
New South Wales Auditor-General's Report

Performance Audit

NorthConnex

Department of Premier and Cabinet, NSW Treasury,
Infrastructure NSW, Roads and Maritime Services,
Transport for NSW



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GPO Box 12
Sydney NSW 2001

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **NorthConnex: Department of Premier and Cabinet, NSW Treasury, Infrastructure NSW, Roads and Maritime Services, Transport for NSW.**

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford
Auditor-General
8 June 2017

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Foreword

On 12 May 2017, in accordance with Section 38C(2) of the *Public Finance and Audit Act 1983*, the Audit Office provided the final report for this audit to the heads of the five audited agencies, their responsible Ministers and the NSW Treasurer.

I note that on 18 May 2017, Portfolio Committee No.2 – Health and Community Services Inquiry into Road Tolling received evidence regarding the potential for a financial contribution from Roads and Maritime Services if a certain percentage of heavy vehicles continue to use Pennant Hills Road.

Subsequently, the issue of compensation payments to the NorthConnex operators has been the subject of public interest.

As part of my audit, I examined how the assessment of the NorthConnex funding model ensured value for money for NSW taxpayers. My report notes the published contract summary for NorthConnex states that:

- Roads and Maritime Services will implement regulatory measures with respect to heavy vehicles travelling on Pennant Hills Road
- there are specific conditions where Roads and Maritime Services must provide compensation to the proponents if an agreed percentage of certain heavy vehicles continue to use Pennant Hills Road.

I consider the matters of public interest referred to above were adequately addressed on 22 May 2017 at the public hearing for the Inquiry into Road Tolling. The transcript from this hearing is available on the NSW Parliament website.

Margaret Crawford
Auditor-General of NSW

June 2017

Executive summary

NorthConnex is a nine-kilometre tolled motorway tunnel between the M1 Pacific motorway at Wahroonga and the M2 Hills motorway at West Pennant Hills. Major construction work commenced in February 2015 and the tunnel is expected to open to traffic in late 2019.

In March 2012, the M7 shareholders (also referred to as the proponents) submitted an unsolicited proposal for NorthConnex to the NSW Government. The proponents, led by Transurban, include the Queensland Investment Corporation and the Canada Pension Plan Investment Board.

A steering committee, with representatives from the Department of Premier and Cabinet, NSW Treasury, Infrastructure NSW, Transport for NSW and Roads and Maritime Services, as well as an independent member, assessed the proposal in accordance with the 'Unsolicited Proposals - Guide for Submission and Assessment' (the Unsolicited Proposals Guide). The Unsolicited Proposals Guide sets out a three-stage assessment process:

1. Initial Submission and Strategic Assessment — A comprehensive initial assessment to identify any potential benefit to the NSW Government of further consideration and development with the proponent
2. Detailed proposal — The NSW Government and proponent work collaboratively to develop and assess a detailed proposal
3. Negotiation of final binding offer — Outstanding issues are finalised with a view to entering a binding agreement should the NSW Government accept the final offer.

As this was a Public Private Partnership (PPP) proposal, the steering committee also assessed the proposal against the National and NSW PPP Guidelines.

This audit assessed whether the process used to determine the NorthConnex funding model adequately considered value for money for taxpayers and road users. In making this assessment, we answered the following questions:

1. How did the assessment of the NorthConnex funding model ensure value for money for NSW taxpayers?
2. Did the assessment adequately consider the overall impact of tolling arrangements to road users and the community?

More details on the audit scope and focus are in Appendix 3.

Conclusion

The processes used to assess NorthConnex adequately considered value for money for taxpayers and road users within the NSW Government's stated policy objectives. These processes included assessing the proposal against the costs and benefits of the NSW Government fully funding the project; adding a competitive tender process for the design and construction components; and using independent cost estimation and traffic modelling. The NorthConnex proposal met a need identified by the NSW Government. By these measures, the NorthConnex agreement represented value for money for the NSW Government.

The steering committee used sufficiently robust and independently verified processes to determine the initial scope and cost for the project. The use of independent traffic modelling represented the best available assessment, given the complexities of the network being modelled and the available traffic data. The impact of tolling concessions on road users and the motorway network were consistent with policy objectives described in the 2012 NSW Long Term Transport Master Plan. The steering committee adequately considered the cumulative impact of tolling changes across the term of the agreement.

The audit identified two areas where there were deficiencies. The current Unsolicited Proposals Guide is not clear on the timing of key assurance stages. Our view is that a business case gateway review would be more effective at providing risk assurance if it were completed during the development of a detailed proposal in stage 2. Additionally, record keeping for this project did not meet the standards for government record keeping. For example, there is insufficient documentation showing that the steering committee endorsed the management plan for a declared potential conflict of interest. Given the risks associated with unsolicited proposals, it is critical for NSW Government participants to keep complete and accurate records of their activities and decisions.

Assessment processes complied with established guidelines

The steering committee, chaired by the Department of Premier and Cabinet, was responsible for assessing and evaluating the proposal, managing communications with the proponents, and advising the NSW Government.

The unsolicited proposal assessment process involved considerable multi-agency stakeholder involvement and input. The steering committee met monthly throughout the proposal assessment and evaluation process. The committee established an assessment panel and technical, commercial and representative teams.

In accordance with stage 2 of the Unsolicited Proposals Guide, the documentation we reviewed indicated a high level of collaboration between relevant NSW Government agencies and the proponents under the guidance of the steering committee.

In line with the requirements of the Unsolicited Proposals Guide, the steering committee considered value for money as a key assessment criterion. We found that the steering committee used multiple processes to assess the NorthConnex proposal which adequately considered value for money for taxpayers and road users within the NSW Government's stated policy objectives. These processes included:

- assessing the NorthConnex proposal against the costs and benefits of the NSW Government fully funding the project (referred to as the public sector comparator)
- developing a business case which demonstrated a positive cost benefit ratio (noting that a business case is not a requirement of the Unsolicited Proposals Guide)
- adding a competitive tender process for the design and construction components
- using independent cost estimation and traffic modelling
- introducing a cap on the NSW Government's contribution.

The steering committee also ensured that the proposal had received planning approval and that it met other government requirements, such as completing a public interest evaluation report which is required by the NSW PPP Guidelines.

The steering committee prepared governance plans which addressed probity requirements, and the probity advisor for the proposal completed probity reports for stages 2 and 3. An issue related to the incomplete documentation for the management of a declared potential conflict of interest is described later in this report.

The NorthConnex proposal met a compelling need for the NSW Government, that RMS had identified many years before the unsolicited proposal was received. However, previous assessments demonstrated that the NSW Government was unable to independently fund the project.

