



The Hon Andrew Constance MP
Minister for Transport and Infrastructure

Mr David Blunt
Clerk of the Legislative Council
NSW Legislative Council
Parliament House
6 Macquarie Street
Sydney NSW 2000


Dear Mr Blunt,

Please find attached the NSW Government response to the Public Accountability Committee's inquiry into the impact of the WestConnex project.

Yours sincerely,

 17/6/19

THE HON ANDREW CONSTANCE MP

Received at 4:00pm
Monday 17 June 2019




Transport
for NSW

NSW Government response

Inquiry into the impact of the WestConnex project

Contents

Introduction	3
Recommendation 1	4
Recommendation 2	5
Recommendation 3	6
Recommendation 4	7
Recommendation 5	8
Recommendation 6	9
Recommendation 7	10
Recommendation 8	11
Recommendation 9	12
Recommendation 10	13
Recommendation 11	14
Recommendation 12	15
Recommendation 13	16
Recommendation 14	18
Recommendation 15	19
Recommendation 16	20
Recommendation 17	21
Recommendation 18	22
Recommendation 19	23
Recommendation 20	24
Recommendation 21	25
Recommendation 22	26
Recommendation 23	27
Recommendation 24	28
Recommendation 25	29
Recommendation 26	30
Recommendation 27	31

Introduction

WestConnex is part of the NSW Government's integrated transport plan to keep Sydney moving by easing congestion, creating jobs, and connecting communities. *Future Transport 2056* identifies motorways as strategically significant roads that move people quickly and efficiently. That is why the NSW Government is investing in Sydney's road infrastructure and closing gaps in the motorway network.

This investment in motorways, including WestConnex, will result in thousands of cars and trucks being removed daily from local roads – returning these roads to local communities for local use, reducing congestion, and improving safety.

The NSW Government welcomes the Public Accountability Committee's support to complete construction of the WestConnex project, including the finding that Stage 3 (M4-M5 Link) is strategically important to the State, and vital in realising the full benefits of WestConnex. The construction contracts for the M4-M5 Link Tunnels and Rozelle Interchange were awarded in 2018, with both projects expected to open to traffic in 2023. Stage 3 of WestConnex will remove vehicles that would otherwise clog suburban and city streets, bridging a major gap in the road network and creating a non-stop underground western bypass of Sydney's CBD with links to the port and airport precincts.

Building major infrastructure in the inner city is challenging. Property acquisitions and construction have significant impact on people's lives. The NSW Government recognises this and has worked hard to minimise these impacts. The NSW Government acknowledges the Committee's findings in relation to the project's impact on local communities and welcomes the opportunity to respond to these.

Roads and Maritime Services has already taken steps to minimise impacts and improve support for individuals and communities affected by the WestConnex project. These include:

- offering a contracted, confidential and independent counselling service to support affected residents
- establishing an Independent Property Impact Assessment Panel, as an independent arbitrator of property damage claims, providing reassurance to the community that the assessment process is transparent, fair and genuinely independent
- investigating opportunities to improve the way dilapidation surveys are offered, to increase the understanding and uptake of these surveys.

The NSW Government is committed to delivering green and open space, minimising noise impacts through the Noise Insulation Program for the M4-M5 Link Tunnels project, and continuing community engagement across the life of the WestConnex project.

The NSW Government thanks the Committee for its detailed examination of the impact of the WestConnex project, and for its support for completing WestConnex and Sydney Gateway. The Committee's specific recommendations are addressed in detail in the following section.

Recommendation 1

That the NSW Government undertake the following for future large scale infrastructure projects:

- hold public planning inquiries
- prepare a detailed options analysis
- ensure that this analysis is independently peer reviewed in accordance with the requirements of the Infrastructure Investor Assurance Framework
- publish both the analysis and a summary of the peer review prior to the commencement of construction of that project.

NSW Government response

The NSW Government's Infrastructure Investor Assurance Framework (IIAF) applies to capital projects with a value of \$10 million and above, being developed, procured or delivered by Government. It consists of project monitoring, regular project reporting and expert and independent Gateway Reviews and Health Checks, led by Infrastructure NSW. Consistent with this framework, Government will ensure Gateway Reviews of Strategic (Gate 1 Strategic Options) and Final Business Cases (Gate 2 Business Case) continue to be undertaken. The NSW Government has also updated its Business Case Guidelines, which continue to apply to all investment proposals and require the development of a range of options and cost benefit analysis for each project.

