

WestConnex: How tax-payers have been taken for a ride

In August 2015, Senator Rhiannon wrote to the Australian National Audit Office seeking an audit of the WestConnex project. In February 2016, Senator Ludlam moved a successful motion in the Senate calling for an audit of WestConnex and the Perth Freight Link. In April 2016, the Audit-General announced an audit of WestConnex, to conclude in early 2017.

This contribution is made on behalf of the Australian Greens and Greens NSW. We would like to thank the community groups, transport and infrastructure experts, investigative journalists and others who have exposed the flaws and spin that have dogged this project. We make this contribution in the hope that the people of NSW get the infrastructure they need in the future.

Background

The WestConnex project is of a size unparalleled in Australian history. As of 2016, it is costed at \$16.8 billion, up from the original \$10 billion estimate. In terms of public funds, it will receive \$1.8 billion from the NSW government over four years and \$1.5 billion from the federal government over the same four year period. This has been supplemented by an additional \$2 billion concessional loan between the federal and NSW governments. As proposed in the November 2013 business case, WestConnex is broken into three stages: Stage 1 involves the widening and extension of the M4 motorway; Stage 2 involves the modification of the M5; and Stage 3 involves the linking of the two motorways. The development plans for WestConnex derived from the recommendations of Infrastructure NSW (INSW), a statutory advisory body, as commissioned by the O'Farrell Liberal Government upon its election in 2011. Construction began in early 2015.

A lack of checks and balances

We submit that the federal government was not informed by appropriate advice and has not followed the processes that have been established to assess the merits of nationally significant infrastructure investments.

The complex and confused nature of the Major Projects Assurance Framework devised by the WestConnex Delivery Authority obstructed the ability for independent monitoring of the project. According to INSW and Infrastructure Australia (IA), a project of this size requires at least six external Gateway Reviews, which are independent assessments of a project throughout its development.¹ These Gateway Reviews are designed to provide independent advice to the government to boost transparency and confidence in the project. These are generally implemented for projects over \$10-

¹ <http://finance.gov.au/assurance-reviews/review-process/>;
https://www.procurepoint.nsw.gov.au/system/files/documents/procurement_process_and_gateway_diagram.pdf

30 million (at the state and federal levels respectively). The various stages of the review look specifically at the justification of the proposal, the value of the proposal, a cost-benefit analysis, a suitable procurement strategy and whether specific objectives are being satisfied.

However, only one external review was conducted by INSW and this was only conducted in light of the first incomplete business case, as presented in 2013. The business case has since changed, yet at the time of writing this contribution no additional independent, external assessment of the project has been commissioned. The first Gateway Review was problematic because it did not 'green-light' or approve of any of the measures taken in the preliminary business case. Moreover, the Gateway Review found the business case had deficiencies, relating specifically to traffic modelling and planning.

Internally, the Major Projects Assurance Framework was developed to ensure the practices adopted throughout the development of the project met the 'best practice standards' and be reported to INSW. **The NSW Auditor-General found in December 2014 that many agencies involved in WestConnex did not implement the Framework as effectively as possible.** There was a lack of clarity surrounding the relationship between the internal and external reviews and, as a result, there was a general lack of independent monitoring of the business case as it progressed.²

In August 2014, the Sydney Motorway Corporation (SMC) was established by the NSW Government to manage the WestConnex project and all contracts and financial dealings as a private company limited by shares under the Corporations Act 2001. The SMC is governed by a Board appointed by its joint Shareholders, the NSW Minister for Roads, Maritime and Freight and the Treasurer. The quarterly reports by the SMC to NSW Treasury are deemed commercial in confidence and unavailable for public scrutiny as are all WestConnex contracts and agreements.

Therefore, the NSW government did not meet best practice standards. By virtue of this, the federal government made an irresponsible decision to commit funding when they were aware that the NSW government had not followed best practice standards, nor was there an independent assessment of the project updated at the time. The independent review itself highlighted deficiencies in the business case, relating to its preliminary modelling and lack of research.

Whilst this is generally a reflection of the poor standards and oversight by the NSW government, the federal government did not consider the deficiencies, or the lack of independent assessment of the WestConnex project before committing public funds. **Further, as late as the October 2015 Senate Estimates, IA conceded they had not seen a final copy of the latest business case.**³ Therefore the federal government was not informed by appropriate, independent advice.

² <http://www.audit.nsw.gov.au/news/westconnex-assurance-to-the-government>

³ 19/10/2015 - Estimates - INFRASTRUCTURE AND REGIONAL DEVELOPMENT PORTFOLIO - Department of Infrastructure and Regional Development

A mockery of the planning process

The processes and body established to assess the merits of nationally significant infrastructure, namely IA, were not fully utilised prior to the funding commitment. The federal government had the responsibility to commission its own review of the project.

IA is responsible for assessing project proposals and advising the federal government about the viability and feasibility of infrastructure investments. It was established in 2008 to categorise and monitor the progress of nationally significant infrastructure, as well as propose reforms and projects to meet the needs of changing society. By virtue of this, it is required to ensure infrastructure investments follow close and careful planning procedures that produce beneficial outcomes.

