choice about what we do because we do not have the data. If we did have the choice, it would still be a problem, but it puts us one foot ahead.

Ms CATE FAEHRMANN: I have one more question for Dr Kilham. I apologise to Ms Regan and Ms Cotsis, because I did wish to ask them questions, but I just do not have the time. The difference between the rotten egg gas and air quality—

The Hon. TREVOR KHAN: Hydrogen sulphide.

Ms CATE FAEHRMANN: —hydrogen sulphide, is of course that you can smell one. You are not going to be as aware of the air quality every day.

Dr KILHAM: That is correct.

Ms CATE FAEHRMANN: What would you like to ask this Committee to recommend to the Government for your school to keep the children safe during all of the construction period? You have said you want the filtration of stacks already. What about how you are alerted to—

Dr KILHAM: We want frequent and transparent layperson interpretations of the particulate matter data at a minimum on a monthly basis.

Ms CATE FAEHRMANN: You possibly may need real-time alerting as well, I would suggest.

Dr KILHAM: Yes.

The CHAIR: When you have a development, as is occurring in St Peters and other areas of Sydney, there will be conflict with the existing residential houses and also schools. I note that the St Peters Public School is located about 600 metres from the projected opening mouths of the tunnel that emerge at the Alexandra landfill site. It is about the same distance from the unfiltered pollution stacks. It is also very close to proposed works on Campbell Street and so on. It is almost as if the school is being targeted with the development. There are stacks on one side and the opening of the tunnel on the other side and all the children are there. I know the P&C has been very involved in registering its concerns about the impact on the school. Would you like to comment any further on the impact on the school and the children—health problems?

Dr KILHAM: There is a huge amount of concern amongst parents. Of course, we cannot prove at this moment what and if there are health impacts that would require an epidemiological study, but there are anecdotes of children having more frequent asthma attacks, of children who did not previously have asthma starting to have asthma. We are having parents talk about children being diagnosed with dust allergies and coming home from school itchy. This type of talk in the playground—we know that the suburb has lots more dust, we know that we have had issues with leachate gas, we know from Wendy Bacon's article that we have had very high levels of particulate matter across the suburb. It is just creating really high levels of stress amongst parents about what is happening to the school. You will see that I tabled some extra documents. They were to show evidence that we have flagged these concerns for years and years with the Government, with RMS, with the WestConnex Delivery Authority and we are not getting anywhere. We are not getting any further.

I have got a list here of examples of WestConnex not following through on agreements with St Peters Public School. We had an agreement that there would be no heavy vehicle movement during school drop-off and pick-up hours. That was agreed to in 2016. That happens on a daily basis. When I videoed and complained loudly this year that there is still heavy vehicle movement going on at the main access to the school during school drop-off and pick-up hours, the response from the contractor was, "We are obeying the road rules, so we cannot limit vehicle movement as long as we are obeying the road rules." We were told that there would be provision of mental health support services for emotional impact of the demolition in 2017. That did not eventuate.

We were told that there would be provision of data collected from the air quality monitor, which is in the school grounds. That was promised in July 2015. We have never received any of that. We were told that we would get hard copies of the new M5 November 2015 environmental impact statement documents. We did not get that. We were promised best practice with regards to dust suppression but the school was blanketed in dust. We had the foul orders and there was the asbestos issue with demolition. The children had to walk past that to get to school. There was not any other way to get into the school. The footpath next to the demolished houses with the asbestos stuff flapping in the wind was the main way that you had to go to school.

The night work was impacting on the children sleep. Alternative accommodation is really offered inconsistently, as Ms Regan said. The trust is very, very low at the moment between the school community and the contractors. The fatigue of reporting—we have reinvigorated our WestConnex subcommittee this year, but it is really tough because we are a school community but we are also local residents. So everything our local residents are going through we go through as individuals and then we have the added issue of how do we manage this as a school and as a school community.

The CHAIR: I think the evidence you are giving to us is an answer to one of the questions the Government has been asking through the health department: Why is there an increase in the number of children suffering from asthma and other breathing problems in Australia? I think you have given the answer. When you put the construction works right on the doorstep, almost, of schools, especially primary schools with small children. Thank you for giving us your evidence.