WestConnex has been subject to a full and complete planning assessment process, including extensive public consultation and feedback periods. Future projects will similarly comply with all the requirements of the NSW planning system.

Recommendation 2

That the NSW Government mandate the completion of a public health impact analysis as part of the wider economic analysis undertaken for future large scale infrastructure projects.

NSW Government response

The wider economic analysis of large scale infrastructure projects is undertaken through the business case process, which is used by government to inform evidence-based investment decisions.

The NSW Government's 2018 Business Case Guidelines¹ provide a clear and consistent approach to preparing business cases. Business cases that are prepared according to these guidelines provide a robust evidence base for government policy and investment proposals, and inform effective and efficient resource allocation decisions for investment proposals.

Complementing the Business Case process is the Environmental Impact Assessment that considers construction and operational impacts in accordance with the Department of Planning and Environment Secretary's environmental assessment requirements. Each Environmental Impact Statement (EIS) for WestConnex included a human health impact assessment that evaluated the human health risks and costs associated with the project.

The assessments focused on the key impacts on local and regional air quality, in-tunnel air quality for tunnel users, noise and vibration, and social changes. The assessments included direct and indirect impacts from construction activities and the project's longer term impacts on the health of the local and wider Sydney populations.

The EIS is reviewed and evaluated by the Minister for Planning, who assesses whether the impacts, including on human health, are acceptable. The Minister may impose conditions on the project to mitigate specific risks.

The NSW Government maintains strong protections for motorway tunnels that formalise and reinforce existing stringent environmental standards. These requirements give the public confidence that air emissions from motorway tunnels are being assessed and are within acceptable limits. For new motorway tunnels that have not progressed through the planning stage, additional checks will be required prior to the exhibition of the Environmental Impact Statement, including:

- The Advisory Committee on Tunnel Air Quality (ACTAQ) will coordinate a scientific review of a project's air emissions from ventilation outlets.
- The NSW Chief Health Officer will release a statement on the potential health impacts of emissions from tunnel ventilation outlets.
- The Minister for Planning and Public Spaces will not approve a motorway tunnel project until the ACTAQ scientific review is considered.

Motorway tunnel operators will also require an Environment Protection Licence from the NSW Environment Protection Authority for ventilation outlets.

¹ TPP18-06 NSW Government Business Case Guidelines - NSW Treasury

Recommendation 3

That the NSW Government:

- publish the strategic business cases, appropriately redacted of commercial in confidence information, for all major infrastructure projects,
- publish the base-case financial models for future infrastructure projects, 18 months after either:
 - a) the commencement of construction on a project, or
 - b) after the opening of the first stage of a project, whichever comes first, and
- publish the cost benefit analysis at the same time as the base-case financial model is published.

NSW Government response

Roads and Maritime Services has published the following business cases materials, redacted of commercial-in-confidence information, in relation to WestConnex:

- WestConnex Business Case Executive Summary 2013
- WestConnex Updated Strategic Business Case 2015

Supporting technical papers were also published with the WestConnex Updated Strategic Business Case 2015. Technical paper 2 is the economic appraisal of WestConnex undertaken by KPMG, through an economic cost-benefit analysis and a Wider Economic Impacts analysis. The paper analyses the economic, social and environmental costs and benefits associated with the WestConnex project versus it not proceeding.

In addition, a significant amount of related information has been published in the Environmental Impact Statements for the projects, and NSW Treasury published a WestConnex Project Summary in May 2019.

The WestConnex Project Deeds (excluding any commercial-in-confidence material) have been published on the Roads and Maritime Services website, in accordance with Government policy and the *Government Information (Public Access) Act 2009* (NSW).

Base case financial models are commercial-in-confidence. Publishing this information could prejudice future negotiations between Government and private toll road operators by providing the market with commercially sensitive information. This would risk the Government's strategy for building the infrastructure the community needs.

Going forward, the Government has commissioned Infrastructure NSW to prepare and publish independent business case summary material for major projects following their approval. These are available on the Infrastructure NSW website.

Recommendation 4

That the NSW Government immediately publish the base-case financial model for the WestConnex project.

NSW Government response

Base case financial models are commercial-in-confidence. Publishing this information could prejudice future negotiations between Government and private toll road operators by providing the market with commercially sensitive information. This would risk the Government's strategy for building the infrastructure the community needs.

