

(Template for response on Agency letterhead)

Response to Question on Notice

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry into the East-West Link and WestConnex Audit Reports

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #1

The ANAO's East West Link report, in footnote 25 on page 28, provides an example of where legislative criteria were not satisfied and the project had not been included on the National Land Transport Network. Was DIIRD aware of this discrepancy at the time of recommending that the minister sign the approval instruments?

Response

Yes. Consideration of new projects includes whether they should be added to the National Land Transport Network.

Following approval, the determination was updated to include the East West Link on the National Land Transport Network. The Determination was approved on 19 December 2014.

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Inquiry into the East-West Link and WestConnex Audit Reports

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #2

If we consider the East West Link funding conditions, the ANAO notes that this stage 2 funding commitment for the East West Link had been made contingent on the state of Victoria providing an updated business case to Infrastructure Australia and ministerial consideration of Infrastructure Australia's analysis of that business case. However, this condition was not reflected in the project's governance documentation. That appears on page 9. Was there a rationale for not requiring this updated business case or Infrastructure Australia's analysis of this business case? Secondly, what role did Infrastructure Australia play in the consideration of funding for the East West Link project?

Response

Yes, there was a rationale for not including the requirement for an updated business case as a condition in the project approval instrument. The condition had been clearly specified in correspondence between the Australian and Victorian governments and this approach was consistent with Commonwealth legislation. The inclusion of conditions in project approval instruments is not a standard practice, as the *Nation Building Program (National Land Transport) Act 2009*, now the *National Land Transport Act 2014*, and the associated Notes on Administration, address a number of standard conditions related to the use of Australian Government funding contributions to projects.

Infrastructure Australia provided advice to the Department in regards to the information it had received from the Victorian Government about the project.

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Commonwealth Infrastructure Spending—Inquiry based on Auditor-General's reports 14 (2015-16) and 38 (2016-17)

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #3

Mr HILL: So when members of parliament look at a project that might be reported to or relied upon by ministers in updating parliament on expenditure and something says 'completed' that does not actually mean that anything has been built; it just means that the state treasury has paid the money to someone else?

Mr Boyd: Correct. That can be the case, and we have seen instances where that is the case.

Ms Zielke: We are not happy with that situation. I am happy to investigate further and come back.

Response

The Department is not aware of any construction project being reported as completed that has not been built.

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Commonwealth Infrastructure Spending—Inquiry based on Auditor-General's reports 14 (2015-16) and 38 (2016-17)

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #4

I want to go to paragraph 4.5 at page 38 of the East West Link report, which talks about the risks associated with the project approval instruments. At the time the land transport legislation instrument was made, did DIRD give consideration to what sorts of risks might exist by having insufficient information available?

So what were the risks that were identified in terms of this particular instrument?

What strategies were identified to mitigate against those risks? You might take that on notice as well. And what representations were made backwards and forwards between the Commonwealth and Victorian governments about what those risks might be?

Response

Yes, the Department gave consideration to risks and their impact on project delivery. Risks considered included the potential for delays, cost overruns, community issues, litigation against the project, and issues in relation to planning approvals.

Strategies to mitigate such risks included variations to project approval instruments (as noted by the ANAO in paragraph 18 on page 10 of the East West Link report), a high level of project monitoring and close consultation with the Victorian Government to enable the early identification of issues as they arose. This included regular steering committee meetings and frequent communication at project officer level.

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JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Inquiry on Commonwealth Infrastructure Spending

Department of Infrastructure and Regional Development

GENERAL COMMENTS

NIL

SPECIFIC QUESTIONS ON NOTICE

Question # 5, Hansard, pp 16-17

CHAIR: I was hoping that you might have been able to identify specific projects that you are working on or have worked on where we would be able to see very clearly that better practice improvement

CHAIR: Perhaps, Deputy Secretary, on notice you might provide the committee with an expanded explanation of what the department is doing around the recommendations. We have two paragraphs here, but, if you could provide more detail, that would be much appreciated. It talks about 'a future IIP business requirement'. What is the IIP? The Infrastructure Investment Program?