The Hon. SHAYNE MALLARD: While you are on that list of things that you said you were promised you were told, can you confirm was that in writing or in meetings or in emails?

Dr KILHAM: Yes, in those extra documents that I tabled today, some of that is correspondence from the WestConnex Delivery Authority. You will see there is some back and forth in those documents. These are the questions from the P&C, these are the responses that we got.

The Hon. SHAYNE MALLARD: You are saying that they committed to do these things and they were not delivered?

Dr KILHAM: Yes. Some of that evidence is also provided in the P&C submission.

The Hon. SHAYNE MALLARD: I will have a good look at that. Thank you for sharing this with us.

Dr KILHAM: Thank you for having us.

The Hon. TREVOR KHAN: Ms Regan, you have not had a chance to say terribly much.

Ms REGAN: I think it is covered quite well. It is just that we care for our community and our community has been absolutely demolished by this whole process. It is just sad that we have lost that sense of being able to live and exist in a community that was once a thriving little suburb now being decimated.

The Hon. DANIEL MOOKHEY: Ms Regan, was your property actually acquired compulsorily? You said you received—

The Hon. TREVOR KHAN: I was going to go there, but it is okay.

Ms REGAN: We received a package—

The CHAIR: Can you let the Government members ask their questions?

The Hon. TREVOR KHAN: No, I am not being in any way critical. Please go ahead.

The Hon. DANIEL MOOKHEY: Mr Khan borrowed some of our time.

Ms REGAN: Melbourne Cup Day we were delivered a package saying they require your house but down the track they said, "We no longer want it. You will be pretty much next to it."

Ms CATE FAEHRMANN: What?

The Hon. DANIEL MOOKHEY: What was the period of time between you being told that your house could be potentially acquired—

Ms REGAN: Two years.

The Hon. DANIEL MOOKHEY: Two years?

Ms REGAN: Yes, two years.

The Hon. TREVOR KHAN: The package that you talked about, that was more than a notice that your home may be the subject of acquisition?

Ms REGAN: Yes, it was a document about that thick. It did not make the news because the race that stops the nation was on that day.

The Hon. TREVOR KHAN: It is amazing what interrupts pieces of news.

The Hon. DANIEL MOOKHEY: That interim two-year period where—

The CHAIR: Have Government members finished their questions?

The Hon. TREVOR KHAN: No, Mr Chair, I know it is our time.

The CHAIR: It is your turn.

The Hon. TREVOR KHAN: I know it is our time.

The CHAIR: In a moment we are concluding.

The Hon. TREVOR KHAN: It is modestly cooperative.

The Hon. SHAYNE MALLARD: You are an honorary Government member.

The Hon. DANIEL MOOKHEY: I have to ask: In that interim period of two years from being told that your house could be potentially acquired and you being told it will not be, did you have a chance to talk to anyone from RMS about that?

Ms REGAN: We actually still have not got anything in writing yet, so we still do not actually know. It has been tabled that St Peters is going to be rezoned an infrastructure corridor, so our home could be taken. We actually have not got a written statement saying, "Your home is no longer wanted". We have just been told, "We do not need your home."

The Hon. TREVOR KHAN: When you say "we"—

Ms REGAN: The community.

The Hon. TREVOR KHAN: Can we deal with respect to you? You have not actually been told as to whether your home is to be acquired or not?

Ms REGAN: There has not been a document stating, "We no longer need your property." It is just this general understanding. We have been verbally told, "You will not be acquired."

The Hon. TREVOR KHAN: Who by have you been verbally told that?

Ms REGAN: Martha Halliday, one of the ladies who works at WestConnex.

The CHAIR: But you were told originally it could have been acquire, were you not?

Ms REGAN: Yes, we got the package. We received the actual package, saying—

The CHAIR: Is that latest statement in writing that you may not be acquired?

Ms REGAN: No, I have never anything in writing about our house not being acquired.

The CHAIR: So they have not changed their position, really?

Ms REGAN: No.

The Hon. DANIEL MOOKHEY: Ms Regan, if you and your family were to make the choice to try to sell your house in such a circumstance, would you be able to, when your house has been subject to a potential acquisition that is never ending? Has it caused a freeze?

