

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

Terms of reference of the Inquiry are:

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

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

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

c) any other related matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In 2015, he wrote,

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

But the Transurban model is a thing of particular beauty.

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

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

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

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

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

"At the back end" is the phrase.

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

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

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

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

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

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

Delayed gratification?

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

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

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

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

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

Continue acquisitions continually, and conveniently, defer tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

How private companies influenced NSW Transport planning and WestConnex decisions

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

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

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

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

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

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

In mid-December 2012, Macquarie Capital was granted the financial scoping contract for WestConnex until 2070. Macquarie also had been involved in tollroads in the US.

On January 16 2013, the NSW Acting Premier Andrew Stoner selected several companies to be closely involved in helping design and justify the WestConnex tollway project. Leighton Contractors, and its subsidiary Theiss Constructions were paid \$4 million to be “industry partners.” AECOM was selected as the traffic modeller. All of these companies had been deeply involved in failed tollway projects. All had a commercial interest in the project going ahead. Needless to say, they found the WestConnex tollway project was a great idea. They were now ideally positioned for further involvement.

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

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

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

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

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

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

He continued,

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

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

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

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¹⁶ Saulwick, J. 'Damning report into westconnex motorway released by NSW Auditor General'

<http://www.illawarramercury.com.au/story/2773266/damning-report-into-westconnex-motorway-released-by-nsw-auditor-general/?cs=411>

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

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

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

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

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

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

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

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

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

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

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

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

“They have completely subverted the normal planning processes and now they’re subverting the consulting processes.

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

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

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

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

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

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

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

A failure in due diligence

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

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

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

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

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

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

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

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

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

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

There are significant governance and probity concerns with the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

Protecting the Public Interest

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

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

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

²⁶ Evidence of Mr Head begins at page 2

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

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

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

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

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

Integration between toll road and other roadwork planning

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

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

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

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

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

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

Inequity in the tolling process

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

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

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

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

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

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

Unacceptable secrecy

Traffic forecasting on which tollway proposals rest are notoriously uncertain. From that point of view, it is a matter of concern that SMC or RMS have never been prepared to share with other experts and consultants the WestConnex traffic model. This would have enabled some independent assessment of the time savings and traffic calculations on which proposals are based. WestConnex and NSW Planning claim to have used peer reviewers but these reports have also not been made public. As I previously reported in New Matilda, one of these peer reviewers was involved in the AECOM assessed Clem 7 project.

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

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

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

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

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

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

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

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

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

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

Secret contracts

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

The CEO of SMC Dennis Cliché recently appeared at the NSW Tolls Inquiry. He was asked a number of basic questions about WestConnex assertions, a number of which he took on notice. Answers (or non answers) to those questions have now been received and are published here. (<https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryOther/Transcript/10778/Answers%20to%20questions%20on%20notice%20-%20Sydney%20Motorway%20Corporation.pdf>) SMC refuses to reveal its basic expectations of toll revenue and other matters on the basis that this is “commercially in confidence” information. Given that we are talking about a system of transport that is expected to be used by so many Sydney residents and businesses, it is disturbing that these basic calculations are not available.

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

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

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

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

Political Donations

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

I quote from the report:

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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