

Chapter 4

Beaudesert Rail

Background

4.1 The town of Beaudesert in south east Queensland is situated between, and is equidistant from, Brisbane and the Gold Coast. Until the mid 1990s Queensland Rail operated a rail service between Beaudesert and Bethania, 43 kilometres away on the Brisbane-Gold Coast line. Queensland Rail ceased to operate the line when an abattoir closed in the Beaudesert Shire and there was no longer any freight to carry.

4.2 In 1997 local citizens formed the Beaudesert Shire Railway Support Group Association Inc. (BSRSG) in an attempt to retain the corridor and to reopen the line. The association unsuccessfully petitioned the responsible minister in the state government to recommence a passenger service to Beaudesert, with an occasional tourist steam train.¹ The association, again unsuccessfully, applied in 1998 for a grant of \$5 million from the Commonwealth Government's Federation Cultural and Heritage Projects program.²

4.3 In March 2000, the association, trading as Beaudesert Rail (BR), applied through the Gold Coast and Region Area Consultative Committee (GCRACC) for a grant from the Regional Assistance Program, a precursor of the RPP, for the development of a business and marketing plan for BR to gain Queensland Transport accreditation as a railway manager-operator.³ The GCRACC supported the application and BR received a grant of \$75,000 plus GST for that purpose.

4.4 In 2001 BR applied for, and received, a Commonwealth Government grant of \$5 million from the Centenary of Federation fund to develop and operate a heritage railway from Bethania to Beaudesert. That grant enabled BR to restore the track and other facilities, to purchase and restore rolling stock and to begin operating as a tourist railway at the end of December 2002.

4.5 Early in December 2002, however, BR's management committee was informed by its then general manager that it had a deficit of \$120,000. In January 2003, it was advised that deficit had increased to \$500,000.⁴

1 Mr Cawley, former President of the Beaudesert Shire Railway Support Group, *Committee Hansard*, 25 February 2005, p. 2.

2 Mr Cawley, *Committee Hansard*, 25 February 2005, p. 1.

3 Mr Gassman, former Chair, Gold Coast and Region Area Consultative Committee, *Committee Hansard*, 25 February 2005, p.28.

4 Mr Cawley, *Committee Hansard*, 25 February 2005, p. 2.

4.6 BR continued to trade after December 2002 despite its financial situation because the committee of management believed, on the advice of its auditor and others, that it could continue to trade if it did not incur additional debts and if its ongoing expenses were met from its cash flow.⁵

4.7 In February 2003, BR's general manager sought assistance from the GCRACC to assess BR's financial status. A grant of \$10,000 plus GST was made to GCRACC for that purpose, again under the Regional Assistance Program. On 27 February GCRACC engaged a firm of chartered accountants 'to establish the current financial position of BR and to consider...management, funding and strategic options for the ongoing viability of BR'.⁶

4.8 The accounting firm, Lee Garvey, reported to GCRACC on 28 March 2003 that as at 28 February 2003 BR owed its creditors \$1,244 644, that it had insufficient liquid assets to meet current liabilities as and when they fell due and that BR was therefore technically insolvent.⁷ The report ('the Lee Garvey Report') suggested that with the agreement of creditors it might be possible to put in place a rescue package.⁸

4.9 The report was presented to BR's management committee on 31 March. At a meeting on 30 April 2003, the management committee, knowing that legal action by creditors to wind up the association was imminent, resolved to apply to the Supreme Court of Queensland to appoint a provisional liquidator.⁹

4.10 The Court appointed a provisional liquidator (Mr L McIntosh, a partner in KordaMentha) on 2 May 2003. After assessing BR's assets, and determining that creditors would receive no more than 15 cents in the dollar if BR were wound up, Mr McIntosh decided that it should continue trading because, as he informed the committee of management, if BR had ceased to trade, 'any likelihood of obtaining further government funding to pay out the creditors of Beaudesert Rail would be jeopardised'.¹⁰

5 Mr Gillow, *Committee Hansard*, 25 February 2005, p. 79.

6 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc.* 28 March 2003, p. 3, tabled 25 February 2005.

7 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc.* 28 March 2003, p. 3, tabled 25 February 2005.

8 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc.* 28 March 2003, p. 4, tabled 25 February 2005.

9 Minutes of the special committee meeting of Beaudesert Rail held 30 April, 2003, p. 2, tabled 25 February 2005.

10 *Provisional Liquidator's Report for Beaudesert Shire Railway Support Group Inc (In Provisional Liquidation)*, 13 June 2003, p. 2, in Receiver's minutes of meetings and reports to creditors, tabled 25 February 2005.