Two key assurance steps were not completed in a timely manner

The decision to proceed from detailed proposal (stage 2) to negotiating the final binding offer (stage 3) was not informed by a business case gateway review or stage 2 probity report. The steering committee completed these key assurance steps after the NSW Government announced the decision to proceed to stage 3.

While there is no specific guidance in the Unsolicited Proposals Guide or the NSW PPP guidelines on when a business case gateway review should be completed, our view is that a business case gateway review would be more effective at providing risk assurance if it were completed during stage 2 and before commencement of the procurement phase in stage 3. An expert panel reviewed the draft business case in February 2014, after stage 2 was completed in May 2013. As a result, the gateway review did not inform the development of the project cost or scope, as the commercial terms had been negotiated as part of stage 2.

The probity advisor reviewed probity related content in the stage 2 assessment report in May 2013. Although the probity advisor confirmed that there were no unresolved probity concerns/issues and that a draft probity report had been prepared, the stage 2 probity report was not finalised until November 2013, six months after the NSW Government announced that it had reached an in-principle agreement with the proponents and completed the stage 2 assessment process in May 2013.

The Department of Premier and Cabinet has provided a draft update to the Unsolicited Proposals Guide. We note that this draft provides clarity on when these assurance steps should be completed for future unsolicited proposals.

Record keeping did not fully comply with legislation or the governance plan

Government agencies are required to keep documentation in accordance with the *State Records Act 1998* and the NSW Government Standard on Records Management. By their nature, unsolicited proposals lack transparency and the benefit of competition in the procurement process. This makes it more critical for NSW Government participants involved in the assessment of unsolicited proposals to keep complete and accurate records of their activities and decisions.

In addition, the governance plans for stages 2 and 3 state 'Records of the proposal and evaluation process must be maintained in order to allow for independent audit and review. The maintenance of appropriate records increases the accountability and transparency of the process'.

Agencies were unable to provide key documentation requested as part of the audit. With the exception of the steering committee, record keeping for groups such as the assessment panel, the technical team, commercial team and representative team did not meet the standards for government record keeping. This was due to a lack of clarity regarding the roles and responsibilities for record keeping, including what should have been recorded during the assessment of the NorthConnex proposal and who was responsible for doing this.

The management of a potential conflict of interest was not fully documented

The governance plans for NorthConnex state that 'All participants in the assessment process (including advisors) must have no conflicts of interest, which would, or may appear to, adversely affect the impartiality of the process. Project team members are responsible for bringing any actual or potential conflict of interest to the attention of the steering committee Chair or Probity Adviser'.

In July 2012, one of the government representatives declared a potential conflict of interest to the steering committee after discussions with the probity advisor in May 2012. This person was involved in all three stages of the assessment process.

The steering committee noted the declaration, and directed the probity advisor and person declaring the interest to 'work on a plan to manage any future conflict of interest and present it to a future meeting'. There is evidence that a management plan was developed and the Department of Premier and Cabinet advised us that this plan was adopted by the steering committee. This was not captured in the steering committee meeting minutes.

The stage 2 assessment panel report confirmed that 'the probity advisor has not reported any unresolved concerns/issues'. The probity reports, which were prepared at key points in the assessment process, did not document that the potential conflict of interest had been declared or that a mitigation strategy had been implemented.

We acknowledge that the government representative acted appropriately in declaring the potential conflict of interest. The chair of the steering committee and the probity advisor were responsible for ensuring impartiality in the assessment process.

Recommendations

By December 2017, the Department of Premier and Cabinet should:

1. publish an updated 'Unsolicited Proposals – Guide for Submission and Assessment' which clarifies obligations with requirements in other NSW Government policies such as the NSW PPP guideline and Infrastructure Investor Assurance Framework. The update should require:
 - a) a business case to be prepared, and a business case gateway review completed, as part of the assessment of the detailed proposal (currently stage 2)
 - b) probity reports must be completed and considered before the decision to proceed to the next stage.

The Department of Premier and Cabinet and NSW Treasury should immediately:

2. improve record keeping to ensure compliance with the *State Records Act 1998* and the NSW Government Standard on Records Management.

Introduction

NorthConnex is a nine-kilometre tolled motorway tunnel between the M1 Pacific motorway at Wahroonga and the M2 Hills motorway at West Pennant Hills. The total cost for the project is \$3.1 billion. NorthConnex will be funded through toll charges, and contributions from the NSW and Australian Governments of up to \$405 million each. In January 2015, the NSW Roads Minister signed the final contracts for NorthConnex.

Exhibit 1: Map of NorthConnex



Source: NorthConnex website.

A steering committee, chaired by the Department of Premier and Cabinet and comprising representatives from NSW Treasury, Infrastructure NSW, Transport for NSW and Roads and Maritime Services, as well as an independent member, was responsible for assessing and evaluating the proposal, managing communications with the proponents, and advising the NSW Government. The steering committee assessed the proposal in accordance with a three-stage process in the Unsolicited Proposals - Guide for Submissions and Assessment (the Unsolicited Proposals Guide). As this was a Public Private Partnership (PPP) proposal, the steering committee also assessed the proposal against the National and NSW PPP Guidelines.

Key features of the project

NorthConnex will provide twin motorway tunnels around nine kilometres each in length, with a height clearance of 5.3 metres and a speed limit of 80 km/h. Each tunnel will be built with long term capacity for three lanes, but will initially operate with two lanes and a breakdown lane in each direction. The tunnel includes interchanges to the north and south.

The primary service delivery objectives of NorthConnex are to complete a missing link in Sydney's motorway network, reduce the number of heavy vehicles using Pennant Hills Road and to ease congestion for Sydney motorists. Major construction work commenced in 2015 and the tunnel is expected to open to traffic in late 2019. When complete, it will link Sydney's north to the Sydney Orbital Network and enable travel from Newcastle (M1) to Melbourne without a single set of traffic lights.

As part of NorthConnex, integration work along the Hills M2 motorway (the M2 Integration) is being carried out to allow the safe merge of traffic from the tunnel onto the Hills M2 motorway. This work will include a new westbound lane from Pennant Hills Road to the Windsor Road interchange and bridge widening along the route.

Budget and funding model

The \$3.1 billion (2014–15 nominal) NorthConnex project has two separate, but related agreements:

- \$3.0 billion to finance, design, construct and operate the NorthConnex twin motorway tunnels
- approximately \$105 million for the M2 integration.