Ms REGAN: We are stuck. Who would buy our house? We have got neighbours who need to sell because of family circumstances. Their property value has decreased by so much that it is not even feasible for them to sell their house. No-one would buy. If I looked at a property that had proposal for an infrastructure corridor, I would not buy it.

Ms CATE FAEHRMANN: Has your general practitioner not said that you need to move in terms of your health?

Ms REGAN: Yes. When I had the hydrogen sulphide incident, I took my family away for three hours up the coast to get away from it. The doctor said, "You should relocate", but we cannot relocate. Who would buy our house?

The Hon. DANIEL MOOKHEY: You have never had the chance to talk to RMS directly about this?

Ms REGAN: No.

The Hon. DANIEL MOOKHEY: Have they done any meetings with your street or anyone else who has been affected by this to say, "This is our intention. This is when we are going to make a decision", or just now you are on indefinite notice that "We could be buying your house"?

Ms REGAN: I have not received anything from them.

The Hon. TREVOR KHAN: Are you able to provide us with the package that you received? Have you still got it?

Ms REGAN: I think I threw it in the fire.

The Hon. TREVOR KHAN: That is all right. I only asked, "If you are able to".

The Hon. DANIEL MOOKHEY: A proportionate response, one might say.

Ms REGAN: Sorry.

The CHAIR: Thank you very much for coming and sharing with us. We know it is very distressing to you personally when it involves you, your family, your children. I am just sorry that it is happening. It is to be regretted.

Dr KILHAM: Thank you for having this inquiry.

The CHAIR: It is an example of an impersonal construction, government actions and so on. It is just not right.

(The witnesses withdrew)

SHELLEY JENSEN, former resident, St Peters, affirmed and examined

RICHARD CAPUANO, former resident, St Peters, affirmed and examined

The CHAIR: We have submissions from you. Do you have any additional material you want to state now in an opening statement?

Ms JENSEN: Yes, I do. You go first.

Mr CAPUANO: Firstly, thank you for the opportunity to speak about my experience with the compulsory acquisition and appeals process. Just to clarify, we received our notifications on 4 November, being Melbourne Cup Day 2014, but that was a year and a half prior to the actual approval of stage 2 and the date of gazettal, which was the day after. So that was 22 April, I do believe. Anyway, my neighbours and I were not opposed to the acquisition of our homes and we met with WestConnex and RMS representatives who assured us that we would be looked after and more than adequately compensated—that is, we would be able to purchase another home in the area. But what eventuated was the complete opposite. The RMS offers were well below market value and, in most cases, we were compared to inferior properties and adding to what the Valuer General [VG] said today, those inferior properties were in inferior suburbs, so not next door like in Newtown or Alexandria but under the flight path in Sydenham, for example. I was compared to a two-bedroom semi under the flight path which had no relation to my home, so the valuations and the comparable properties were just unrealistic. Prior acquisitions were not taken into consideration. There was no adjustment for blight, and that is what we talked about when a project is announced then values automatically decrease significantly. What we noticed were large inconsistencies across all RMS offers.

We were obviously upset that we had been deceived. We felt betrayed, obviously. When we received the offers we were actually discouraged from lodging an appeal. We were told that the RMS would drag us through a lengthy and expensive appeals process and that there would not be any guarantee that the outcome would be any better. Now, many of my neighbours, particularly the more vulnerable and elderly—and some of them are here today in the gallery—believed they had no other option but to accept the unreasonable offer. This is what the Government refers to as a negotiated outcome: that 80 per cent figure that the Government boasts that a lot of these acquisitions were successfully negotiated. We are talking about the RMS bullying residents into accepting these low offers under the threat, as I said, of a very lengthy and expensive appeals process which I went through. I am one of those five who went through the process to the very end and the way I was treated, I would not wish it upon anybody, as I mentioned in my submission. A lot of it is covered in my submission, but I will move on. Those who proceeded to the VG found that the offers were not any better. There was no negotiation as the VG mentioned. There was nothing. There was no negotiation with the RMS. It was basically, "Take it or we will see you in the Land and Environment Court."