4.11 BR and Mr McIntosh sought further Commonwealth Government funding through the local Member of Parliament, the Member for Forde, Mrs Kay Elson.¹¹ Mrs Elson made representations to the Prime Minister who responded, on 11 June 2003, that he was 'inclined to support the provision of a \$400,000 Commonwealth loan',¹² subject to certain conditions. Those conditions were, first, that the project would have to obtain funds of at least \$800,000 from the Queensland State Government and/or other sources and, second, that BR would need to provide updated financial statements and a business plan demonstrating that the project could be made financially viable.¹³

4.12 Mr McIntosh wrote to the Prime Minister on 15 July 2003 to inform him that Queensland Government funding had been obtained from Queensland Rail, which had agreed to take out a lien on BR's steam engine in consideration for forgoing its unsecured loan of \$675,236.22. He also informed the Prime Minister that the Beaudesert Shire Council had agreed to provide funding of \$200,000 towards working capital for Beaudesert Rail, subject to conditions. Mr McIntosh enclosed with his letter a business plan prepared by BR's General Manager, which he said gave him confidence that the project was financially viable. He formally requested the release of the \$400,000 by 5 August.¹⁴

4.13 BR continued to operate, paying for its ongoing expenses from its cash flow, during the period that it was in provisional liquidation (and then under administration, from 25 September 2003), except for two periods amounting to several weeks following a derailment on 28 June 2003 and a bridge fire in October 2003. During that time the government, through DOTARS, tried to establish with Mr McIntosh whether the conditions of the proposed loan could be met.

4.14 Mr McIntosh was able to satisfy DOTARS that BR could meet most of conditions for the loan, but on 30 October 2003 he was still attempting to satisfy the department that the project would be financially viable.¹⁵ In that regard, the Committee was informed that DOTARS obtained from KPMG an independent

11 See, for example, *Provisional Liquidator's Report for Beaudesert Shire Railway Support Group Inc (In Provisional Liquidation)*, 13 June 2003, p. 3, in Receiver's minutes of meetings and reports to creditors, tabled 25 February 2005.

12 The Hon John Howard MP, Prime Minister, correspondence to the Member for Forde, Mrs Elson MP, 11 June 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

13 The Hon John Howard, Prime Minister, correspondence to the Member for Forde, Mrs Elson MP, 11 June 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

14 Mr McIntosh, correspondence to the Hon John Howard, Prime Minister, 15 July 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

15 Mr McIntosh, correspondence to DOTARS, 31 October 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

financial assessment of BR's ongoing financial viability.¹⁶ BR's financial viability is discussed in more detail later in this chapter.

4.15 Documents provided in evidence to the Committee reveal that in the final days leading up to the government decision on BR the Deputy Prime Minister, The Hon John Anderson MP, who was also the portfolio minister for RPP, was involved in discussions with the Prime Minister's office about the matter of government assistance. It would seem that these negotiations continued until late in the afternoon on 4 November—the day before the decision was made.¹⁷ It is also clear from the evidence that at this stage the department was completely unaware of where the discussions between the Deputy Prime Minister and the Prime Minister's office were heading in relation to BR. Right up until the eve of the decision the department, including the most senior officer in charge of the BR issue, were continuing to work on the basis that any funding would be in the form of a loan.¹⁸

4.16 On 5 November 2003, the Minister for Transport and Regional Services, Mr Anderson, advised Mr McIntosh that the government would provide BR *not* with a loan, but with a *grant* (of \$600,000) for its future operations. The grant was to be made on the condition that BR obtained at least \$800,000 from the Queensland State Government and/or other sources. This was one of the conditions set in the Prime Minister's letter to Mrs Elson of 11 June 2003 regarding the possible loan. The grant was to be paid in two instalments—the first, of \$400,000, was for BR's immediate funding needs and the second, of \$200,000, was for operating capital. The second instalment was to be paid when BR had satisfied the Australian Government that all arrangements were in place to give effect to the Deed of Company Arrangement, that is, that all creditors had been paid the amounts specified in the legal agreement that had been made between the creditors and the administrator.¹⁹

4.17 Following the payment of the grant, the management of BR then became the responsibility of a new management committee.²⁰ BR continued to operate until August 2004, when the largest bridge on the railway was burnt. This was the fifth or sixth mishap, including a derailment and grass and bridge fires that had befallen the

16 See Ms Riggs, answer to question on notice, p. 2, received 16 May 2005, in which DOTARS stated that the KPMG report formed part of the department's advice to the minister and would not be provided to the Committee.