The proponents, led by Transurban, who are currently the shareholders in the M7 motorway, will finance and operate the NorthConnex motorway with the following financial arrangements (worth approximately \$2.1 billion):

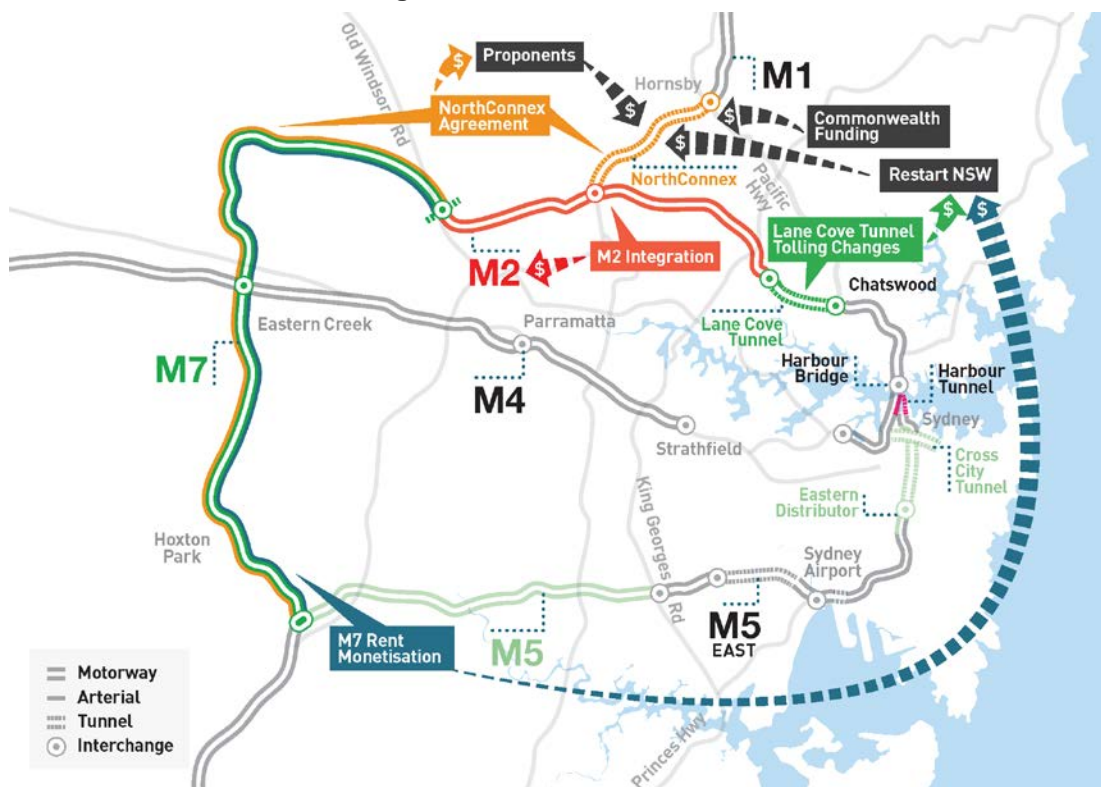
- the NorthConnex motorway, operating under a concession arrangement until year 2048. This includes a revenue share arrangement to allow the State to share in the financial benefits if actual demand is higher than currently forecast. The light vehicle toll will be equal to the nominal M2 toll at the completion of construction and there will be a heavy vehicle toll multiplier of three times the light vehicle toll
- regulations will require heavy vehicles to use NorthConnex rather than Pennant Hills Road
- the following changes to the M7 motorway tolling concessions:
 - extension of the M7 tolling concession agreement by 11 years (from 2037 to 2048)
 - phasing-in an increase in the heavy vehicle toll multiplier to three times the current light-vehicle toll. The increase was phased in over two years, in eight increments after financial close for the deal, in 2015. Prior to this increase, heavy and light vehicles paid the same toll.

Up to \$810 million in government funding comprising:

- \$405 million from the Australian Government, paid over the construction period as specific project milestones are completed
- up to \$405 million has been reserved from the NSW Government infrastructure investment fund known as Restart NSW. Around \$375 million of this will be reimbursed by money received for:
 - changes to the Lane Cove Tunnel tolling arrangements (worth around \$200 million), including extending the concession arrangement from 2037 to 2048 and an increase in the heavy vehicle multiplier (from two times the toll for passenger vehicles to three times the toll for passenger vehicles). The tolls for heavy vehicles will also be escalated quarterly by the Consumer Price Index or one per cent (whichever is greater)
 - a one-off sale of the future scheduled payments for the M7 rental payments arrangement (the M7 rent monetisation - \$175 million).

These financial arrangements are further described in Exhibit 2. Roads and Maritime Services was responsible for land acquisition costs of up to \$165 million funded from its existing budget. The M2 integration works are fully funded by the extension of the M2 tolling concession term from 2046 to 2048.

Exhibit 2: NorthConnex funding model



Source: Audit Office research 2017.

NorthConnex benefits

The NorthConnex project business case states that the new motorway tunnel will address the following issues:

