

## **PUBLIC ACCOUNTABILITY COMMITTEE**

### **INQUIRY INTO THE IMPACT OF THE CBD AND SOUTH EAST LIGHT RAIL PROJECT**

**Questions taken on notice during Mr Bede Noonan's appearance before the Inquiry on 29 November 2018**

**1. Question taken on notice:**

***The Hon. COURTNEY HOUSSOS:** Have you ever been invited to provide information or presentations to the advisory board regarding progress or cost of the light rail project?*

***Mr NOONAN:** Not that I am aware of. But I can come back to you, because I do not want to mislead you. I do not believe that to be the case.*

***The Hon. COURTNEY HOUSSOS:** That would be very helpful.*

**Mr Noonan's response**

There have been no requests for Acciona to provide information which have come directly from the Advisory Board.

**2. Question taken on notice:**

**The Hon. TREVOR KHAN:** *Was it a condition set down by the Department of Planning and Environment as to how the remains were to be dealt with?*

**Mr NOONAN:** *I do not actually know if it was a condition of planning.*

**The Hon. SHAYNE MALLARD:** *You could take it on notice.*

**Mr NOONAN:** *I can take that on notice, yes.*

**Mr Noonan's response**

The Minister for Planning's Conditions of Approval for the Sydney Light Rail project include the following requirements relating to human remains:

- B53. This approval does not allow the Proponent to destroy, modify or otherwise physically affect human remains as part of the State Significant Infrastructure.
- B54. All human remains discovered during construction must be managed in accordance with the Heritage Council of NSW Skeletal Remains: Guidelines for Management of Human Remains and exhumed and reinterred at an appropriate location. Where remains are identified, consultation with the Department (Heritage Branch) must be undertaken.

**3. Question taken on notice:**

***The Hon. TREVOR KHAN:** Is it in fact a continuing requirement that you are to lodge a report with the Department of Planning and Environment with regard to this incident?*

***Mr NOONAN:** I will take that on notice also.*

**Mr Noonan's response**

Yes, it is a requirement to lodge a Human Remains Management Plan to the Department of Planning and Environment to enable the recommencement of works in the vicinity of the find. This document was submitted to the Department of Planning and Environment on 21 December 2018.

**4. Question taken on notice:**

**The Hon. COURTNEY HOUSSOS:** *You have told us extensively there are scope and design changes that have led to delays after the signing of the contract. The \$60 million or so for the dam on Alison Road was required because of scope changes, is that correct?*

**Mr NOONAN:** *That is correct.*

**The Hon. COURTNEY HOUSSOS:** *And those scope changes occurred as a result of finalising the third-party agreements with the turf club, is that correct?*

**Mr NOONAN:** *That is correct.*

**The Hon. COURTNEY HOUSSOS:** *But the third party was not agreed to when you signed the contract?*

**Mr NOONAN:** *I would have to take that particular detail on notice about when the Randwick racecourse agreement was concluded. Certainly from our perspective of a solution, it had not been arrived at in order for us to get a solution prior to contract signing. Whether the third-party agreement was agreed, I do not have that information. To the extent that we are able to provide that, I will take it on notice.*

**Mr Noonan's response**

The Australian Turf Club (**ATC**) Third Party Agreement was not agreed when the SLR D&C Contract was entered into between ALTRAC Light Rail Partnership, Alstom Transport Australia Pty Ltd and Acciona on 17 December 2014.

The ATC Third Party Agreement was executed on 24 February 2015. This was a day before Financial Close of the SLR Project.

The executed ATC Third Party Agreement had a number of differences compared to the draft ATC Third Party Agreement, which Acciona had been provided earlier.

**5. Question taken on notice:**

**Ms CATE FAEHRMANN:** *Is it possible to get evidence of the workshops you referred to in 2014 where the APS system was discussed? We were talking before that Ausgrid would have been aware of the APS system in the latter half of 2014. Is there any evidence that the Committee could be provided with, even on notice, such as agendas or presentations, that the APS system was referred to and very well understood by Ausgrid at that time?*

**Mr NOONAN:** *Yes, there is a great deal of information that can be provided. There are enormous volumes of information that can be provided. Effectively, the whole flow of information through the tender period could be provided. However, under schedule F8 itself, which is the contract—I do not know whether you have a copy of the contract or have access to copies of the contract? I think that would be quite helpful to you, because you would then see schedule F8 and you would see, for instance, drawings of some of the Ausgrid pits that are in schedule F8. I have one in front of me right now. It shows the APS track. It shows how the pit lids were worked around the APS track, and these specific drawings were developed in collaboration with respect to our necessary design and what we understood Ausgrid were accepting via Transport for NSW's process.*

**Mr Noonan's response**

The APS system, and in particular, its interaction with the track alignment and certain Ausgrid assets, was an issue which was negotiated throughout the tender process of the Sydney Light Rail Project.