Recommendation 5

That the NSW Government ensure that the delivery of future large-scale infrastructure projects, irrespective of whether they are delivered privately or publicly, be subject to the same levels of transparency and accountability that would be required of a project delivered by a public sector body.

NSW Government response

The development and delivery of large infrastructure projects is subject to Infrastructure NSW's Infrastructure Investor Assurance Framework (IIAF). As a part of this framework, all large projects where delivered publicly or privately are subject to expert and independent gateway reviews and health checks.

Gateway reviews are conducted at the project justification (Gate 0), strategic assessment (Gate 1), business case (Gate 2), pre tender (Gate 3) and tender evaluation (Gate 4) stages prior to award. Health checks in delivery assess the overall project delivery function at six-monthly intervals and then, prior to commissioning, a pre-commissioning review (Gate 5) is conducted. Results of all reports are provided to and considered by government. Infrastructure NSW also prepares and provides monthly project reports on all projects rated Tier 1 (High Profile/High Risk) to government, which provide an assessment of project development and delivery against time and cost measure as well as advising on project risks and impediments to project development/delivery.

The NSW Government also has a comprehensive set of guidelines and practices to ensure rigorous assessment and transparency for Public Private Partnership projects, including toll road concessions. This includes the following:

- NSW Government's Guide for Submission and Assessment of Unsolicited Proposals (available on the Department of Premier and Cabinet's website).
- Publishing a copy of class 3 contracts on the Roads and Maritime Services website in accordance with the *Government Information (Public Access) Act 2009*.
- Public Private Partnership Guidelines (available on the NSW Treasury website).

Recommendation 6

That the NSW Government ensure that the Audit Office of New South Wales has the resources required to undertake a detailed and comprehensive performance audit of the WestConnex project in 2019/2020.

NSW Government response

The NSW Government is working with the Audit Office of New South Wales to determine the scope and resources required to undertake a performance audit of the WestConnex project in 2019-20.

Recommendation 7

That the NSW Government should establish 'follow the dollar' powers for the Audit Office of New South Wales.

NSW Government response

The NSW Treasury is already undertaking further work in relation to enhancing public accountability and transparency with relation to government finances. This includes examining how follow the dollar powers may be applied in NSW, and consulting parties external to government who would be potentially affected.

Recommendation 8

That the NSW Government conduct an extensive advertising campaign and work with community stakeholders in Western Sydney to ensure that the toll relief program is adequately publicised and fully utilised by eligible parties.

NSW Government response

Service NSW has promoted the Toll Relief Program to the community as part of the Cost of Living initiative. Service NSW will continue to promote this program by communicating with community stakeholders (including Western Sydney), collaborating with Toll Service Provider customers, and engaging with NGOs and community groups to raise awareness of Toll Relief as part of the Cost of Living Campaign.

Recommendation 9

That the NSW Government urgently review the Industrial Relations Act 1996 to clearly establish cost-recovery mechanisms for the NSW owner-drivers.

NSW Government response

Chapter 6 of the Industrial Relations Act 1996 establishes a framework which applies to contracts of carriage (drivers engaged in transporting goods who own their own vehicle) and to contracts of bailment (taxi drivers). These provisions enable the Industrial Relations Commission to make and approve Contract Determinations (award-like instruments) for owner-drivers who are wholly or principally engaged by a principal contractor to deliver goods. A Contract Determination is an enforceable industrial instrument negotiated between carriers and employer groups, with minimum payments required to be made to the owner-driver for work undertaken, vehicle maintenance and incidental costs associated with the day to day running of a vehicle, which could also include tolls.

As a Contract Determination is negotiated between the parties, there is already scope to include cost recovery of tolls if the parties agree, and to make relevant amendments to the Contract Determination.

It should be noted, however, that Chapter 6 is not a means of delivering cost recovery of tolls for all owner-drivers. Independent owner-drivers (ie those not engaged in a contract of carriage) are not covered by contract determinations made under the IR Act, and as they are independent contractors at law, relevant Commonwealth legislation (the Independent Contractors Act 2006 (Cth)) would be likely to override any state legislation that sought to apply to this class of owner-drivers.

Recommendation 10

That the NSW Government proceed with Stage 3 of WestConnex.

NSW Government response

In June 2018, the Lendlease Samsung Bouygues Joint Venture was awarded the contract for construction of the M4-M5 Link Tunnels. Construction of the M4-M5 Link Tunnels has started, and is scheduled to open to traffic in 2023.