I did raise concern about the VG valuer Omega. Basically it was a cut and paste job from the RMS valuation. The valuer completely disregarded and ignored my submission—completely ignored it. And then we were told that we would only receive a portion of our legal expenses and this, that and the other. So it was just a mess. But more importantly during this time we were being forced out of our homes. We were forced to pay rent. My neighbours were moving out—Shelley, for example, she will tell her story. But the way we were treated was despicable. We came up with "They stress you out to get you out", which is very much the situation. The community consultants or people who were assigned to us after Mike Baird's mea culpa and acknowledgement that the process could have been fairer—they were just there to basically shift us out of our homes at any cost. I even note in my submission that a neighbour was basically thrown in jail for not doing so. I know from these community consultants there was always that underlying threat of police involvement. My representative basically said "I hope it doesn't come to that." We had no choice. We were treated like dirt. So I proceeded to the Land and Environment Court. The RMS was anything but reasonable. They delayed the hearing. They overwhelmed me with expensive and completely unnecessary structural engineer reports.

My legal costs came to just on \$300,000. Every time they sneezed and every time RMS valuers Lunney Watt sneezed with another structural engineering report, which we had to refute and were completely dismissed and not used, it cost money, so I can only imagine the final cost to taxpayers. My \$300,000-plus, as mentioned before, their barrister, their legal counsel, Clayton Utz—we are talking high-end expensive legal representation—I can only imagine what the final cost is. I ask why the RMS just did not adequately compensate us in the first place if they are going to go to this extraordinary cost. I note that there was an article last year in the *Sydney Morning Herald* that basically stated the Government legal bill jumped to more than \$650 million. I think maybe this is something for the Auditor-General to consider in her scope in the upcoming review of WestConnex. After a lengthy wait the judge disregarded comparable properties—I say "disregarded" because that is what is in the outcome, the determination. These comparable properties clearly demonstrated that my home was worth more

than what the VG and the RMS had stated. But I know during the hearing the barrister and the RMS were having conniptions about the benchmark being so high. I was only offered \$1 million and what can you buy for \$1 million in a St Peters market? You cannot even buy a two-bedroom unit. Even Shelley will attest—

The CHAIR: What do you think the market value was?

Mr CAPUANO: My valuations specifically came in about \$1.5 million and that was taken into consideration—but you also have to remember that, when they talk about "market value", that market value is for unaffected by the project. So that takes into consideration blight—blight, which is, you know, when they announce the project and people sell and these then become comparable houses. So automatically there is a massive downward influence on the market.

The Hon. DANIEL MOOKHEY: When was it valued at \$1.5 million?

Mr CAPUANO: Consistently across it is now four years but I had seven valuations on that property—four by the RMS and three by myself—and mine consistently came in at \$1.5 million.

The Hon. TREVOR KHAN: By your expert?

Mr CAPUANO: Yes, by different experts, so not just the same one.

The Hon. DANIEL MOOKHEY: In 2015?

Mr CAPUANO: Yes, the initial one was 2015 and then the one for the Valuer General and then one for the Land and Environment Court. I did three and then they had to do theirs with their experts.

The Hon. TREVOR KHAN: The Land and Environment Court did not accept your valuations?

Mr CAPUANO: They did. They looked seriously upon it. Justice Robson even affirmed us. He asked "What is the benchmark?" and they came with a figure. It was less but it was \$1.3 and that was the benchmark but, as I said, barrister Anne Hemmings and Clayton Utz had conniptions that it was \$1.3. They wanted evidence dismissed but it was their comparable property. It was one that they offered on the table.

The Hon. TREVOR KHAN: Where did you end up?

Mr CAPUANO: One million dollars—pathetic. I was absolutely gutted by that because he disregarded evidence.

Ms CATE FAEHRMANN: Chair, are we still going through an opening statement? We want to her from Ms Jensen as well and then to questions.

Mr CAPUANO: I will table this which also has what I would like to see. Basically what I want to see is a full inquiry into the acquisitions. I want to see us recompensed for what was taken from us.

The CHAIR: Table that document and it will be added to your submission.

Mr CAPUANO: There is a lot. I thank you for your time.