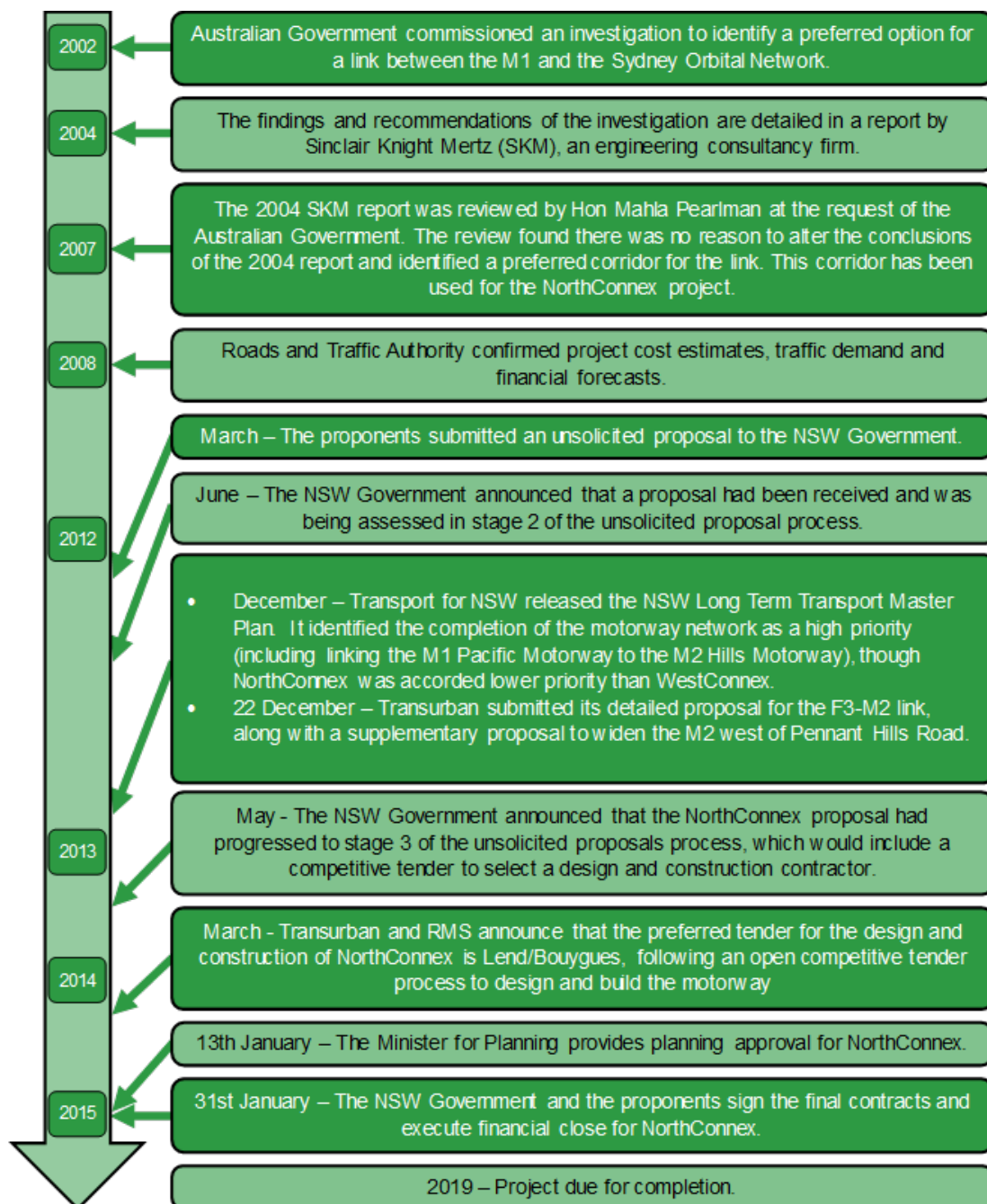
- Inefficient freight systems: congestion on the existing link affects the efficiency of the national highway network, impacting on freight productivity and limiting opportunities for economic growth.
- Congestion: there are high levels of congestion on Pennant Hills Road because of the large number of signalised intersections (21) and traffic exceeding the design capacity of the road.
- Vehicle accidents: data from the Centre for Road Safety (October 2013) indicates that, over a five-year period, there were 945 crashes, with one fatality and 404 people injured. Heavy vehicles were involved in 20 per cent of these crashes.
- Adverse economic impacts such as traffic noise, community severance and exhaust emissions: the NRMA Red Flag Survey of over 10,000 road users indicated that Pennant Hills Road is considered the third worst road in NSW and the ACT (September 2013).

The project benefits published in the business case include:

- increase transport reliability for people, businesses and freight on the motorway network
- providing an alternative route to the Pacific Highway with 40 sets of traffic lights bypassed
- up to 15 minutes travel time saved by allowing motorists to avoid stop-start arterial roads
- more reliable trip by avoiding 21 sets of traffic lights on Pennant Hills Road
- moving up to 5,000 trucks per day off Pennant Hills Road to reduce traffic congestion, improve safety, local air quality and reduce traffic noise
- opportunity for improved public transport

- improving local traffic conditions and amenities on Pennant Hills Road
- more efficient movement of state and national freight
- providing a high standard motorway that integrates with the regional transport network.

Exhibit 3: NorthConnex project development



Source: Audit Office research 2017.

Exhibit 4: About unsolicited proposals

In January 2012, the NSW Government launched its 'Guide for Submission and Assessment of Unsolicited Proposals' (the Unsolicited Proposals Guide) to further engage with the private sector in developing and delivering new infrastructure and services. The Unsolicited Proposals Guide underwent minor revision in August 2012 and a more substantial update in February 2014.

The 2012 Unsolicited Proposals Guide outlined a three-stage assessment process that had been developed to guide the evaluation of proposals (and in later stages, the development of detailed business cases and final binding offers). The Unsolicited Proposals Guide requires all proposals to be assessed against the following criteria:

- uniqueness – demonstration of the unique benefits of the proposal and the unique ability of the proponent to deliver the proposal
- value to government (the 2014 version of the Unsolicited Proposals Guide changes this criterion to 'value for money'. The stage 3 assessment report for NorthConnex assessed the proposal against both criteria)
- whole of government impact
- return on investment
- capability and capacity
- affordability
- risk allocation.

The Unsolicited Proposals Guide also describes the governance arrangements for the assessment of unsolicited proposals, which include:

- an overarching standing steering committee that includes the Department of Premier and Cabinet, Treasury and Infrastructure NSW and reports to the Infrastructure Committee of Cabinet
- proposal specific steering committees that are convened if a project reaches stage 2
- assessment panels that are convened at either stage 1 (which provide advice to the standing unsolicited proposal steering committee) or stage 2 (which provide advice to the proposal specific steering committee)
- a probity advisor
- technical advisors, who may be used to provide expert advice to the assessment panel and steering committee.

The Unsolicited Proposal Assessment Process

- stage 1 – Initial Submission and Strategic Assessment — A comprehensive initial assessment to identify any potential benefit to the NSW Government of further consideration and development with the proponent
- stage 2 – Detailed proposal — The NSW Government and proponent work collaboratively to develop and assess a detailed proposal (which is similar to a business case)
- stage 3 – Negotiation of final binding offer — Outstanding issues are finalised with a view to entering a binding agreement should the NSW Government accept the final offer.

The governance arrangements for NorthConnex are described in Appendix 2.

Key findings

1. How did the assessment of the NorthConnex funding model ensure value for money for NSW taxpayers?

The steering committee assessed the proposal against the value for money criteria in the *Unsolicited Proposals Guide* and NSW PPP guidelines. The use of competitive tendering for the design and construction of NorthConnex provided an additional driver for value for money. The *Unsolicited Proposals Guide* is not clear on the timing of key assurance stages. While the project complied with the Guide, our view is that a business case gateway review would be more effective at providing risk assurance if it were completed during stage 2 and before commencement of the procurement phase in stage 3. We also found that record keeping for NorthConnex did not comply with legislation or the governance plans.

The processes used to estimate the initial project scope and budget were independently verified, consistent with Roads and Maritime Services policy, and sufficiently robust for an infrastructure project of this scope. As part of their initial proposal, the proponents accepted traffic risk for NorthConnex¹. This meant that should the predicted traffic volumes not eventuate, the NSW Government would not have to provide any financial reimbursement or subsidy to make up for lower than expected toll revenue.

