

SUBMISSION ON THE IMPACT OF THE WESTERN HARBOUR TUNNEL AND BEACHES LINK by David Kirby QC

June 13, 2021

1. Background:

I should disclose at once that I do not live on the Warringah Peninsula and would rarely use the proposed facility if it were built. I live in the Eastern Suburbs.

My interest in the issues before the Inquiry is the product of my background as a barrister at the NSW Bar. In time, I became a QC (1985) and ultimately a Justice of the Supreme Court of NSW (1998) for almost 14 years. I have now retired.

2. My Experience with Road Inquiries:

In about 1978 the Premier of the Labor Government, Neville Wran, appointed me to conduct two inquiries into Freeway proposals which were then being pursued by the Department of Main Roads (DMR). They were:

First, a freeway connecting the newly constructed Port Botany Container Terminal with the South West of Sydney, to be constructed either within the Wollie Creek Valley or the Cooks River Valley.

Secondly, an Inquiry in respect of the Corridor, then largely owned by the DMR, which was ultimately ear-marked for a Freeway connecting the Warringah Freeway and Seaforth, via the Castlecrag Escarpment and the proposed Sugarloaf bridge.

The report relating to the first inquiry into the South Western Freeway was in 4 volumes, completed on 31.1.1981. Vol 2 and 3 were each headed Criteria for Evaluation, examining in some depth the following:

Vol 2: Transportation Criteria

 Planning Criteria

 Economic Criteria

Vol 3: Social Criteria

 Environmental Criteria

The Report of the Warringah Freeway Corridor Inquiry was mercifully shorter and one volume (357pp). If I may say so, immodestly, these volumes, though to some extent dated, are still instructive on the issues that arise in respect of major infrastructure projects, such as the proposed Beaches Link Tunnel.

The Reports, including the Warringah Corridor Inquiry Report, can be accessed on the internet at roadinquiry.blogspot.com.au

3. The Announcement by the Premier of the Proposal to Build the Beaches Link Tunnel:

Soon after the Premier, Ms Gladys Berejiklian announced the project in March 2017, I wrote an article published in the SMH on 27.3.2017. The article included the following, referring to the Inquiries that I had conducted in 1980's:

“Together, the Inquiries occupied several years. For me, it was a complete education into transport planning. I had the advantage of instruction from expert consultants, including Professor Ross Blunden, the father of transport planning in this state.

I learnt a number of things. First, that congestion during peak hours is part of living in a city- there was congestion in ancient Rome. Even if the proposed road between Seaforth and North Sydney is built, there would still be congestion during the peak hours.

Secondly, building a road has land use consequences. The issue in my Inquiry into the Warringah Peninsula was whether the corridor should be preserved to enable a freeway to be later constructed, to give greater access to the area. It was agreed by all the parties- those against the Freeway and those in favour- that building the road would remove the one inhibition to further development of Warringah, namely access”.

The article continued, identifying the development then considered likely:

“Previously, the Minister for the Environment had given a direction that land in Warringah shouldn’t be rezoned to enable further development without improvement of access.

It was therefore accepted that, were access improved, it was inevitable that land would be released for the construction of homes. In 1982, all parties thought that a further 80,000 people could be expected to settle in Warringah once the land was released. Inevitably, new residents would add to the existing traffic. It was common ground that the end result would be congestion at more or less the same levels as now experienced.”

Forty years later, much the same can be expected. Construction will be accompanied by the rezoning of land in Warringah, which is already occurring. The land will be developed, adding to the number of drivers and traffic on the road. In the peak it is likely that there will be roughly the same level of congestion on the roads, which include the tunnel, providing access to the CBD, .

Does anyone doubt that, in the crush of traffic from the Beaches Link Tunnel, as it joins the Warringah Freeway, there will be significant congestion, which will feed back and delay other traffic? So, what, then, does the tunnel achieve? As stated, in the peak hours, morning and night, it will achieve very little, if it achieves anything at all. There will still be congestion and queuing, as you still see on other freeways that have been built elsewhere in Sydney and that because congestion is simply part of living in a city. Drivers learn to address the issue by choosing the time they travel to and from work, where their choices reflect their experience and the amount of delay they are prepared to tolerate. All that can be said, is that in the off-peak driving will be easier and will take less time, although it will cost money.