Throughout the 2013 election period, the Coalition and Labor committed themselves financially to the WestConnex project⁴ and the incoming federal government agreed to the funding, yet IA had only classified WestConnex in its 'early stage'. This meant that it addressed a nationally significant issue or problem, but the development of the right solution was still at an early stage. It was the first stage in four. While this is not unusual for an election period, it is in stage four ('ready to proceed') where funding commitments are made.

WestConnex was announced by the NSW government in October 2012 as a key recommendation of INSW despite criticism that the government had committed to a project of this scale without a detailed business case or modelling to back up its decision. **The Sydney Motorways Project Office (SMPO) was established within the NSW Roads and Maritime Services in December 2012 and this office engaged 'infrastructure development partners' to develop a detailed business case for WestConnex.**

At this point the federal government had already committed \$1.5 billion according to Roads Minister Duncan Gay.⁵ In early 2013 consortiums led by Ferrovial Agroman and Leighton Contractors were contracted to develop key design aspects along Parramatta Road while the first WestConnex Business Case was developed by officers from Roads and Maritime Services and advisers from a large number of consulting, finance and construction firms. These included Ernst & Young, Macquarie Bank, AECOM, Leighton Contractors and Ferrovial Agroman. AECOM was also appointed to develop traffic modelling, which was used for infrastructure development and toll revenue forecasts.

According to NSW Roads Minister Mr Gay the SMPO was established in 2012 to "develop a detailed business case for WestConnex"⁶. **Given that many of the companies that were developing this work were companies which would benefit greatly from the construction of WestConnex, there**

⁴ http://australianpolitics.com/downloads/liberal/2013-federal-policies/13-01-26_our-plan_liberal-party.pdf, p. 32; <http://www.abc.net.au/news/federal-election-2013/policy/transport/>

⁵ <http://www.transport.nsw.gov.au/media-releases/westconnex-project-office-and-running-and-community-consultation-underway>

⁶ <http://www.transport.nsw.gov.au/media-releases/westconnex-project-office-and-running-and-community-consultation-underway>

was an obvious conflict of interest and it is not surprising that the SMPO presented a very appealing case for WestConnex.

The evidence of failed toll roads around the country should have ensured that a project of this size and cost would have undergone extremely rigorous planning and budgeting, with strong governance and independent review mechanisms in place right from the concept stage, but in fact the reverse was the case and this was highlighted by the NSW Ombudsman's report in December 2014⁷ and the City of Sydney's independent report from October 2015 concerning the Environmental Impact Statement for the M4 East⁸.

It was only in February 2015 that IA recommended moving the project to "threshold" status on the Infrastructure Priority List. By this stage, \$500 million of the \$1.5 billion grant had been paid.⁹ Former IA board member, Professor Peter Newman slammed this decision to approve WestConnex citing that this was not informed by IA's processes, nor by IA's strategic approach to building transport and getting better economic productivity and sustainability outcomes but rather it was an "arbitrary political decision by the then Prime Minister, Tony Abbott"¹⁰.

Parallels to the East-West Link debacle

The Commonwealth funding for the proposed East West Link in Victoria was committed in the same budget as the WestConnex grant and a similar funding commitment to Perth Freight Link in WA. The approval and administration of the East West Link commitment was examined by the ANAO, which reported on their audit in December 2015.¹¹ This report noted that "neither stage of the East West Link project had proceeded fully through the processes that have been established to assess the merits of nationally significant infrastructure investments prior to the decisions by Government to approve \$3 billion in Commonwealth funding and to pay \$1.5 billion of that funding in 2013–14." There are significant commonalities in the significance and scale of these projects, and in the timing of the WestConnex funding commitment.

The political nature of the funding decision was highlighted in responses to Senate Estimates questioning. **In February 2014, IA confirmed it was yet to receive a detailed cost-benefit analysis of WestConnex (question 114). When questioned about the preliminary cost-benefit analysis and how the methodology could be checked, Mr Brennan also said that IA lacked the "underlying information which formed the basis for their calculations" (question 115)¹².** When questioned about the lack of a detailed cost-benefit analysis in May 2014, IA simply responded that "a key

⁷ <http://www.audit.nsw.gov.au/news/westconnex-assurance-to-the-government>

⁸ http://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0008/245780/Report-150344-M4-East-EIS-Review-Final-Report.pdf

⁹ http://investment.infrastructure.gov.au/publications/policies/pdf/NPA_Schedule_NSW_September%202015.pdf

¹⁰ <https://sourceable.net/infrastructure-australia-ex-board-member-slams-westconnex/>

¹¹ <https://www.anao.gov.au/work/performance-audit/approval-and-administration-commonwealth-funding-east-west-link-project>

¹² http://www.aph.gov.au/~media/Estimates/Live/rrat_ctte/estimates/add_1314/infra/Answers/IA.pdf

component of the Department's management of projects is the requirement for all project proponents to complete a Project Proposal Report. This report includes, as a mandatory item, a cost benefit analysis" (question 145)¹³. While the qualifier of 'detailed' was omitted from the answer, this seemed to contradict the answer given in February 2014.