Ms JENSEN: This is my story. Thanks for the opportunity to speak today. I would like to start by saying the RMS made a profit of \$2.5 billion in the last financial year at the same time they were resuming my house. It is not a secret. It is not commercial-in-confidence. It is online. I saw it last night on the internet. RMS went on to intimidate and libel me. My beef was with the money, the intimidation and the threats. Lisa Chikarovski has breached, in my view, the code of conduct of the public service and is now online showing her lobby group Chikarovski and Associates. In my view, she has no moral compass. Her views drive the culture of RMS. She was not honest and ethical, which is the mission statement for RMS. The house comparison was from the previous year, 2015, but it was 2016 and it was boom town. Pauline Lockie got \$1.8 million, which was double for my house, for a much smaller and only slightly newer house. The negotiation started at \$825,000. It was assessed as having three bedrooms when only for a tiny bit of work it was four beds. The median price was well over \$1 million. A house without a roof that was uninhabitable was sold for \$1.2 million nearby. The process was water torture supplemented by water boarding. Meanwhile, Lisa showed photos online that she was a Champagne Charlie, drunk with power and booze.

I lost my home of 20 years in Sydney. It was a home I was able to buy cash because I have worked for most of my life. I now live in exile on the Central Coast. I am taking medication four times a day and in treatment. A voice from the underworld phoned me to threaten me and told me that I would have to pay a cleaning fee unless my house was spotless. This voice was only identified by a first name and to me it sounded like I was being threatened by a criminal. This was a threat: unless it was clean I would pay for a cleaning fee for a house to be demolished. It was the beginning of the threats. I now live in a unit on the Central Coast, which I hate. I have to buy garbage bins, there are unaffordable water rates. One bin was stolen. I am paying the same water rates as a

place where seven people live. I made this purchase under extreme pressure from Lisa. She called me into a meeting without telling me the reason for it. I was not introduced to anyone. There were 13 people in an extremely high spec office at North Sydney. Extremely expensive, worth millions and millions of dollars, marbled floors and all the rest of it. I was told I had two months to buy a house and then I was on my own. I was already extremely distressed. I was having constant headaches, my hair was falling out and I have high blood pressure. I often arrive home and vomit because I am so stressed. I live in penury. I have been robbed twice. I have begun biting my tongue or lip when eating or speaking. I am devastated.

The RMS manager and Mummy Dearest caused this. The process was like a tsunami crushing down on me. Lisa organised removals and I was put in what I call a Swedish prison for two months. This was a tiny bedroom where I could touch the walls from my bed, a tiny bathroom and a tiny kitchen where I was unable to cook except for making tea and coffee—teabag tea or instant coffee with those teeny-weeny milk things. There was no kitchen. I now struggle still with depression. Sorry, my PowerPoint has gone a bit crazy here. This is another one of the brutality things of RMS—a photo of six policemen with sunglasses evicting an elderly Vietnamese man in my street nearby. The last inquiry was quashed by RMS. That was in 2013. The process is adversarial, complicated and expensive. All these issues were brought up in that inquiry, which, as I said, was quashed by a department whose annual profit was \$2.5 billion. RMS exerts power over innocent people. People are seen as having no value but a mere file in a system of corruption more consistent with a dictator after a coup d'état. I plead for change not only for me but for the many by the few drunk with power and booze. I have recently been diagnosed with Attention Deficit Hyperactivity Disorder. I do not know if I said that before. My hair is still falling out. I still have high blood pressure. I am not able to work. That is my statement.

The CHAIR: Thank you very much. Again, we are very sorry for the impact on your health and mental health.

Ms JENSEN: Thank you.

The Hon. GREG DONNELLY: Thank you very much for coming along. It must be very difficult for both of you in your own circumstances to revisit it and go through it in such detail. Ms Jensen, just going to your opening statement, you made comment that you were told that you would have two months to buy a house or you would be on your own. I think I recall that being part of a conversation that took place in North Sydney.

Ms JENSEN: Yes, that is right, at this meeting with 13 people around it.

The Hon. GREG DONNELLY: That was a large meeting. Who was present? Do you remember at least some of the people who were present at the meeting?

Ms JENSEN: I remember two. Lisa Chikarovski—and I actually managed to find her because no-one was introduced. I asked her to write her name down and her phone number. She gave me my mobile which I did not ever use. And there was someone called a removal expert who apparently was allocated seven or eight hours to help me.