The use of traffic modelling represented the best available assessment given the complexity of the network and the available traffic data. Where there were differences in traffic modelling estimates, the NSW Government used the figures which provided the better outcome for NSW taxpayers, regardless of source.

The NSW Government's contribution for NorthConnex was considered with regard to NSW PPP Guidelines and subject to an expert review panel business case review.

By their nature, unsolicited proposals lack transparency and the benefit of competition in the procurement process. This makes it more critical for NSW Government participants involved in the assessment of unsolicited proposals to keep complete and accurate records of their activities and decisions. We found that record keeping for the NorthConnex proposal did not fully meet the requirements of the *State Records Act 1988*, the NSW Government Standard on Records Management and the proposal specific governance plans.

Recommendations

By December 2017, the Department of Premier and Cabinet should:

1. publish an updated 'Unsolicited Proposals – Guide for Submission and Assessment' which clarifies obligations with requirements in other NSW Government policies such as the NSW PPP guideline and Infrastructure Investor Assurance Framework. The update should require:
 - a) a business case to be prepared, and a business case gateway review completed, as part of the assessment of the detailed proposal (currently stage 2)
 - b) probity reports must be completed and considered before the decision to proceed to the next stage.

The Department of Premier and Cabinet and NSW Treasury should immediately:

2. improve record keeping to ensure compliance with the *State Records Act 1998* and the NSW Government Standard on Records Management.

1.1 The processes used to estimate the initial project scope and budget were robust

Transurban initially submitted that the proponents could finance, design, construct and operate two motorways to complete the links in the Sydney motorway network. It also proposed changes to tolling concessions to support these initiatives. The initial NorthConnex proposal used the preferred route identified in an independent review conducted in 2004 (and confirmed in 2007) as the basis for the project and provided an initial cost estimate based on this route.

During stage 2 of the assessment process, the commercial team sought to establish a set of commercial terms which met the requirements of the Unsolicited Proposals Guide, in addition to directions from the steering committee. The negotiation and agreement of the commercial terms required an initial project cost figure to inform assessment of the proposed tolling concessions.

A multi-agency technical team assessed the cost of the proposal. Project costing during the strategic and planning stages of infrastructure development relies on contingency figures to estimate the cost for the project. The technical team's assessment was consistent with the Department of Infrastructure and Transport's 'Best Practice Cost Estimation for Publicly Funded Road and Rail Construction 2011'.

The extent of assessment was consistent with the rigor that would be expected for a project that was at the business case stage of development

There were multiple reviews of cost estimates for the NorthConnex proposal as the assessment progressed. During stage 1, cost review focussed on assessing the initial proposal. During stage 2, Roads and Maritime Services engaged an independent costing expert to assist the technical team to review the proposal and develop an independent cost estimate for the project.

The cost estimates for the project decreased over time as the contingency requirement reduced. This is consistent with the Department of Infrastructure and Transport's 'Best Practice Cost Estimation for Publicly Funded Road and Rail Construction 2011'.

The steering committee considered whether the cost target, which was used as the basis for the design and construction tender, was likely to be achievable and provide scope for competition in relation to innovation and design.

1.2 The use of traffic modelling, including as part of negotiating tolling concessions, was consistent with NSW Government requirements

Traffic modelling involves the use of real world data and computer simulations to predict the number of vehicles that will use roads. For large infrastructure projects like NorthConnex, traffic modelling plays an important role in determining the potential benefits and costs of a project (in terms of modelling reduced road congestion and estimating travel time savings). Traffic modelling also underpins commercial negotiations relating to tolling concessions, such as the length of an agreement (in years) and the amount of a toll.

Roads and Maritime Services released traffic modelling guidelines in February 2013. The guidelines aim to develop consistency in traffic modelling practice and promote high quality model outputs that will lead to better project design.

The use of independent traffic modelling represented the best available assessment, given the complexities of the network being modelled and the available traffic data

During the assessment of NorthConnex, Roads and Maritime Services engaged an independent traffic modelling consultant to assess the traffic impacts of NorthConnex and validate the forecast provided by the proponents. The assessment included providing forecasts for the 2021 and 2031 traffic volumes for NorthConnex and the M7 corridor.

The assessment used a specific model, initially developed for the WestConnex project, and the use of this model was consistent with Roads and Maritime Services' practice at the time.

The results of the independent assessment were also used to validate the proponents' modelling and to provide confidence to the NSW Government.

The NSW Government managed the risk of underestimating traffic volumes by including a revenue sharing arrangement

As part of their initial proposal, the proponents accepted traffic risk for NorthConnex. This meant that should the predicted traffic volumes not eventuate, the NSW Government would not have to provide any financial reimbursement or subsidy to make up for lower than expected toll revenue.

During the negotiations for the proposal, the risk of underestimating the traffic volumes was managed by including a revenue sharing arrangement. If NorthConnex traffic volumes are higher than expected, the proponents share the additional revenue with the NSW Government. This mitigates the risk of the private sector making super profits from the infrastructure investment.

Traffic modelling identified the impact of truck diversion from the M7 as having a significant potential impact on the funding model for the NorthConnex proposal

As part of the NorthConnex funding arrangement, tolls for heavy commercial vehicles (trucks over 12.5 metres in length and 2.8 metres high) will increase significantly on the M7. Heavy commercial vehicles used to pay the same toll as cars. Under the terms of the NorthConnex agreement, they will now pay three times the car toll. This change has been gradually phased in through quarterly incremental increases starting in January 2015.

The traffic modelling for NorthConnex identified that this increase would result in some heavy commercial vehicles diverting from the M7. The additional tolls for heavy commercial vehicles on the M7 contribute 27 per cent of the funding requirement for NorthConnex (compared with 27.3 per cent for tolls on NorthConnex and 27.4 per cent for NSW and Australian Government contributions). There was a limited sensitivity analysis conducted on the impact of the potential diversion.

1.3 The process used to determine the NSW Government's contribution was reasonable

The unsolicited proposal assessment process provided the decision-making framework for NorthConnex. The steering committee and assessment panel applied relevant government policies and guidelines, including the NSW PPP Guidelines.

The process used to determine the NSW Government's contribution was in line with NSW Government requirements. There was consideration of value for money and value to government, with the application of a 'cap' for the NSW Government's contribution early in the process.

The public sector comparator confirmed that the NSW Government could not afford to deliver the project by itself

The public sector comparator is an estimate of the cost that the NSW Government would pay were it to deliver a project or service by itself. The public sector comparator assumes that a state owned corporation would deliver the project and would earn a commercial rate of return on revenues derived from user charges.