In December 2018, a John Holland/CPB Contractor Joint Venture was awarded the design and construct contract for Rozelle Interchange. Construction for Rozelle Interchange is expected to begin this year, and is scheduled to open to traffic in 2023.

Recommendation 11

That the NSW Government immediately publish a full account of all costs to be incurred by NSW taxpayers if Stage 3 contracts were cancelled.

NSW Government response

As noted in Recommendation 10, the NSW Government is proceeding with Stage 3 projects.

Recommendation 12

That the NSW Government should improve engagement and consultation with communities concerning air quality monitoring and ensure the real time publication of all air quality data for WestConnex in a single online location. This should include the retention of historical information and the development of user friendly tools to understand and interpret the data.

NSW Government response

Each WestConnex project will monitor ambient (local) air quality for at least 12 months before opening and for at least two years after opening. For the M4 East and the New M5 projects, the ambient (local) air quality monitoring has started.

There are six air quality monitoring stations for the M4 East project and eight air quality monitoring stations for the New M5 project. Real time and historical air quality results are publicly available for both projects.²

When working with stakeholders and the community, the NSW Government always endeavours to:

- make the most of all opportunities to involve local communities and stakeholders in the project
- arrange engagement activities at times and places that are convenient for the community and stakeholders
- provide online options
- respond to reasonable requests for additional engagement activities and information
- acknowledge and understand diverse views on the project
- use feedback from community engagement activities and public documents on past projects to positively influence information prepared for future projects.

Activities include:

- sending notifications either electronically or in hardcopy
- door knocking
- public information sessions
- meetings with key stakeholders, including councils, property owners and residents,
- interface and interagency meetings
- Online information is also provided and feedback is accepted on a 24-hour 1800 information line or via email.
- For the M4-M5 Link Project there are a total of 310 conditions of approval that relate to managing and minimising environmental and community impacts of the project. For example condition B13, appointment of a Community Complaints mediator appointment of an Acoustics Advisor (A24) and Environmental Representative (A17).

² <http://airodis.ecotech.com.au/westconnex/>

Recommendation 13

That the NSW Government install, on all current and future motorway tunnels, filtration systems in order to reduce the level of pollutants emitted from ventilation stacks.

NSW Government response

Motorway tunnels in NSW are required to meet stringent air quality standards using state-of-the-art ventilation and tunnel design. Studies have found that filtration systems would not provide any significant improvement to the air quality in the surrounding community, and are energy intensive to run,

The *Initial report on Tunnel Air Quality* by the Advisory Committee on Tunnel Air Quality (July 2014) found that 'emissions from well-designed road tunnels cause a negligible change to surrounding air quality, and as such, there is little to no health benefit for surrounding communities in installing filtration and air treatment systems in such tunnels.'

To gather firsthand information on tunnel air treatment, the NSW Government ran a filtration trial in the M5 East from March 2010 to September 2011. The filtration trial removed 200 kilograms of particles at a cost of \$3.8 million per tonne (operating costs only). This is much less cost effective than a range of other particle reduction measures analysed by the then NSW Department of Environment Climate Change and Water, and much more expensive than the calculated health benefits from removing this quantity of particles.

All of the WestConnex tunnel projects use ventilation outlets to effectively disperse emissions high into the atmosphere where they mix with the air with negligible impact on air quality. Ventilation outlets are also used for the Lane Cove Tunnel, Sydney Harbour Tunnel, Eastern Distributor, Cross City Tunnel and M5 East. Comprehensive air quality assessments were conducted for the M4 East, New M5, and M4-M5 Link. The assessments have all been subject to detailed expert review coordinated by the Office of the NSW Chief Scientist and Engineer³.

As the state's population continues to grow, the NSW government is committed to maintaining high air quality standards. Rather than filtration, which would not meaningfully reduce community exposure to motor vehicle emissions, the best approach is continue to reduce emissions at the source by adopting cleaner fuels and vehicles.

The approvals for all three stages of the WestConnex project have a condition of approval which requires that the ventilation outlets must be designed and constructed to allow for potential modification of the outlets in future.