The APS system was always the solution proposed by Alstom (Acciona's design and construction joint venture partner) as part of the design and construction contractor for the Sydney Light Rail Project. Accordingly, the APS system was included in all submissions to TfNSW, including the original tender submission in July 2014. The original tender submission included design drawings and detail of the APS system, including its interaction with Ausgrid assets.

In mid-August 2014, a technical query was raised and a workshop was held on the APS system's interaction with Ausgrid's assets and on 19 August 2014, a Request for Information was issued regarding the interaction between the APS system and Ausgrid pits and hatches.

Throughout the remainder of 2014, there were interactive workshops between TfNSW and members of the Connecting Sydney consortium, in which the interaction between locations of Ausgrid assets and the rail alignment in relation to the APS system were discussed.

As the Committee has heard, for probity reasons, Acciona was unable to contact Ausgrid, or any of the utility providers, directly during the tender process of the SLR Project. Rather, the process by which the consortia tendering for the project were to communicate with the utility providers is set out in:

- (a) the Probity and Process Deed, entered into between TfNSW, Transdev, Alstom, Acciona and Capella (jointly referred to as Connecting Sydney) on 20 February 2014 (**Probity and Process Deed**); and
- (b) the Request for Proposals for the project (**RFP**) issued by TfNSW on 7 March 2014.



Acciona Infrastructure Australia Pty Ltd

Sydney Light Rail Project  
Level 7, 280 Elizabeth Street  
Surry Hills New South Wales 2010  
AUSTRALIA

ABN 52 140 915 251

[www.acciona.com](http://www.acciona.com)

The effect of the Probity and Process Deed and the terms of the RFP was that Acciona (and the other members of the Connecting Sydney consortium) were prevented from communicating with Ausgrid without TfNSW's prior written approval and facilitation. As a result, the only method for Acciona to engage with utility authorities as to issues affecting utility authorities was via interactive meetings or indirectly by making a request of TfNSW through the Electronic Data Room, which had been established by TfNSW during the tender phase of the SLR Project.

**6. Question taken on notice:**

**Ms CATE FAEHRMANN:** *Just to clarify in terms of what I was asking to provide the Committee on notice, before we move on, that you will provide the Committee with evidence that demonstrates that the track slab and the actual alignment of the rail system did not change from when Ausgrid became aware of it in 2014 and was working with you on it in 2014.*

**Mr NOONAN:** *Until we received the Ausgrid guidelines?*

**Ms CATE FAEHRMANN:** *Yes.*

**Mr NOONAN:** *No, it did not. It changed subsequently, absolutely, because of the Ausgrid guidelines.*

**Mr Noonan's response**

As recorded in my answer to question 5 above, the interaction between the track alignment and the APS system was negotiated throughout the tender process of the SLR Project.

At TfNSW's request, there was a change made to the alignment during the pre-contractual phase of the SLR Project.

Following the original tender submission, TfNSW requested that Connecting Sydney make a change to the tender design to incorporate a single track running solution, which would mean that the light rail vehicle could transfer between the two tracks. This was proposed as a potential alternative for allowing Ausgrid access to the Ausgrid assets during the time the vehicles would normally be operating without having to completely shut down the Light Rail.

The solution Connecting Sydney presented to TfNSW to meet their request required three Ausgrid access hatches to be placed between rails within the APS zone.

On 8 September 2014, Connecting Sydney resubmitted its bid to TfNSW. It included Connecting Sydney's single track solution of placing the three Ausgrid hatches between rails within the APS zone. Other than changes resulting from this solution, the utilities treatment proposal was the same in respect of Ausgrid assets as it had been when it was initially submitted with the tender documentation in July 2014.

**7. Question taken on notice:**

**The Hon. SHAYNE MALLARD:** *I want to return to the human remains which were "respectfully removed" by your contractors at Chalmers Street in Surry Hills in October. Has Acciona made a claim against the contract for delays caused by that?*

**Mr NOONAN:** *No, we have not.*

**The Hon. SHAYNE MALLARD:** *Are you certain of that? Are you considering taking a claim?*

**Mr NOONAN:** *Let me take that on notice. I am unaware that we are but I will take that on notice.*

**The Hon. SHAYNE MALLARD:** *Would you think it would be inappropriate to make a claim considering what happened in terms of the behaviour of your contractors on the site?*

**Mr NOONAN:** *I am unaware if we are even entitled to make a claim but I am unaware whether there is even any discussion about making a claim. I am happy to take that on notice.*

**Mr Noonan's response**

The discovery of bones (which are defined as an Artefact under the D&C Contract) entitle the D&C Contractor to a Relief Event.

The D&C Contractor issued a written notice on 20 November 2018 that a Relief Event had likely occurred.

The D&C Contractor has not issued Claim Particulars and has not claimed time or cost in relation to this Event.