However, off-peak driving is not the issue that the public has been led to believe is being addressed. The public has been encouraged to believe that the tunnel is the answer to the irritation of congestion. So, at great cost, both in monetary terms and to the environment, little change can be expected during the peak hours, apart from drivers having to pay a toll to the tunnel operators. And the face of Warringah will also change, where bushland will be replaced by development, including high rise.

4. Terms of Reference (e) the extent to which the project is meeting the original goals of the project

Many decades of experience in road building and traffic studies suggest the Beaches Link Tunnel will not achieve the improvements in travel time claimed by Transport for NSW and actively marketed to the public. Rather, it will lead to further development in the northern beaches, comparable congestion within the tunnel itself and worsening congestion within local roads as traffic volumes increase.

5. Terms of Reference (a) the adequacy of the business case for the project, including the cost benefits ratio, Terms of Reference (h) whether the NSW Government should publish the base-case financial model and benefit cost ratio for the for the project and its component parts, and Terms of Reference (i) whether the project is subject to the appropriate levels of transparency and accountability that would be expected of a project delivered by a public sector body,

I have had access to a draft of a proposed submission by Mr Terry le Roux, dealing with Benefit Cost Analysis of the proposed Beaches Link Tunnel project, in which he has expertise. His submission includes a quote from an article by Ross Gittins, which in turn was taken from an investigation by the Grattan Institute. In 2016 the government signed for 29 projects worth more than \$500M, of which only six were accompanied by a completed business case.

In contrast, in each of the Inquiries I conducted, the Roads authority (the DMR) presented a Benefit Cost Analysis, which was then made available to any person who sought access to it. It was dissected and analysed, and alternatives were often suggested. That, I believe, is as it should be.

I was shocked to learn from Mr le Roux that there was, in respect of the Beaches Link Tunnel proposal, no business case provided to the public justifying the decision for the proposed tunnel. In fact, Mr le Roux doubts if even an indicative or preliminary business case for the Beaches Link Tunnel was done prior to the government making an announcement in early 2017 that it intended to proceed with the project.

When a decision has been made to consider a major infrastructure project the issue is: *Can it be demonstrated even at an early stage that the proposal delivers benefits which exceed the cost, such that it is plainly value for money.* The material relevant to that issue should be available to everyone to scrutinise at the time a project is proposed.

The public, in my view, must have the opportunity of commenting on that issue. On my understanding, that has not happened to this point in respect of this project and that should immediately be corrected. Nonetheless, on the limited material available, Mr le Roux has calculated that the project does not appear to deliver benefits which are likely to exceed the costs.

6. *Terms of Reference g) the extent to which changes in population growth, work and travel patterns due to the Covid-19 pandemic have impacted on the original cost benefit ratio*

We live in a time when aspects of society are changing rapidly and often dramatically. The Pandemic has led to many working from home. These workers and their employers have, in many cases, found such arrangements beneficial. They, or at least some of them, may never return to their previous arrangement. Traffic predictions made pre-pandemic may, if that be right, significantly over-state the traffic likely to use the proposed road. Hence, there is uncertainty about the projected economic benefits. This is therefore a time for caution, not a time to rush to completion. Once the Pandemic has receded, one will be better able to assess whether the work changes now apparent are likely to remain.

Another significant change, not far away, is the likely switch to electric vehicles. It is a change recognised and embraced by the Minister for Transport in recent public statements. Though the change may take some years, it may call for design changes, for instance in ventilation and other aspects of the design. Again, the question arises: what is the rush? Plainly, there is a need to hasten slowly, to get everything right. There is, in my view, certainly no justification for politicians to accelerate the process, simply because political advantage is seen in announcing a new project.

7. *Terms of Reference (b) the adequacy of the consideration of alternative options*

When introducing the proposed Beaches Link Tunnel to Warringah, there was no analysis presented and, one imagines, no investigation undertaken, to demonstrate that, whatever the transport issues, a massive toll road within a tunnel was plainly the best solution. There was no reference to trains, light rail, buses or ferries as possible, and perhaps better alternatives. Public transport and other options appear simply not to have been examined. That is regrettable. Instead, the government chose to propose another road, channelling yet more cars into the CBD. As with other aspects of WestConnex, one is left with the impression that the Government's real interest is the creation of yet another asset that they can sell, where car users thereafter have to pay ever increasing tolls to some large company such as Transurban.

This is my submission. I should be very happy to appear before the Inquiry if it is thought that may be useful.

Sincerely, David Kirby