Response

On 17 November 2016, the Australian Government announced its agreement to provide a \$181 million concessional loan to the Sunshine Coast Council for the Sunshine Coast Airport Expansion Project (SCAEP). As a result of the lessons learned from the WestConnex concessional loan, the Department has improved its processes consistent with the audit recommendation. Specifically, the Department has adopted the following better practice measures:

1. The Department determined that the Australian Government should only make an 'in-principle' commitment to a concessional loan, with approval to follow due diligence outcomes. This serves to protect both the reputation and the negotiating position of the Australian Government. In relation to the SCAEP, the Department sought early agreement from Ministers around the parameters upon which the Department would negotiate the concessional loan.
2. The Department has taken a revised approach to the creation of the Concessional Loan Term Sheet. The Department sought early legal advice regarding the SCAEP concessional loan proposal and the creation of the Concessional Loan Term sheet.

In agreeing to the terms of the SCAEP concessional loan, Ministers were provided with extensive information on the costs to government of the arrangements. Additionally, the interest rate, taking into account public debt interest impacts, was set following extensive consultation with the Department of Finance and the Treasury.

3. The Department is taking greater consideration of whether the proponent is sufficiently ready for due diligence activities to commence. For the SCAEP, the Sunshine Coast Council had already commenced the process of negotiating a loan from the Queensland Treasury Corporation and had sufficient information to do so. The Department was able to leverage off analysis the Queensland Treasury Corporation had in undertaking its own due diligence. In addition, the Department undertook a risk review workshop on the concessional loan proposal on 19 October 2016, ahead of the finalisation of the Term Sheet on 28 October 2016.

In addition, the Department is applying the framework outlined in the *Principles for Innovative Financing* document that was released in February 2016 in the consideration of all future concessional loans, and will work with the Infrastructure Project Financing Agency on future concessional loan and other innovative financing proposals.

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Commonwealth Infrastructure Spending—Inquiry based on Auditor-General's reports 14 (2015-16) and 38 (2016-17)

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #6

The ANAO's East West Link report (footnote 25, p. 28) provides an example of where legislative criteria were not satisfied: the project had not been included on the National Land Transport Network.

- a. Can DIRD advise the committee whether it assessed the project's compliance with land transport legislation after Ministerial approval of advance payments?
- b. Has DIRD considered the legal implications of non-compliance with the requirements of the legislation?
- c. What corrective actions were taken?

Response

See the Department's response to Question #1.

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Commonwealth Infrastructure Spending—Inquiry based on Auditor-General's reports 14 (2015-16) and 38 (2016-17)

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #7

In regard to the WestConnex project, does the department agree that there was a large difference between the milestones that had been approved in June 2015 and the milestones submitted with the payment request?

- a) If so, what circumstances changed to justify those changed milestone payment conditions? How were these changes documented and assessed? If not, can you explain why?*

Response

At the time the Department provided advice on the milestones, including the June 2015 milestone, it also advised that future milestones could be renegotiated between the Australian and NSW Governments to reflect project progress. Milestones are based on agreed activities and reflect key deliverables associated with the project's critical path.

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Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #8

Did DIRD have any prior indication that the milestones would not be met? If so: why didn't DIRD seek to revise 2016-17 milestones well before payment?

Response

See the Department's response to Question #7.

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Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #9

What are the circumstances in which DIRD would decline to make a milestone payment?
What factors would DIRD consider to be relevant in that decision?

Response

The Department would decline to make a milestone payment when agreed activities to accomplish that milestone have not been met.

A milestone payment is approved or declined based on the achievement of agreed activities.

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Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #10

At the Inquiry hearing on 29 March 2017, the department advised the Committee: (p. 16-17) *Mr Thomann: Yes. And we are certainly looking at how we can better manage the information in our systems with regard to milestones and recording the discussions around the relevant points affecting milestones so that all those considerations are clearly in the system and we can track them more effectively as they change over time as well. The current system is a very old system and it is very difficult to do that at the moment, so we want to improve those aspects of it.*

What are the system limitations, how do they affect milestone tracking, and how is the department seeking to address these limitations?