The Hon. GREG DONNELLY: But the statement specifically that you will be on your own, what did you interpret that to mean?

Ms JENSEN: It was a threat. I actually did not know what it meant but it was a threat. At that point I will just tell you I was going out every day. One real estate agent said to me, "You are living the life of a real estate agent because I see you at every open house I go to." I was trying and I had signed three contracts and lost money on three. One was a building problem and one I was not sure about. And this was in Revesby. It was not in my local area because, as one of the article says, real estate agents in my area laughed at me because of my budget that did not enable me to get anything in that area. So I suppose it was a threat. I do not know. I suppose because I was under stress it put more pressure on me. You know, I felt intimidated.

The Hon. GREG DONNELLY: Just remind the Committee, how much did you finally receive?

Ms JENSEN: It was \$960,000 for the house, \$40,000 less than Richard Capuano. He was my neighbour but one.

The Hon. GREG DONNELLY: The valuations that you presumably independently went out to obtain to inform yourself of the value were in the vicinity of \$1.3 million. Is that correct?

Ms JENSEN: No. I used Slater and Gordon. They had a contingency fee. I always thought they might have an improper relationship with RMS. I do not know if anyone read the exposé in the *Sydney Morning Herald* about them. They are not even called—

The Hon. TREVOR KHAN: I would say many things about Slater and Gordon but I do not think they would have a relationship with RMS.

Ms JENSEN: They have got some standards. They are low but they do exist. Okay.

The Hon. GREG DONNELLY: Can I ask you this: The \$1.3 million, which is referred to at the bottom of page two of your submission, relates to the property next door or in the next street. Is that correct?

Ms JENSEN: Yes. I think mine was valued at either \$900,000 or \$920,000, around there.

The Hon. GREG DONNELLY: Right.

Ms JENSEN: This was when they are really going up high and I did go in once to see them to talk about that, and they said they had had another look at it. But I think eventually what happened was they made an offer of \$950,000, but saying it was only really worth \$900,000; they were just being nice to me. I did not accept it. Then they offered another \$10,000.

The Hon. GREG DONNELLY: "They" being? Are you dealing with one particular person at this time? Is it the same person you mentioned earlier?

Ms JENSEN: Yes. Jonathan Wertheim, solicitor—or fee-earners, they describe themselves as.

The Hon. GREG DONNELLY: That is the solicitor representing RMS.

Ms JENSEN: Representing me.

Mr CAPUANO: They did us a great disservice, Slater and Gordon. They are responsible for cheating a lot of residents and bullying a lot of residents. They told residents, "Accept this offer. That is the best you'll get. The RMS won't budge anymore. This is it." I know a number of situations, even residents sitting here in the gallery, who were told that very same thing, and that forms part of the 80 per cent that the Government says is a negotiated outcome.

The CHAIR: We will have to move on to questions by The Greens.

The Hon. DANIEL MOOKHEY: Did you get the supplemental payment from Mr Baird after the Russell review?

Ms JENSEN: The solatium?

The CHAIR: Ms Fachrmann, it is now your turn for questions.

The Hon. DANIEL MOOKHEY: The supplemental payment. Mr Baird said that he would be offering, although Mr Perrottet was the Minister at the time, the supplemental payment for people who were affected in your circumstances. It was meant to be to the value of \$40,000 to \$60,000.

Ms JENSEN: That was the solatium you are referring to. That is a payment, but it was only a fraction of what we were—

The Hon. DANIEL MOOKHEY: Did you get it?

Ms JENSEN: Yes. I did get it.

Mr CAPUANO: Some were not able to access that, but it was an absolute insult compared to what we had actually been cheated of. It was a fraction.

The Hon. DANIEL MOOKHEY: Because it is not a \$300,000 difference in your valuations, or half a million dollars in your case.

Mr CAPUANO: Yes, exactly. It is a percentage. It is like one-tenth. It was like, "Here!". Everything seems to be in increments of \$50,000, which is really odd. But it was a slap in the face, you know.

Ms JENSEN: I felt under a lot of pressure from my lawyer. I was weeping, sobbing, as I was signing, but it was just like nothing to him. He subsequently left.

The CHAIR: Do The Greens have any questions?