17 See the email traffic between a departmental officer and the liquidator's office, 3 and 4 November 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

18 See Ms Riggs, *Committee Hansard*, 25 February 2005, p. 96.

19 The Hon John Anderson MP, Deputy Prime Minister and Minister for Transport and Regional Services Correspondence, correspondence to Mr McIntosh, 5 November 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

20 The previous management committee had stood down in June 2003 at the request of the provisional liquidator and a new, more professionally oriented board was elected in September 2003. See Mr Robert, *Committee Hansard*, 25 February 2005, p. 4 and Mr Munn, *Committee Hansard*, 25 February 2005, p. 60.

railway since it commenced operations in December 2002. On this occasion BR did not have sufficient funds (\$132,000) to effect the necessary repairs, and had to cease operations. Subsequently, in February 2005, on the application of a number of creditors, those creditors took possession of certain assets and of BR's operational records and bank accounts.²¹

Commonwealth Government involvement

4.18 The Commonwealth Government provided BR with four grants amounting in total to \$5.7 million.

4.19 As stated earlier the first grant of \$75,000 plus GST, was for the production of a business and marketing plan. That grant was made under the Regional Assistance Program and was processed through the GCRACC. The responsible government department was the Department of Employment, Workplace Relations and Small Business. Ms Riggs informed the Committee that the grant was acquitted through that department on 25 May 2001.²²

4.20 The second grant of \$5 million was made from the Centenary of Federation Fund. DOTARS had the responsibility for administering that grant, but the GCRACC was not involved. There are different views about whether the grant was adequate for the intended purpose and indeed whether it should have been made at all.²³ Nevertheless the evidence indicates that the various instalments of the grant were carefully administered and monitored by DOTARS,²⁴ but the grant was not acquitted with DOTARS till October 2003.²⁵ The late acquittal of the grant was one of the issues that was raised by DOTARS when it was corresponding with Mr McIntosh regarding the conditions of the proposed loan, as is discussed later in the chapter.

4.21 The third grant of \$10,000 plus GST was made in February 2003 and was for a report on BR's financial situation and suggestions for a way forward. That report (the Lee Garvey report) has been discussed earlier in this chapter. BR applied to the GCRACC, which supported the application. The grant was made from the RAP to the ACC and was administered by DOTARS.

4.22 The Commonwealth Government was again involved in the project in June 2003 when, on the representations of the Member for Forde, the Prime Minister made a conditional offer of a loan of \$400,000. DOTARS was given the responsibility for

21 Mr Munn, *Committee Hansard*, 25 February 2005, p. 53.

22 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 90.

23 Mr Daynes, Correspondence with the Gold Coast and Region Area Consultative Committee, 25 April 2003, p. 3, and *Committee Hansard* (in camera), 25 February 2005.

24 See, for example, Mr Robert, *Committee Hansard*, 25 February 2005, p. 6.

25 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 91.

facilitating the loan, although the department did not administer any programs that offered loans.²⁶

4.23 DOTARS did not intend, however, that the proposed loan would be made under either the RP or SR programs. Ms Riggs informed the Committee that at the time DOTARS was 'contemplating the provision of additional funding through the additional estimates process, in the latter part of 2003, specifically for the proposed loan'.²⁷ Ms Riggs also admitted in evidence to the Committee that, as it failed to fit any existing departmental programs, the unique nature of the proposed loan and the one-off appropriation to fund it amounted to effectively an additional or new program.²⁸

4.24 From 13 August 2003 till early November 2003 DOTARS and Mr McIntosh were in frequent communication concerning BR's ability to meet the conditions of the loan. As discussed in the next section, BR had satisfied DOTARS that it would be able to meet most of the conditions for the loan but on 30 October 2003 the department was still seeking detailed, additional evidence from BR, as follows:

I am seeking further evidence that the project's prospects of solvency in the first year can be improved. I will require this response as soon as possible tomorrow if I am to maintain the possibility of finalising a loan agreement before 6 November 2003.²⁹

4.25 The offer of a loan was in effect withdrawn on 5 November 2003 when the government decided to provide further assistance to BR by way of a fourth grant. DOTARS was given the responsibility of administering the grant through the RPP.