Response

In late 2014 the Department transitioned to a milestone based payment structure for infrastructure investment projects. Core system functionality to input and maintain milestones was implemented at that time to meet the immediate requirements. The milestone component of the system would benefit from further enhancements to overcome current system limitations that require considerable offline manual intervention to satisfy reporting requirements which can be time consuming.

The Department has initiated a project to upgrade the business systems in order to better support the assessment, administration and reporting of infrastructure investment funding. This project includes investigating the requirement for a seamless milestone payment management solution.

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Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #11

The ANAO concluded that DIRD did not adequately advise Ministers of the costs and risks of providing a concessional loan (p.8). It also notes that the project is 'currently less than six months ahead of schedule', compared to the two years anticipated in the 13 May 2014 project announcement (p. 11).

- a) In its submission to this Inquiry, DIRD suggests that uncertainty about planning, financing and construction approvals meant that the original WestConnex delivery timeframe was uncertain (p. 4). Given this comment, what assurance can the Committee have that estimated project timeframes, before such approvals are given, are a sufficiently realistic basis for assessments about project acceleration? In DIRD's experience, and noting the ongoing risk of unforeseen issues arising, at what point in the approvals process does a delivery timeframe become reasonably reliable?*
- b) Is it accurate that the project is less advanced than was anticipated? If so, what implications does this have for infrastructure spending models based on estimates of project acceleration?*

Response

The Department provides advice to the Government to inform project and funding approval. As part of the project approval process, the Department will consider project timelines estimated by the state at each stage of project development and delivery and provide advice on any risks that could affect achievement.

The provision of the concessional loan enabled Stage 2 to be fully financed at contractual close, allowing Stages 1 and 2 to proceed in parallel resulting in significant time savings. The original timeline, referenced in the ANAO's report, was estimated prior to receiving planning approval, environmental clearances, and prior to negotiations with the successful constructors and financiers.

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Nil

SPECIFIC QUESTIONS ON NOTICE

Question #12

DIRD's submission to the Inquiry notes: *The Australian Government attached a condition to its funding for WestConnex that, in the event that all three stages of the project were not delivered, the parties would discuss and agree the appropriate use of residual funds. This additional safeguard was a result of experience with the East West Link funding (p. 3).*

- a. Have any other changes been made to departmental policies or practices as a result of lessons learned from these two projects, regardless of whether or not the ANAO identified a problem? If so, can you outline those changes?

Response

No other significant changes have been made, other than the outcomes from the lessons learned process discussed in the audit report. These learnings have been incorporated into departmental practices and the management of individual projects within the existing legislative and administrative frameworks.

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GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question 13

Is DIRD aware of any other instances where infrastructure projects have been cancelled after funding was provided? Was funding recovered in those instances?

- a. Does DIRD routinely seek to recover interest on payments when cancellation of infrastructure projects occurs?
- b. How is DIRD usually made aware of any interest that is earned on such funding? Does DIRD verify the interest calculation?

Response

There have been a number of instances where funding has been provided to Building Australia Fund (BAF) projects approved under the *Nation-building Funds Act 2008*, where the project has subsequently been cancelled or the scope significantly reduced.

In these instances, the Commonwealth required the return of the funding relating to the works not being undertaken and, in each case, the relevant state repaid the funds. The Department also seeks to recover or reapply interest earned on unspent Commonwealth funding to other projects. In previous instances, interest earned by the state on the Commonwealth funding has been returned to the Australian Government.

The Commonwealth seeks to verify the amount of interest earned on Commonwealth funding through annual audited financial statements provided by the funding recipients.

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Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #14

Can DIRD advise the committee on how much interest the Victorian Government earned on East West Link advance funding between June 2014 and December 2016?

Response

Approximately \$77 million.

Response to Question on Notice

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Commonwealth Infrastructure Spending—Inquiry based on Auditor-General's reports 14 (2015-16) and 38 (2016-17)

Department of Infrastructure and Regional Development

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question #15

Did the funding settlement include this interest? If not: Why not?

Response

No.

At the time of negotiating the reallocation of the \$1.5 billion previously allocated to the East West Link, it was determined that the allocation of the interest earned would be settled separately.