

15 November 2011

**CONFIDENTIAL**

Acting Chair  
Hon Dean Wells MP  
(Murrumba)  
Legal Affairs, Police, Corrective Services and Emergency Services  
Committee  
Parliamentary Annexe  
George Street  
BRISBANE QLD 4000  
Email: [lapcsesc@parliament.qld.gov.au](mailto:lapcsesc@parliament.qld.gov.au)

**Submission to the Parliamentary Committee reviewing the changes to the *Right to Information (Government-related Entities) Amendment Bill 2011*.**

I have provided a brief submission on my experiences, beliefs, opinion and research on the Right to Information doctrine for the appointed parliamentary committee charged with the review process on a proposed change to the *Right to Information Act 2009*.

It is requested that this submission's authorship remains anonymous and parts are strictly confidential as certain legal matters still remain unresolved.

The Right to Information (RTI) movement has been highlighted as a key condition for citizen participation and community engagement, social accountability, good transparent decision making and sound governance. RTI is a corner stone of a healthy democracy, while also being recognized as a human right. In this context, the number of countries adopting RTI legislation has increased significantly in the past decade.

While in some countries such as Mexico and Chile, the RTI has been seen as part of the anti-corruption or state modernization agendas (for instance), in South Asia, particularly in India, it has been seen as part of the empowerment agenda. In India, the Right to Information (RTI) Act 2005 has been embraced by grassroots groups as a powerful tool to demand their entitlements, especially

those under government-sponsored social programs. This has resulted in the use of the RTI Act by people to improve their living conditions. Although to a lesser extent, citizens in Bangladesh are beginning to realize the potential that their RTI Act has in this area.

The concept of the RTI doctrine implies '*an entitlement to something - civil or human rights*'; whether it is a form of '*social justice*' or a '*transparent process*' where information is often of a '*personal nature*' or in the form of '*real or personal property*' or a '*threat to liberty*' or is '*unjust and unfair*' and '*natural justice*' is an issue.

## **Understanding of fundamental legislative principles Rights and liberties of individuals**

In 1997, the Legal, Constitutional and Administrative Review Committee (LCARC) reported on a Review into the Preservation and Enhancement of Individual's Rights and Freedoms in Queensland: *Should Queensland Adopt a Bill of Rights?*

The committee examined the systems and mechanisms operating in Queensland to protect rights, recognised that a bill of rights would be one way to further enhance individuals' rights, but did not recommend the adoption of a bill of rights in Queensland at that time. However, LCARC did highlight the need for awareness of, and compliance with, fundamental legislative principles by public officers in all decision making processes.

## **Fundamental legislative principles**

Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law (s4(1) *Legislative Standards Act 1992*) The principles include requiring that legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

The Office of the Queensland Parliamentary Counsel (OQPC) has a statutory responsibility to advise in relation to the application of fundamental legislative principles in drafting legislation (s7 *Legislative Standards Act 1992*).

A way to measure the effectiveness of drafting instructions and the drafting of the legislation is to ask:

- Are they clear, concise, accurate and comprehensive?
- Do they clearly identify:
- What has to be done
- Why it has to be done
- When it has to be done by?

The former Scrutiny of Legislation Committee had a statutory responsibility to comment on the application of fundamental legislative principles to particular Bills and particular subordinate legislation (s103(1) *Parliament of Queensland Act 2001*).

Fundamental legislative principles aim to ensure that Queensland legislation has sufficient regard to *'principles relating to the maintenance of rights and liberties, the provision of adequate redress to citizens aggrieved by administrative decisions and the maintenance of effective parliamentary sovereignty over delegated legislation'*.

In its review, the committee examined the contemporary meaning of *'fundamental legislative principles'*. However, in December 2010 the report of a Select Committee reviewing the committee system recommended the cessation of the Scrutiny of Legislation Committee.

Due to the uncertainty about the committee's future, the Scrutiny of Legislation Committee reported and tabled in Parliament an incomplete review examining the contemporary meaning of *'fundamental legislative principles'*. The report's only recommendation was that the review be conducted and concluded by another committee of the Legislative Assembly.

One important issue to note within the report is that of the Queensland Government (submission 7) stated:

*The enunciation of FLPs in the Act is a core part of Queensland's legislative framework. The Act guides the development of draft legislation by the Executive arm of Government-as described below-requiring the Executive to ensure that its policy proposals are balanced against critical democratic principles and values in our society. Concurrently, the Act guides the scrutiny of legislation by Parliament...*

The Queensland Government reaffirms its commitment to the continued existence of such legislated principles. The Act contains a message of the highest order. It puts individuals' rights and liberties-and the institution of Parliament-at the heart of the legislative development process, through Parliament effectively advising the Executive arm of Government of a set of fundamental principles, upon which legislation should not encroach without explanation and justification.