The commercial team developed the public sector comparator for NorthConnex in stage 2, consistent with the NSW PPP Guidelines. The public sector comparator indicated that a state owned corporation could only support a capital investment of around \$600 million in net present value terms. This would result in a funding shortfall of \$1.7 billion. The steering committee concluded that traditional delivery and funding of the NorthConnex project was not affordable or viable from the NSW Government's perspective, given the budget position and commitment to other infrastructure projects.

Competitive tendering for the design and construction component added value

In May 2013, the NSW Government announced that it had reached an in-principle agreement with the proponents and agreed to proceed to stage 3 of the unsolicited proposal process (submission of a final binding offer) on the basis that a competitive design and construction tender be conducted.

The inclusion of a competitive tender at this stage of the proposal helped drive value and allowed the market to share innovative ideas, which ultimately helped improve the scope, including increased tunnel height.

Transurban (on behalf of the proponents) ran the tender process which encouraged innovation in design. Roads and Maritime Services provided the output specification requirements for the motorway.

1.4 Two key assurance steps were not completed in a timely manner

The decision to proceed from stage 2 to stage 3 was not informed by a Business Case Gateway Review or completed stage 2 Probity Report. The steering committee completed these key assurance steps after the NSW Government announced the decision to proceed to stage 3.

The Department of Premier and Cabinet has provided a draft update to the Unsolicited Proposals Guide. We note that this draft provides clarity on when these assurance steps should be completed for future unsolicited proposals.

The business case expert review (or gateway review) report did not inform the stage 2 assessment

The stage 2 assessment involves the proponents working with the NSW Government to develop a detailed proposal, which is then presented for Cabinet's consideration. If the detailed proposal is successful at this stage, the proposal moves to stage 3, and the NSW Government and proponents develop a final binding offer.

For an infrastructure project like NorthConnex, the detailed proposal is equivalent to a business case. Like comparable projects, NorthConnex did undergo an expert review panel (also known as a 'gateway review').

In February 2014, the expert panel reviewed the draft business case. This was after stage 2 was completed in May 2013. The gateway review did not inform the development of the project cost or scope, as the commercial terms had been negotiated as part of stage 2.

While there is no specific guidance in the Unsolicited Proposals Guide or the NSW PPP guidelines on when a business case gateway review should be completed, our view is that a business case gateway review would be more effective at providing risk assurance if it were completed during stage 2 and before commencement of the procurement phase in stage 3.

The stage 2 probity report did not inform the stage 2 assessment

According to the Unsolicited Proposals Guide, the role of a probity advisor is to monitor and report on the application of the Independent Commission Against Corruption's probity fundamentals during the assessment process. Probity fundamentals include maintaining impartiality, accountability and transparency, confidentiality, managing conflicts of interest and obtaining value for money.

The probity advisor reviewed the probity related content in the stage 2 assessment report in May 2013. Although the probity advisor confirmed that there were no unresolved probity concerns/issues and that a draft probity report had been prepared, the stage 2 probity report was not finalised until November 2013, six months after the NSW Government announced that it had reached an in-principle agreement with the proponents and completed the stage 2 assessment process in May 2013.

While there is no specific guidance in the Unsolicited Proposals Guide or the NSW PPP Guidelines on when a probity report should be completed, our view is that the probity report should have been completed earlier to inform the decision to proceed to stage 3.

1.5 Record keeping did not fully comply with legislation or the governance plan

By their nature, unsolicited proposals lack transparency and the benefit of competition in the procurement process. This makes it more critical for NSW Government participants involved in the assessment of unsolicited proposals to keep complete and accurate records of their activities and decisions.

Exhibit 5: NSW Government standards for record keeping

Should records be captured?	
Statement	Where to find it
'Each public office must make and keep full and accurate records of the activities of the office.'	State Records Act 1998 Part 2, under 12 Records management obligations.
'Records and information are routinely created and managed as part of normal business practice.'	Standard on Records Management Principle 3, point 3.1.
Whose responsibility it is to capture records?	
Statement	Where to find it
'Staff and contractors understand the records management responsibilities of their role, the need to make and keep records, and are familiar with the relevant policies and procedures.'	Standard on Records Management Principle 1, point 1.6.
'Records and information management is the responsibility of senior management who provide direction and support for records and information management in accordance with business requirements and relevant laws and regulations.'	Standard on Records Management Principle 1, point 1.2.
Are drafts official records?	
Statement	Where to find it
'An 'official record' is a record made or received by an agency in the conduct of its business. According to this definition, drafts are records. However, drafts do not always need to be kept. State Records advises that drafts should be kept when there is an identified recordkeeping requirement to retain them because they document significant decisions, reasons and actions or contain significant information that is not contained in the final form of the document, or both.'	Recordkeeping FAQs on State Records Authority website.

Advice on keeping meeting minutes	
Statement	Where to find it
'Make sure that someone has been delegated to make a record of the meeting. Document when the meeting was held, who attended, the discussions points, decisions, advice or information provided/communicated, and actions to be taken. Record any dissent or issues raised by participants. Circulate and confirm the accuracy of the minutes of the meeting.'	Recordkeeping Reminders – leaflet under heading 'Meetings'.
Do records need to be captured in an EDRMS (electronic document and records management system)?	
Statement	Where to find it
'No. An EDRMS (electronic document and records management system) is one type of system that organisations can use to manage their records. If implemented well, an EDRMS can protect and manage records as authentic evidence of business to meet your organisation's statutory and other responsibilities, and can assist you to address your organisation's longer term needs for information. For further information about EDRMS, see our FAQs about EDRMS.'	Recordkeeping FAQs on State Records Authority website.

Source: Audit Office research 2017.

We found that record keeping for the NorthConnex proposal did not fully meet the requirements of the *State Records Act 1988*, the NSW Government Standard on Records Management and the proposal specific governance plans.

The governance plans for stages 2 and 3 state:

Records of the proposal and evaluation process must be maintained in order to allow for independent audit and review. The maintenance of appropriate records increases the accountability and transparency of the process.

The governance plan specifies that the Proposal Manager (Department of Premier and Cabinet) was responsible for record keeping for the steering committee. However, the stage 2 governance plan did not specify who was responsible for maintaining records for other groups associated with the proposal, such as the assessment panel and the commercial, representative and technical teams. The stage 3 governance plan did specify that the chairs and team leaders of the project teams associated with the proposal development were responsible for ensuring appropriate records were maintained for their respective committees and project teams.

However, we were unable to obtain minutes or agendas for these groups. In our previous audit on unsolicited proposals, this documentation was available. There were inadequate records kept of all NSW Government representative meetings with the proponents, despite this being a requirement of the Stage 2 Governance Plan. Additionally, some status reports from these groups were not tabled or adequately captured in the minutes of the steering committee meetings.