Although there are more cars on the road, the developments outlined below have actually resulted in substantial reductions in vehicle emissions in the past two decades. Emissions from motor vehicles are set to continue to fall over the next decade due to the new cleaner vehicles replacing older technology vehicles. This is despite an expected increase in the number of cars in Sydney as the population grows. Current emission reduction initiatives and developments include:

- improvements in technologies and design e.g. electric powered vehicles
- clean fleet program
- smoky vehicle detection systems
- vehicle import duties on second-hand cars

³ This includes senior representatives from the Roads and Maritime Services and the NSW Ministry of Health (NSW Chief Health Officer), as well as an independent air quality expert, Dr Ian Longley from the National Institute of Water and Atmospheric Research (New Zealand), Chief Scientist website.

- National Clean Air Agreement.

The NSW Government will continue to support initiatives to further reduce emissions at the source and monitor tunnel and roadside emissions to appropriately manage them.

Recommendation 14

That the NSW Government undertake a review and audit of the Air Quality Community Consultative Committees and the locations for air quality monitoring for the New M5.

NSW Government response

The New M5 Air Quality Consultative Committee is a condition of the Minister for Planning's approval. The condition (B9) specifies:

- the composition of the consultative committee
- governance of the committee meetings
- the frequency of meetings
- the role of the consultative committee
- operating longevity.

The composition of the New M5 Air Quality Community Consultative Committee, the governance of committee meetings, frequency, role and operating longevity are all captured in the Terms of Reference, available on the WestConnex website.⁴

A shortlist of potential locations for the New M5 ambient air quality monitoring stations was developed to meet the conditions of approval. The locations were informed by air quality modelling impacts associated with the New M5 ventilation outlets. The shortlist was provided to the Committee before its 17 October 2017 meeting. The locations were discussed at the meetings on 17 October, and 5 March 2018 and 10 September 2018. Committee members were able to identify additional locations for consideration by the Committee and the New M5 project team.

For each of the monitoring locations, a number of options were presented to the Committee together with modelled air quality contour plot maps.

The information presented to the committee at each of the meetings is publicly available on the WestConnex website.⁵

⁴ <https://www.westconnex.com.au/sites/default/files/New%20M5%20-%20AQCCC%20Terms%20of%20Reference%20-%20September%202017.pdf>

⁵ <https://www.westconnex.com.au/NewM5AQCCC>

Recommendation 15

That the NSW Government establish a WestConnex mental health support and wellbeing service.

NSW Government response

The NSW Government acknowledges that construction impacts and the property acquisition process associated with the delivery of major infrastructure can be distressing.

The NSW Government has arranged a contracted confidential and independent counselling service to help affected residents manage change and other challenges that are associated with motorway projects.

In addition to mental health support, there are also a number of other mechanisms in place to support those impacted by property acquisitions.

Key is the Personal Manager, who is appointed to guide and support land owners through any residential acquisition (they may also assist business owners where required). Personal Managers are community engagement professionals, trained to help people navigate the acquisition and relocation process to make it as easy as possible for them. They work closely with the home or business owners throughout the process to assist in finding relocation solutions tailored to each owner's circumstances. The Personal Manager can provide guidance at every step of the process and:

- be the primary point of contact, helping home owners access the appropriate people at each stage of the acquisition
- accompany home owners to meetings if required
- listen to any concerns and work with the home owners on solutions to any challenges that arise with their relocation
- answer questions and put the home owner in touch with relevant experts in the team
- assist the home owner to access information on finding a valuer and a lawyer.

Recommendation 16

That the NSW Government:

- conduct an immediate review of safety measures and conditions relating to the construction of WestConnex to ensure that these measures and conditions are being complied with
- publicly disclose any instances of non-compliance found during the review including a response as to how these issues will be remedied.

NSW Government response

The NSW Government has arranged for an independent safety review of the WestConnex project construction activities, and will respond accordingly, subject to the review findings.

Recommendation 17

That the NSW Government ensure that the commitments made by itself and WestConnex regarding the establishment or rehabilitation of green and open spaces be fully delivered as promised.

NSW Government response

The NSW Government is committed to the delivery of green and open space as a part of the WestConnex project. In line with this commitment, under its current designs, WestConnex will deliver over 20 hectares of open space:

- More than 1 hectare of new publicly accessible open space at various locations across the M4 East Project.
- Over 11 hectares of new publicly accessible open space at St Peters Interchange (Alexandria Landfill site), Gardeners Road Bridge and Campbell Road Green Link at the New M5.
- Up to 10 hectares of community space at Rozelle Rail Yards and Iron Cove Link for the M4-M5 Link, as shown in the current design.