4.26 DOTARS and BR signed a Regional Partnerships funding agreement on 14 December 2003. As is the normal practice, DOTARS paid the grant monies only when it was satisfied that the conditions of the agreement had been met. The first instalment of the grant was paid to BR on 18 December 2003. The second instalment was paid in February 2004, after Mr McIntosh attested that he had complied with all the requirements to give full effect to the Deed of Company Arrangements.

4.27 Although the grant was made from RPP funds, the government apparently did not treat it as a grant that would normally be made under the program. In that regard, BR had not applied for a RP grant, nor had GCRACC been consulted. Ms Riggs told the Committee:

26 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 93.

27 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 93.

28 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 93.

29 Ms Riggs, correspondence to Mr McIntosh, 30 October 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005. (The various deadlines for the provision of information set by DOTARS were determined by the dates set down for proceedings in the Queensland Supreme Court to wind up Beaudesert Rail.)

Regional Partnerships was simply an existing program from which the grant was paid, and that is why in the subsequent budget the government provided an additional \$600,000 to top up the Regional Partnerships appropriation.³⁰

4.28 The manner in which the government resorted to using program funds for the BR grant reveals the disregard on the part of its most senior ministers for the RPP guidelines. It is one of several examples in this report of the virtually unfettered discretion in the hands of ministers under this program (see also chapter 7 on Primary Energy). The other striking aspect of the BR case is that program funds were used to achieve a political outcome in a government-held electorate following direct intervention from the Prime Minister.

Financial viability

4.29 A major issue arising from the provision of taxpayers' monies to BR is whether the government could have reasonably concluded at any time that the project would be financially viable, which is a requirement under the RP guidelines.

4.30 The first grant that was made to BR was for the provision of a business and marketing plan to gain accreditation from Queensland Transport as a railway manager-operator. That report presumably was taken into account when the government awarded the \$5 million Centenary of Federation grant. The Committee did not have access to that report, but one witness stated that the business plan had some serious flaws. In that witness' opinion, an overestimate of the possible income was one of the flaws.³¹

4.31 Mr Daynes, the former General Manager of BR, also identified a number of flaws, as follows:

The report was attractive in the promise of financial returns and a wonderful contribution it would make to the workforce and economy of the Beaudesert Shire.

The plan did not include the upgrades and maintenance of the railway infrastructure or any cost of restoring locomotives or rolling stock.³²

4.32 Mr Daynes also wrote that:

There was never any figure that could be substantiated as to how much the infrastructure upgrade would cost or if the rolling stock restoration figures were realistic. Surely this was the responsibility of the funding body before handing out \$5 million of public money.

30 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 91.

31 *Committee Hansard* (in camera), 25 February 2005.

32 Mr Daynes, correspondence to the Gold Coast and Region Area Consultative Committee, 25 April 2003, p. 2, tabled 25 February 2005.

When the grant was made public the BSRSB was as surprised to get the grant as the political organisations who condemned the grant.³³

4.33 However, the Committee was informed by another witness that, but for the inadequacies of the then management, the project could have been brought in on budget and on time in accordance with the business plan.³⁴ The then secretary of the committee of management, Mr Robert, did not necessarily share that opinion³⁵ and neither did Mr Daynes, who claimed in April 2003 that it was apparent by October 2001 that the project would have a deficiency in funds to complete the project by December 2002.³⁶

4.34 When the BR management committee was told in January 2003 that the deficiency amounted to \$500,000, it prudently decided to ask the GCRACC to fund a report on its financial situation. As reported earlier, the ACC received a grant of \$10,000 plus GST with which it commissioned the Lee Garvey report.

4.35 The Lee Garvey report found that 'Capital expenditure relating to the Commonwealth Grant was \$6,091,188, \$1,091,188 over budget'³⁷ and observed that in normal circumstances winding up would be the most likely scenario. The report suggested, however, that if a rescue package could have been put in place there may have been a chance for BR to move forward. One option that the report put forward required BR to obtain a package of funding from financial institutions, Commonwealth and State Governments.³⁸ As discussed earlier, that was the option eventually chosen by the liquidator.

4.36 Lee Garvey prepared a cash flow forecast for the year, 1 April 2003 to 31 March 2004, which indicated that BR might achieve an operating surplus of approximately \$462,000 for the year. The report stated that the forecast cash flow 'establishes a basis for ongoing viability however there is insufficient cash flow ... to meet current creditor liabilities'.³⁹

4.37 The Lee Garvey forecast assumed that monthly ticket sales and charters would be as much as \$131,699 in February 2004. Estimates submitted by Mr McIntosh to

33 Mr Daynes, correspondence to the Gold Coast and Region Area Consultative Committee, 25 April 2003, p. 2, tabled 25 February 2005.