The management of a potential conflict of interest was not fully documented

The governance plans for NorthConnex state that 'All participants in the assessment process (including advisors) must have no conflicts of interest, which would, or may appear to, adversely affect the impartiality of the process. Project team members are responsible for

bringing any actual or potential conflict of interest to the attention of the steering committee Chair or Probity Adviser’.

In July 2012, one of the government representatives declared a potential conflict of interest to the steering committee after discussions with the probity advisor in May 2012. This person was involved in all three stages of the assessment process.

The steering committee noted the declaration, and directed the probity advisor and person declaring the interest to ‘work on a plan to manage any future conflict of interest and present it to a future meeting’. There is evidence that a management plan was developed and the Department of Premier and Cabinet advised us that this plan was adopted by the steering committee. This was not captured in the steering committee meeting minutes. However, there is some evidence that shows the management plan was implemented.

The stage 2 assessment panel report confirmed that ‘the probity advisor has not reported any unresolved concerns/issues’. The probity reports, which were prepared at key points in the assessment process, did not document that the potential conflict of interest had been declared or that a mitigation strategy had been implemented.

We acknowledge that the government representative acted appropriately in declaring the potential conflict of interest. The chair of the steering committee and the probity advisor were responsible for ensuring impartiality in the assessment process.

2. Did the assessment adequately consider the overall impact of tolling arrangements to road users and the community?

The assessment of NorthConnex adequately considered the impact of tolling arrangements, given the NSW Government policy set out the NSW Long-Term Transport Master Plan.

The steering committee's assessment of the overall impact of tolling arrangements complied with relevant government policy, including the NSW PPP Guidelines. The NSW Government's road pricing policy, described in the NSW Long-Term Transport Master Plan, includes direct charging of road users to fund new transport infrastructure. The steering committee considered issues related to equity as part of the public interest evaluation, as well as the impact of tolls over the life of the agreement.

2.1 The assessment considered the equity of tolling arrangements for road users

The primary service delivery objectives of NorthConnex are to complete a missing link in Sydney's motorway network, reduce the number of heavy vehicles using Pennant Hills Road and to ease congestion for Sydney motorists. The tolling arrangements were designed to pay for the cost of the infrastructure and divert heavy commercial vehicles from using Pennant Hills Road.

During the assessment of the NorthConnex proposal, the steering committee considered tolling arrangements.

The tolling arrangements are consistent with the Long-Term Transport Master Plan

The Long-Term Transport Master Plan (2012) described the NSW Government's intention to explore new methods of funding road infrastructure, such as changes to road pricing. Of particular relevance is the intent to use innovative financing and funding approaches to expand the motorway network. The NorthConnex funding model is consistent with the following principles described in the Long-Term Transport Master Plan:

- NSW will seek more direct charging of heavy vehicles for the roads they use, with these revenues being reinvested in transport
- direct charging, or road pricing, is a way to raise revenue for new infrastructure and or lessening congestion

- toll revenues will be directly allocated to fund public transport and complete missing motorway links.

Public interest evaluation report considered issues related to equity

The steering committee completed a public interest evaluation during stages 2 and 3 in accordance with the NSW PPP Guidelines. The evaluation addressed eight criteria including meeting NSW Government objectives, public access and community consultation.

The evaluation concluded that the proposed level of user charge and the contribution from the taxpayer are reasonable considering the benefits that will eventuate from this infrastructure.

The evaluation considered whether there were adequate arrangements to ensure that the public, including disadvantaged groups, can access and use the government service and related infrastructure. The evaluation report states that:

The proposal will be designed, constructed and operated to provide a service to all motorists subject to the payment of a toll. The public, including disadvantaged groups will have equal rights to use the completed project. The proposal will not change access to existing private or public facilities or infrastructure.

2.2 The assessment considered the impact of tolling arrangements across the metropolitan road network

The assessment of NorthConnex complied with government policies which consider the impact of infrastructure

During the assessment of NorthConnex, the steering committee and Roads and Maritime Services completed relevant processes to assess the impact of infrastructure in line with government policy. These included:

- unsolicited proposal assessment reports
- the business case and subsequent expert panel review
- public interest evaluation report
- environmental impact statement.

Traffic modelling was undertaken to consider the impact of tolling arrangements across the motorway network

Roads and Maritime Services undertook network wide traffic modelling, using an independent consultant, to ascertain the impact of tolling changes across the motorway network and adjacent roads.

The most significant finding from the traffic modelling was the potential for heavy commercial vehicles to divert from the M7 because of the increase in the heavy commercial vehicle toll multiplier. The modelling attempted to estimate the traffic impact on some roads surrounding the M7 which might experience greater heavy commercial vehicle use. The most recent traffic data show that the increase in the truck toll multiplier has not had as much of a diversionary impact as the modelling predicted.

There was consideration of the cumulative impact of tolling changes on motorists across the life of the agreement

Throughout the assessment of the NorthConnex proposal, the assessment panel and steering committee evaluated the impact of tolling changes across the different toll roads through to 2048, the final year of the agreement with the proponents.

Appendices

Appendix 1: Response from Agency



Reference: A2118200

Ms Margaret Crawford
Auditor-General of NSW
Audit Office of New South Wales
Level 15, 1 Margaret Street
SYDNEY NSW 2000

Dear Ms Crawford

Thank you for your office's letter dated 12 May 2017 and for the opportunity to respond to the Performance Audit Report on NorthConnex (NCX). I write on behalf of the Department of Premier and Cabinet (DPC), NSW Treasury and Transport for NSW.

I am pleased the audit found that the processes used to assess NCX adequately considered value for money and that the NCX agreement represented value for money. I was also pleased to see that DPC'S record keeping for the key decision making body, the NorthConnex Steering Committee, met appropriate standards.

The audit has made some recommendations to provide greater clarity in the unsolicited proposals framework and to improve record keeping in technical and assessment committees. DPC and NSW Treasury will continue to work towards the implementation of the recommendations contained in the audit report.

I understand that as part of this transaction, various project working groups were established to work together often on a full time basis and present to the Steering Committee status updates on relevant outputs. It is not common practice to keep minutes and agendas of project working groups, so long as their outputs and decisions are appropriately recorded. I note that the Steering Committee updates included verbal updates on Proponent meetings, and that the evolving commercial terms being negotiated between the Proponent and negotiation team were recorded in the transaction term sheet which was also provided at various times to the Steering Committee. However, we acknowledge your suggested improvements to this process to ensure greater clarity and consistency on the need for record keeping.

I would like to thank the Audit Office for its efforts in examining whether the process used to determine the NCX funding model adequately considered value for money for tax payers and road users.