In addition, 13.5 hectares of inaccessible green space is also incorporated into designs at St Peters Interchange.

The NSW Government has created a new Minister for Public Spaces, who will identify and protect publicly owned land for use as parks or public spaces.

Recommendation 18

That the NSW Government monitors and publicly reports on its new noise minimisation measures for the WestConnex project to ensure that the improvements being sought are achieved.

NSW Government response

The NSW Government has committed to a range of additional measures to mitigate noise impacts. Compliance with these measures will be monitored and reported publicly, through a tracking program that identifies how the M4-M5 Link project will monitor compliance with the Conditions of Approval and the environmental management measures.

The WestConnex M4-M5 Link approval includes several new noise minimisation measures, which require public reports to be generated and released. These include:

- reports from the Acoustics Advisor;
- reports from the Community Complaints Mediator;
- Operational Noise and Vibration Review; and
- Operational Noise Compliance Report.

A range of environmental monitoring and reviewing will be conducted to ensure compliance.

Activity	Frequency
Ongoing environmental site surveillance	Daily
Environmental inspections including review of environmental controls and actions	Weekly formal inspections
Environmental performance and compliance reporting	As part of project monthly report
Environmental risk assessment review	Annual
Formal compliance review of Conditions of Approval requirements	Six-monthly
Environmental auditing	Six monthly (generally)
Environmental management reviews	Annual CEMP reviews

Recommendation 19

That the NSW Government ensure that acquiring authorities only issue Proposed Acquisition Notices when they can clearly demonstrate a need to acquire the property.

NSW Government response

This is standard practice for the NSW Government and its associated acquiring agencies.

It is essential that acquiring authorities undertake investigations, reasonably possible at the time of the acquisition, to ensure that a Proposed Acquisition Notice is only issued where it can be reasonably established that there is a need to acquire the property.

Recommendation 20

That the NSW Government ensure that for any significant project the acquiring authority must provide clear and consistent information about the compulsory acquisition process by:

- ensuring relevant staff are sufficiently trained and experienced
- confirming key information in writing in a timely manner
- providing counselling and translation services where necessary.

NSW Government response

The NSW Government's Property Acquisition Standards require acquiring agencies to appoint a Personal Manager to act as the central point of contact for affected homeowners. The Personal Manager is required to be a sufficiently trained, knowledgeable and experienced person, able to inform property owners of the acquisition process and support them during the process.

The NSW Centre for Property Acquisition provides a broad training program for Personal Managers and all frontline acquisition staff, covering both technical and community engagement training. This training equips frontline acquisition agency staff with the appropriate skills to help guide residents, property owners, tenants and business owners through the property acquisition process. The courses are designed to focus on improved overall customer satisfaction with key government services, including building resilience and communication skills.

The NSW Government provides land owners with written information relevant to the particular project, which advises that their property is required for that project. Land owners whose properties are impacted by land acquisition are consulted, wherever possible, at the early development stage of the project. This is generally at the early (concept) design stage of the project, prior to the achievement of planning and project approval. Customers are provided with detailed information to help guide them through the land acquisition process, which includes copies of all relevant publications from the NSW Centre for Property Acquisition.

- Key to supporting people is the Personal Manager, who is available to guide and support individual land owners through any residential acquisition, and may also assist business owners, where required. Personal Managers are community engagement professionals trained to help navigate the acquisition and relocation process to make it as easy as possible. They work closely with the home or business owners throughout the process to assist in finding relocation solutions tailored to each owner's unique circumstances. Please see the response to Recommendation 15 for information about their role in providing support and information to homeowners.

Additional support services that are available to land owners include written and verbal translation services as well as counselling, where relevant. A free Translating and Interpreting Service is available on all WestConnex projects, and an interpreter is offered at meetings, at no cost to the resident. The response to Recommendation 15 also provides further information about mental health services.

Recommendation 21

That the NSW Government undertake a review into the merits of a process where all offers of compensation are administered by the Valuer General from the beginning of the property acquisition process.

NSW Government response

In 2016, based on recommendations of the Russell and Pratt Reviews, the Land Acquisition (Just Terms) Act 1991 (Just Terms Act) was amended to encourage acquisition by agreement. The NSW Government would not support moving away from its position of encouraging acquisition by agreement.