Ms CATE FAEHRMANN: Thank you, Chair. I honestly think you have answered and provided quite a bit. Thank you for appearing. I understand how difficult it has been for both of you to present today. Just for the Committee's reference, the houses that you both lived in, or the accommodation you had—your homes in St Peters. Yours was, Mr Capuano?

Mr CAPUANO: It was a four-bedroom, double-storey terrace. The RMS, or the RMS valuers, would only consider it as a three bedroom and made up all sorts of—

Ms CATE FAEHRMANN: Okay.

Mr CAPUANO: Anyway, continue: I know you have limited time.

Ms CATE FAEHRMANN: Ms Jensen?

The CHAIR: And it was going to be demolished, was it not? They were not going to resell it?

Mr CAPUANO: No, no. It was going to be demolished. It was.

Ms CATE FAEHRMANN: And yours was?

Ms JENSEN: Mine was four.

Ms CATE FAEHRMANN: A terrace?

Ms JENSEN: A terrace. I had put a bath in so they described mine as a three-bedroom as well.

Mr CAPUANO: Yes, likewise.

Ms CATE FAEHRMANN: Okay. Where have you both moved to? You have moved to the Central Coast, Mr Capuano?

Mr CAPUANO: I am stuck in limbo. I suffered severe physical, mental, emotional, everything breakdown. My health suffered. I was advised by my counsellor and doctor to actually leave Sydney. I am living—I am renting up on the Central Coast, and that was to ride out the Land and Environment Court process. It is almost four years for me now. I am still angry. I am still sick. My business has suffered; it is dead.

The Hon. TREVOR KHAN: And you are still renting?

Mr CAPUANO: And I am still renting. I want a home. I want to return to my beloved St Peters. Eighteen years I spent in that home.

The CHAIR: In your opening statement you said that the WestConnex and RMS said, "Do not be worried. You will be adequately compensated."

Mr CAPUANO: That is correct.

The CHAIR: "You will be able to purchase another home in the area."

Mr CAPUANO: Yes.

Ms JENSEN: That is right.

The CHAIR: But that was a lie, was it not?

Mr CAPUANO: Absolutely. We know that the reinstatement recommendation of the Russell review was dismissed by Perrottet and Baird. They refused to implement that. That would make the difference between allowing somebody to stay in the area or not. I know the Valuer General said, "Oh, it's up to market value", this, that and the other, but if I get \$1 million and it costs me \$1.8 million to buy a home in the area, then that is the market value, I am sorry—not this crap that we have been given, and the way we have been treated.

The CHAIR: Under the law, you are supposed to be offered the market value.

Mr CAPUANO: Yes. It is nowhere near market value.

Ms CATE FAEHRMANN: That is why you are on the Central Coast and why you are renting.

Mr CAPUANO: Well, you know, I do not belong on the Central Coast. I am there in limbo.

Ms JENSEN: I do not know if I said it, but when I walk, I was stalked twice coming back from the train station by people who I thought were on ice. I was walking straight ahead and this guy passed me, turned around and then he was getting really close to me. So I now feel that I cannot—

Ms CATE FAEHRMANN: You do not feel safe.

Ms JENSEN: I do not feel safe in the dark, and that is leaving Sydney at five o'clock, meaning then that I would get home after 6.30, so I cannot even stay until five o'clock where my life remains in Sydney.

The CHAIR: Mr Capuano, you were saying in your opening statement that the VG had made an offer. Is the VG the Valuer General?

Mr CAPUANO: Yes. Sorry. Yes.

The CHAIR: Then you found out the VG was also an employee of RMS valuers.

Mr CAPUANO: Yes. I looked at his LinkedIn profile. I have a copy here which I can table, but on his profile he says that he was with Lunney and Watt and Associates, and then he only started his business like the November before—so only four months before or prior to that. But his valuation was a copy and paste of the RMS valuation.

The Hon. TREVOR KHAN: That is not the VG. That is the valuer who undertook the valuation.

Mr CAPUANO: Yes, but the VG signs off on it.

The Hon. TREVOR KHAN: Yes, I know, but that is not the VG.