34 *Committee Hansard* (in camera), 25 February 2005.

35 Mr Robert, *Committee Hansard*, 25 February 2005, p. 3.

36 Mr Daynes, correspondence to the Gold Coast and Region Area Consultative Committee, 25 April 2003, p. 2, tabled 25 February 2005.

37 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc. 28 March 2003*, p. 3, tabled 25 February 2005.

38 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc. 28 March 2003*, p. 3, tabled 25 February 2005.

39 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc. 28 March 2003*, p. 12, tabled 25 February 2005.

DOTARS in October 2003 forecast sales of only \$31,973 for February 2004, and DOTARS sought assurances that sales forecasts even at that level were realistic.⁴⁰

4.38 Following the Prime Minister's indication that a loan of \$400,000 might be available, DOTARS explored with Mr McIntosh the viability of the project. As stated earlier, the matter had still not been resolved to the satisfaction of DOTARS before the Deputy Prime Minister offered the grant of \$600,000 plus GST on 5 November 2003. As Ms Riggs informed the Committee on 25 February 2005 in relation to BR's ability to service the loan:

Senator O'Brien – So, Ms Riggs, at that time the department had overwhelming evidence that the project, in its view, was never going to be viable, and you were defending the interests of the taxpayer at that time?

Ms Riggs – We had what I believed to be an informed and experienced judgment that if what the Commonwealth offered were a loan then, based on projections available to us from the person then responsible for Beaudesert Rail, its future could not be assured on those terms.⁴¹

4.39 As discussed earlier, the first tranche of the grant promised to BR on 5 November 2003 was used to pay its creditors under the Deed of Settlement. The second tranche of \$200,000 was for working capital. The need for working capital had been recognised in the Lee Garvey report which had recommended that it would be important to allow for working capital of approximately one third of [the] expected surplus of \$462,000 'in order to ensure that BR is able to always meet future commitments as and when they become due'.⁴²

4.40 Lee Garvey therefore had considered that an amount of approximately \$150,000 would be needed to support BR's ongoing operations. As it happened, even the apparently generous grant of \$200,000 from the RPP proved to be insufficient. In August 2004, BR was not able to find \$132,000 to repair a bridge that was damaged by fire.

Conclusion

4.41 Clearly, Mr McIntosh had not been able to demonstrate to DOTAR's satisfaction that BR was sufficiently economically viable to service a loan of \$400,000. That appears to have been for that reason that the government decided to provide financial assistance in the form of a grant. However, even a grant of \$600,000 proved insufficient when BR needed to find funds to repair a bridge so that it could continue operating.

40 Ms Riggs, correspondence to Mr McIntosh, 30 October 2003, in Receiver's correspondence with DOTARS, tabled 25 February 2005.

41 Ms Riggs, *Committee Hansard*, 25 February 2005, p. 96.

42 Lee Garvey Chartered Accountants, *Financial Assessment of Beaudesert Shire Railway Support Group Association Inc.* 28 March 2003, p. 3, tabled 25 February 2005.

4.42 As stated earlier, BR was wound up on the application of a number of creditors in February 2005.

4.43 It may be, as some witnesses claimed, that without the mishaps that adversely affected the operation of the railway at vital times, BR may have been viable in the medium to long term.⁴³ However, its ongoing viability was at best marginal, and the Committee must seriously question the government's decision to expend a total of \$5.7 million of taxpayers' monies on a project that failed.

4.44 It is also significant that the major grants provided to BR (\$5 million from the Centenary of Federation Fund and \$600,000 from the RPP) were not processed through the relevant area consultative committee. The Committee did not receive sufficient evidence about the Centenary of Federation grant for it to determine whether the usual processes for grants under that program were followed. In relation to the latter grant, however, the evidence is that the decision to make the grant was made at the political level. The GCRACC was not involved and DOTARS was only informed of the grant on the same day that the Minister informed the voluntary administrator.

4.45 In making this ultimately futile grant of \$5.7 million to a project in a Government-held electorate it is clear that the government bypassed its own normal procedures for the administration of the RPP. It is therefore reasonable to conclude that the grant was made for political purposes.

43 See, for example, Mr Gillow, *Committee Hansard*, 25 February 2005, p. 89.