Over 80 per cent of land acquisition matters for WestConnex were completed on agreed terms and were not compulsorily acquired. Land owners with whom agreement on terms of purchase are unable to be reached are completed by compulsory acquisition. In accordance with the Just Terms Act, where compulsory acquisition occurs, the Valuer General as independent expert is required to determine the amount of compensation to be paid by the acquiring authority to the land owner. This results in agreed settlement of most of these matters without recourse to a court hearing. If the recommendation to have the Valuer General initially determine compensation also meant that there was no subsequent step available in determining compensation, then this would eliminate the opportunity for land owners to negotiate an agreed compensation outcome, which is a primary objective of the *Land Acquisition (Just Terms Compensation) Act 1991*.

If the Valuer General were to determine compensation at the outset in all acquisition cases there would need to be an alternate avenue for review, whether it be the courts or by another independent statutory officer role.

If the court were to replace the Valuer General as the first avenue of review, it is likely, as a consequence, that the court would be charged with determining many more compensation cases than currently happens. This would remove the current expeditious process of review and determination of unagreed matters by the Valuer General, which might lead to a more litigious, uncertain and less timely process. Such an outcome could result in added stress and uncertainty for land owners, and significantly increase the costs of litigation to be borne by the government.

Recommendation 22

That the NSW Government:

- devise a mechanism, through which property owners can apply to have the process by which their property was compulsorily required, reviewed
- examine whether Proposed Acquisition Notices are being speedily resolved in the interests of owners.

NSW Government response

Land owners to whom compensation is payable are encouraged to seek the services of legal advisors to assist with negotiations and the overall acquisition process. The *Land Acquisition (Just Terms Compensation) Act 1991* provides for the land owner to be compensated for the cost of such assistance. These provisions are considered to be of practical and timely assistance to land owners at the most relevant time to the land owner. This allows any deficiencies in the process to be identified and redressed at the time that it matters most: before the land has been acquired.

A mechanism for review of the process, after the acquisition has been effected, would be of limited practical benefit to a former owner of land. Further, such a process would bring into question the acquiring authority's right to own and occupy the land. Consequently, this would be unworkable for the NSW Government's infrastructure development program, as certainty of access timing to land is essential in letting major infrastructure construction contracts. Inability to provide certainty of access to land would expose the NSW Government to significant contractor delay penalty claims.

The NSW Government's strong preference, in accordance with the objectives of the *Land Acquisition (Just Terms Compensation) Act 1991*, is to complete acquisitions on agreed terms with land owners. In this regard, the large majority of Proposed Acquisition Notices given by Roads and Maritime Services result in purchase on agreed terms within the time limits of the notice.

Recommendation 23

That the NSW Government provide clear and consistent information to affected residents about:

- the process through which residents can claim compensation for property damage as a direct result of WestConnex construction
- which entity would be responsible to pay for such damage.

NSW Government response

The NSW Government is committed to ensuring that property owners are treated fairly and will hold the contractors accountable for any damage judged to be caused by WestConnex construction works.

The process to lodge a claim for compensation for property damage as a direct result of WestConnex construction is located on the WestConnex website.

As outlined on the website, a robust and thorough claims process has been introduced:

- First, pre-construction surveys are offered to every property owner within 50 metres of the construction zone. This is based on an engineering assessment.
- At the completion of construction, a second survey of property is completed. Additionally, property owners can request an interim review of any alleged damage at any time during construction.
- Property owners should submit damage claims directly to the contractor.
- The contractor will review either a post condition survey or an interim review and will make a determination based on a number of factors. These include the location of a property in relation to construction work; the nature of construction activities near the property; immediate geological activities; ground monitoring data and weather records.

If homeowners are dissatisfied with the contractor determination, they can request a review of the process by the WestConnex project company and then, if necessary, Roads and Maritime Services:

- Roads and Maritime Services may send out an independent assessor to collate information and present this to the Independent Property Impact Assessment Panel.
- This panel acts as an independent arbitrator of property damage claims and provides reassurance to the community that the assessment process is transparent, fair and genuinely independent.
- The panel was appointed in April 2019 to meet the Conditions of Approval for M4 -M5 Link and the first meeting was held on 11 April 2019.
- The panel are now reviewing their draft terms of reference and preparing to commence work.

The NSW Government expects that the contractor would be liable to pay for damage if it is proven that their actions caused the damage.

Recommendation 24

That the NSW Government consider extending the zone of influence from 50 metres to 100 metres, and change the dilapidation survey process to an opt-out or compulsory process.