Yours sincerely

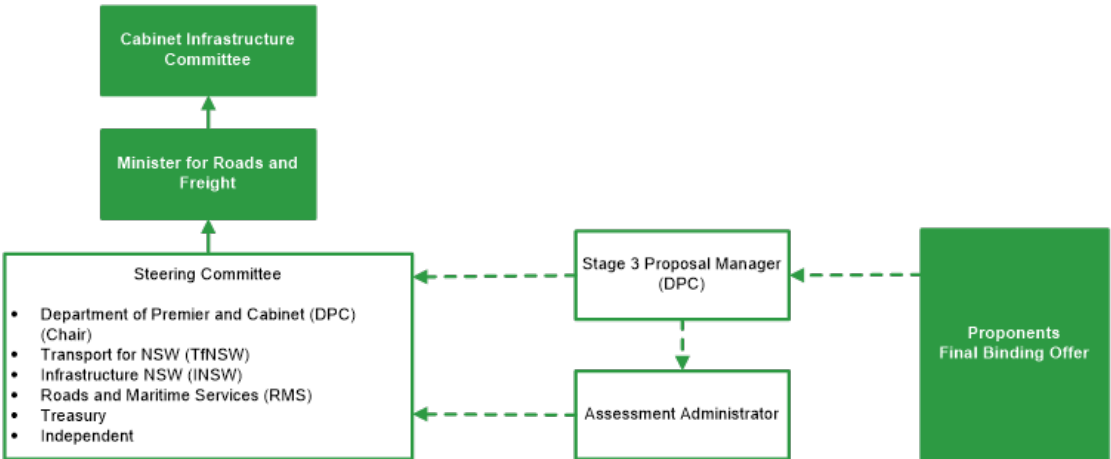
A handwritten signature in blue ink, appearing to read 'Blair Comley'.

Blair Comley PSM
Secretary

7 June 2017

52 Martin Place, Sydney NSW 2000 ■ GPO Box 5341, SYDNEY NSW 2001
Tel: (02) 9228 5555 ■ www.dpc.nsw.gov.au

NorthConnex Stage 3 Governance Final Binding Offer Assessment



Appendix 3: About the audit

Audit objective

This audit assessed whether the process used to determine the NorthConnex funding model adequately considered value for money for taxpayers and road users.

Audit criteria

The audit answered two questions, each with its own criteria.

1. How did the assessment of the NorthConnex funding model ensure value for money for NSW taxpayers?
 - a) The processes used to estimate the initial project scope and budget were robust
 - b) The use of traffic modelling, including as part of negotiating tolling concessions, was consistent with best practice and government requirements
 - c) The process used to determine the NSW Government's contribution to the project cost was reasonable.
2. Did the assessment adequately consider the overall impact of tolling arrangements to road users and the community?
 - a) The assessment considered the equity of tolling arrangements for road users
 - b) The assessment considered the impact of tolling arrangements across the metropolitan road network.

Audit scope and focus

The audit scope focussed on a broad definition of the NorthConnex funding model, which included:

- Direct government contributions to the project
- Tolling concessions granted to the proponents
- Secondary transactions which had a direct impact on the NorthConnex project, such as:
 - Monetisation of the M7 rent payment
 - Changes to the M2 and Lane Cove Tunnel tolling arrangements.

The audit sought to assess value for money against the use of specific government policies that were applied during the assessment of the NorthConnex project. These included (but were not limited to):

- The NSW PPP Guidelines (which identify the Public Sector Comparator as the main qualitative benchmark for testing value for money)
- Australian Government National PPP Guidelines
- NSW Treasury Economic Appraisal Principles and Procedures Simplified which essentially align economic appraisal as the measure of value for money
- NSW Gateway Guides / Work Books
- NSW Procurement Board policies.

The audit considers value for money from two different perspectives:

- taxpayers, i.e. the cost of the project to government
- road users, which includes users of NorthConnex and the users of the broader metropolitan road network.

Audit exclusions

The audit did not seek to:

- identify issues related to the current construction phase of the project
- undertake detailed analysis of environmental impacts, including air quality
- question the merits of government policy objectives.

Audit approach

Our procedures included:

- interviewing members of key assessment and advisory groups involved in the NorthConnex Unsolicited Proposal, including:
 - Unsolicited Proposals Standing Steering Committee
 - Proposal Specific Steering Committee
 - Assessment Panel
 - Technical Team
 - Commercial Team
 - Representative team
 - Collaborative Procurement Committee
 - Commercial Negotiations Team
 - RMS/TfNSW Project Team
 - Government Representative Team.

We also interviewed key government staff, such as the Proposal Manager, Project Director, Relationship Manager, external advisors and representatives from the proponent.

We reviewed key documentation and reports relating to the assessment of the project including:

- Assessment reports, minutes from assessment panel and steering group meetings
- Evidence of work done related to the development of the business case
- The final business case
- Treasury, INSW, TfNSW and RMS policies and guidelines for cost assessment for major infrastructure projects
- Traffic modelling reports and data
- Any other assessment conducted on, or using, traffic modelling for the NorthConnex proposal
- RMS, TfNSW and Treasury assessment of tolling prices including changes to establish tollways
- Treasury's work in relation to the M7 Rental monetisation
- Examples from other jurisdictions
- Reports and reviews which evaluated prior similar projects (for example M7, Cross City Tunnel, Lane Cove Tunnel).

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standards ASAE 3500 on performance auditing. The Standard requires the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by current and former staff from the Department of Premier and Cabinet, NSW Treasury, Transport for NSW, Roads and Maritime Services, Infrastructure NSW and other people interviewed as part of the audit.

Audit team

Jason Appleby and Michael Jones conducted the audit. Expert advice was provided by Ted Smithies and Rosemarie Risgalla, Value Network Pty Ltd. Giulia Vitetta, Kathrina Lo and Claudia Migotto provided direction and quality assurance.

Audit cost

Including staff costs, travel and overheads, the estimated cost of the audit is \$245,000.

Performance auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

Why do we conduct performance audits?

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

Do we check to see if recommendations have been implemented?

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every four years. The review's report is tabled in parliament and available on its website.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

Our vision

Making a difference through audit excellence.

Our mission

To help parliament hold government accountable for its use of public resources.

Our values

Purpose – we have an impact, are accountable, and work as a team.

People – we trust and respect others and have a balanced approach to work.

Professionalism – we are recognised for our independence and integrity and the value we deliver.

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Level 15, 1 Margaret Street
Sydney NSW 2000 Australia

t +61 2 9275 7100

f +61 2 9275 7200

e mail@audit.nsw.gov.au

office hours 8.30 am–5.00 pm

audit.nsw.gov.au