We submit that, congruous with the federal commitment to Victoria's East West Link, the decision to commit public funds to the WestConnex project was premature and motivated by political gain. The decision of the federal government to allocate public funds to WestConnex was made without any real impartial or independent assessment according to the proper processes and good governance protocols that were in place.

Therefore there was a lack of appropriate advice present before the commitment and funding of WestConnex, specifically the \$1.5 billion agreement. The federal government did not wait for the appropriate assessments and advice from IA before proceeding with either the initial commitment or the payment of \$500 million.

Transferring risk to the tax-payer

We submit that the concessional loan arrangement did not represent the best value for money and did not protect the interests of the Commonwealth.

The federal government did not adequately consider certain factors that would contradict the best interests of the Commonwealth, specifically relating to the integrity of the project and the independent assessment of the value-for-money aspect of the project, nor did it do so transparently. This specifically relates to the influence of political donations and the involvement of specific private corporations and organisations with private interests vested in the WestConnex project.

A \$2 billion concessional loan arrangement was signed through a Memorandum of Understanding in May 2014 by then Prime Minister Tony Abbott and NSW Premier Mike Baird. The purpose of the loan was to accelerate the construction of Stage 2, so that development on Stage 1 and 2 was simultaneous, shortening the entire project by approximately 18 months. However, the terms of the loan arrangement were made commercial-in-confidence, meaning no public scrutiny over the agreement could be made.

This lack of transparency prevented the public from commenting on the terms of the arrangement and, by extension, meant there could be no scrutiny to examine whether the loan was in the best interests of the Commonwealth or represented the best value for money. **Through Senate Estimates questions, we can infer that the loan has reduced risk to private financiers and increased risk to the Commonwealth, described by IA as a "ground breaking first"**¹⁴.

¹³ http://www.aph.gov.au/~media/Committees/rtrat_ctte/estimates/bud_1415/infra/Answers/II.pdf

¹⁴ 19/10/2015 - Estimates - INFRASTRUCTURE AND REGIONAL DEVELOPMENT PORTFOLIO - Department of Infrastructure and Regional Development

WestConnex as an example of clientelism

The federal government failed to consider the roles of specific private actors in the development and implementation of the WestConnex project prior to its commitment of the concessional loan arrangement in May 2014. Therefore, this impeded its judgement that the concessional loan arrangement represented the best value for money, by extension not protecting the interests of the Commonwealth.

One example is the involvement of Macquarie Bank in the development of the business case finalised in 2013. Macquarie has also been involved in the private financing of WestConnex - but what is significant is that Macquarie is a major donor to the Coalition and Labor. They have donated over \$5m between 2000-01 and 2014-15.

Another example is the awarding of contracts to Leighton Holdings. Leighton Holdings was found to be involved in overseas corruption, unearthed from around 2008-09; its offshore arm, Leighton International, was found in 2016 to be engaged in foreign bribery (dating back to 2003); Leighton Holdings subsidiaries were awarded the Lane Cove Tunnel project in Sydney in 2004. Leighton Holdings donated over \$3m to both the Coalition and Labor between 2000-01 and 2014-15. **In total, we estimate that companies that substantially benefit from motorway construction have donated over \$13m to the major parties since 2000.**

Whilst this is more of a clear reflection of the NSW government's failure to ensure its contracts were awarded without undue influence by political donations, the federal government did not additionally attempt to assess this liability when agreeing to the terms of the concessional loan arrangement. The federal government did not conduct its own assessment to understand whether the terms and conditions of the concessional loan arrangement were in accordance with the best interests of the Commonwealth, not private actors. If the federal government did consider this and decide it was an irrelevant consideration, this has not been shown in any publicly available documents.

High Court Justices Kiefel, Bell, Keane and Chief Justice French stated in *McCloy v NSW* [2015] that **“reliance by political candidates on private patronage may, over time become so necessary as to sap the vitality, as well as the integrity, of the political branches of government”**¹⁵. This was an expansion of the definition of ‘corruption’. Corruption is no longer a crude quid-pro-quo, but includes a pattern of donations subtly affecting policy trajectories called ‘clientelism’. We submit that there is a causal link between the utility of political donations and the wider planning of government. In the context of WestConnex, this has damaged the integrity of the advice given to the Commonwealth and may have compromised the value of the concessional loan and other grant funding.

¹⁵ <http://www.theherald.com.au/story/3408640/opinion-power-of-corporate-patrons/>

Summary

The WestConnex project has been hindered by a lack of transparency and a lack of independent assessment. We submit that the federal government was not informed by appropriate advice when it made a financial commitment to the WestConnex project. Further, we submit that decisions were not made through the proper processes that have been established to assess the merits of nationally significant infrastructure investments. Finally, we submit that concessional loan arrangement does not represent value for money and did not take into sufficient consideration the interests of the Commonwealth.

Australia's long-term future is dependent on well-advised and effective infrastructure investments. In a push for political gain, the federal government has failed to ensure that its own processes were followed and we fear that Australian tax-payers will pay the price.

Senator Janet Rice

Senator Lee Rhiannon

Jenny Leong, MP for Newtown

On behalf of the Australian Greens and Greens NSW