Mr CAPUANO: The VG saw it. He completely dismissed my submission and he also included—and I thought this was disrespectful—a passage about the benefits of WestConnex. If those benefits were so real, then why is my home so lowly valued? It was all pro-WestConnex. There was no statutory independence.

The CHAIR: Do Government members have any questions?

The Hon. Dr PETER PHELPS: Yes. To Mr Capuano: You say in part of your recommendations, "You should establish an independent body to undertake government valuations."

Mr CAPUANO: Yes.

The Hon. Dr PETER PHELPS: A valuation commission. How do you envisage that working any differently to what we currently have, which is the Valuer General?

Mr CAPUANO: Well, from our experience the Valuer General is not independent. There is no independence there.

The Hon. Dr PETER PHELPS: Despite the fact that he is on a 10-year guaranteed contract and cannot be removed other than by misfeasance?

Mr CAPUANO: That is fine. I do not know the details of his employment, but it is not statutory independence. I cannot even pronounce the word. He is not independent is what I am saying. For him to only offer another \$75,000 plus copy and paste from an RMS valuation, then force me into the Land and Environment Court while sitting here today saying, "Oh, there is negotiation. We give this. We do that. We do that.", which was absolute nonsense. It was given to the RMS and I got a letter saying, "This is it. If you don't like it you are off to the VG." Three hundred thousand dollars later, then we question the Land and Environment Court, you know: Are they independent?

The Hon. Dr PETER PHELPS: Okay. Just to get the chronology correct, you are given by RMS at first instance a proposed sale price for your property.

Mr CAPUANO: Yes.

The Hon. Dr PETER PHELPS: That is about \$980,000?

Mr CAPUANO: No, \$825,000—the same as Ms Jensen. That was in March.

The Hon. Dr PETER PHELPS: Then they increase it after your rejection.

Mr CAPUANO: No. There was no negotiation with the RMS. There was no increase after any objections. It was straight to the VG.

The Hon. Dr PETER PHELPS: And the VG gave you?

Mr CAPUANO: Came back at \$900,000. Then we went to the conciliation conference at the Land and Environment Court, and the RMS had gone back down to \$825,000; so did not even acknowledge—

The Hon. Dr PETER PHELPS: The Valuer General's own assessment.

Mr CAPUANO: —the Valuer General's own assessment and determination.

The Hon. Dr PETER PHELPS: Okay.

Mr CAPUANO: So there was a report in the *Sydney Morning Herald* about how absurd this all was, and they reluctantly went back up to the \$900,000—would not budge. That was it, which then forced me into the hearing in the Land and Environment Court.

The Hon. Dr PETER PHELPS: As opposed to the conciliation conference.

Mr CAPUANO: As opposed to the conciliation conference, yes.

The Hon. Dr PETER PHELPS: You were not happy with the conciliation. You go to the Land and Environment Court, and then in the Land and Environment Court did you pursue a \$1.5 million claim at that stage, or had you reduced your claim?

Mr CAPUANO: We had adjusted it. It was adjusted to take into consideration—Lunney and Watt had come up with some fandangled report saying it was going to cost \$350,000.

The Hon. GREG DONNELLY: Who were they again, just for the record?

Mr CAPUANO: Lunney Watt and Associates. Adrian Lunney and David Watt. They are the RMS valuers.

The Hon. Dr PETER PHELPS: What did you reduce your claim to at that stage?

Mr CAPUANO: To \$1.465 million, to take into consideration some repairs that they had pointed out.

The Hon. Dr PETER PHELPS: This is one of the key things. Are you then saying that your legal counsel recommended that you take a lower offer?

Mr CAPUANO: The judge's decision is final.

The Hon. Dr PETER PHELPS: Yes, subject to appeal.

Mr CAPUANO: No. If I want to appeal, it would cost—

The Hon. Dr PETER PHELPS: Practically. I take your point—

Mr CAPUANO: Please let me finish my answer. I was advised by my lawyer not to proceed to the Supreme Court under appeal because the RMS would tie me up in the courts and bankrupt me. This is what they do. It cost me \$300,000 to get to that point, only to get 10 per cent so it covers my costs.

The CHAIR: Thank you very much for coming and sharing that with us. I apologise for the suffering you have had.

(The witnesses withdrew)

(The Committee adjourned at 17:50)