NSW Government response

The NSW Government considers that the zone of influence should be based on an engineering assessment and for the WestConnex project this is 50 metres. Current planning conditions for Stage 3 of WestConnex require the project to offer pre-dilapidation surveys of all surface and sub-surface structures identified as at risk from settlement or vibration by the project geotechnical model.

This model must be prepared prior to excavation and tunnelling in order to identify geological structures and groundwater features. The model must include details of proposed excavations and tunnels, construction staging, and identify surface and sub-surface structures, including any specific attributes, which may be impacted.

For WestConnex, there is a process in place to ensure that all residents eligible for pre and post-condition surveys can access them. Pre-condition surveys are offered via a letter to the resident. This mail-out is undertaken progressively in line with construction schedule. If there is no response, the contractors re-issue the letter two weeks later. If there is still no response, they door knock two weeks after the second drop and leave a 'sorry we missed you' card if no one is at home.

The NSW Government will continue to consider opportunities to improve processes to increase the understanding and uptake of dilapidation surveys.

Recommendation 25

That the NSW Government ensure that the Community Complaints Mediator is independent from any parties involved in the construction or delivery of the WestConnex project.

NSW Government response

Every independent mediator or independent chair associated with WestConnex is chosen through a rigorous procurement process to ensure there is no conflict of interest.

In accordance with the M4-M5 Link Conditions of Approval, Roads and Maritime Services has engaged a Community Complaints Mediator whose appointment has been recommended and approved by the Department of Planning and Environment.

The NSW Government will ensure that the Community Complaints Mediator is independent from any parties involved in the construction or delivery of the WestConnex project.

Recommendation 26

That the NSW Government monitors and publically reports on the new Community Complaints Mediator for the WestConnex project to ensure that the improvements being sought regarding community engagement and complaints handling are achieved.

NSW Government response

In accordance with the M4-M5 Link Conditions of Approval, Roads and Maritime Services has engaged a Community Complaints Mediator (CCM) whose appointment has been approved by the Department of Planning and Environment.

Roads and Maritime Services and the CCM will maintain a register that includes the details of all cases considered by the CCM and their recommendations. Roads and Maritime Services will provide this to the Department of Planning and Environment at any time if requested and, if asked by the Department, will publish this information on the WestConnex website.

Any published reports may include redactions to protect the privacy of individuals whose cases have been considered by the CCM.

Recommendation 27

That all major infrastructure projects have a centralised complaints management system that is accessible 24/7, transparent and empowered to respond effectively in a short time frame.

NSW Government response

There is a thorough and robust complaints management process for WestConnex, which includes:

1. The WestConnex hotline, which is available 24/7 and is manned 24/7. Particularly when there are night works underway, the call centre will contact the contractor directly, even if it is one o'clock in the morning, and lodge those complaints with the contractor. Contact details for this number are clearly displayed on the WestConnex website.

During business hours, this number can be used to reach relevant Roads and Maritime Services community engagement team members, who have in-depth WestConnex community and issues knowledge and experience. All these team members are full-time Roads and Maritime Services staff.

2. Direct contact via the email address info@westconnex.com.au. This address is also clearly displayed on the website.
3. Face-to-face meetings with community members are an ongoing and important part of the complaints response process. The WestConnex community engagement team have:
 - a. held more than 2,100 face-to-face meetings with residents, businesses and stakeholders.
 - b. held more than 180 community information sessions, forums and street meetings with residents, businesses and stakeholders.
 - c. carried out more than 3,490 doorknock events and responded to more than 17,470 phone calls.

All complaints and interactions with the community are recorded in a centralised stakeholder contact database (which has been in use since 2013). The EPA also requires the licence holder, the WestConnex project contractor, to log and respond to complaints it receives. All complaints, including those that are referred to WestConnex by regulatory agencies, are logged, investigated and responded to in accordance with conditions of approval.

The stakeholder contact database is used by community engagement personnel from Roads and Maritime Services, WestConnex and the joint ventures construction contractors. It is maintained in real time by these representatives.

In accordance with conditions of approval, the WestConnex project teams provide weekly reports of any complaints to the Department of Planning and Environment. The project teams also include information on complaints received in compliance reports, which are provided to Department of Planning and Environment and published on the WestConnex website. Information identifying individuals is redacted from these reports to protect their privacy.