***The Right to Information Report: Reviewing Queensland's Freedom of Information Act. (aka Solomon Report 2008)***

[http://www.rti.qld.gov.au/data/assets/pdf\\_file/0019/107632/solomon-report.pdf](http://www.rti.qld.gov.au/data/assets/pdf_file/0019/107632/solomon-report.pdf)

[http://www.thepremier.qld.gov.au/library/pdf/initiatives/foi\\_review/Right to Information.pdf](http://www.thepremier.qld.gov.au/library/pdf/initiatives/foi_review/Right_to_Information.pdf)

In September 2007, the Queensland Government commissioned an independent and comprehensive review of Queensland's freedom of information legislation, chaired by Dr David Solomon AM.

The report by the FOI Independent Review Panel, *The Right to Information*, proposes a complete rethink of the framework for access to information in Queensland. At the core of the report is a clear recommendation that government implement real enhancements to openness and accountability through a comprehensively developed change statement on information policy.

The Queensland Government agrees with the panel's conclusion that there is a need for government to renew its commitment to freedom of information through a new policy and legislative approach to freedom of information.

***'Openness and accountability are the cornerstones of good government'.***

That's why one of my first acts as Premier was to commission Dr David Solomon to review Queensland's Freedom of Information laws and report on changes to give the community greater access to information.

Dr Solomon undertook a comprehensive review involving extensive consultation, and delivered his report to the Queensland Government on 10 June, 2008. At the heart of *The Right to Information* report is the belief that governments should readily make information available to the community.

### **The Queensland Government agrees.**

We recognise the importance of cultural change, as well as structural change.

That means that, as we overhaul our approach to information, the over-riding principle will be that the community has a right to information held by the government.

As indicated in this response, the Queensland Government supports in full 116 of the report's recommendations, and either partially or in principle supports another 23 recommendations. Only two recommendations are not supported (see recommendations 45 and 70).

When these reforms take effect, Queensland will be the most open and accountable government in Australia.

*The Right to Information* report and the Queensland Government response provide a firm foundation for our State to take the lead on open and accountable government

The Solomon Report and accompanying Government Response both clearly articulate the benefits of an open and accountable Government, with the latter declaring the steps to be taken in this direction. **Signed by ANNA BLIGH MP PREMIER OF QUEENSLAND.**

This submission stems from our position of agreement with the Solomon Report and Government Response.

**Government Response to the Review of the *Freedom of Information Act 1992*** <http://www.rti.qld.gov.au/>

The Premier; Minister for Public Works, Housing and Information and Communication Technology, and Attorney-General; Minister

for Justice and Minister Assisting the Premier in Western Queensland Cabinet – August 2008

1. Cabinet considered its response to the report of the review by an Independent Review Panel of the *Freedom of Information Act 1992* (the Solomon report). The report puts forward 141 recommendations. It proposes new legislation and addresses issues such as information policy, records management, privacy, publications and agency culture.
2. The Report recommends the development of a whole-of-Government information policy. The policy framework includes the following elements:
  - A move to a ‘push’ model with access through legislation to be a last resort in accessing government information.
  - A clearly articulated governance framework covering the roles and responsibilities of all relevant agencies.
  - A comprehensive and integrated information policy governing all aspects of the information lifecycle, including planning, creating, collecting, organising, using, disseminating, storing and destroying information.
  - A clear authorising environment to ensure that openness becomes part of the official culture of government.
  - Equal access to information across all sections of the community to address the needs of those who are at a social disadvantage or who cannot, because of their location or personal circumstances, readily access information through electronic means.
  - Public interest restrictions on the release of information where release would have a prejudicial effect on essential public interests or the private or business affairs of members of the community.
3. Cabinet approved the Government response to *The Right to Information Report: Reviewing Queensland’s Freedom of Information Act*.

## References

Bottomley. S., *Regulating Government-Owned Corporations...*” supra at 524.

Government Business Enterprises and Public Accountability through Parliament”, Research Paper 18, 1999-2000, Parliament

of Australia at <http://www.aph.gov.au/library/pubs.rp/1999-2000/2000rp18.htm>

Bouchez, L.C. 2008. The OECD Guidelines on Corporate Governance of State-Owned Enterprises an introduction. pp578 - 582

OECD 2005. Guidelines on Corporate Governance of State-Owned Enterprises. OECD Annotations to Chapter V : Transparency and Disclosure. OECD Publishing. pp41- 46.

Queensland Government Response to the report of the Independent FOI Review Panel, *The Right to Information: Reviewing Queensland's Freedom of Information Act*.

[www.thepremier.qld.gov.au/library/word/initiatives/foi\\_review/Right\\_to\\_Information.doc](http://www.thepremier.qld.gov.au/library/word/initiatives/foi_review/Right_to_Information.doc)

Note: The **Solomon Report** and the **Right to information report: Queensland Government response** at page 18, clearly indicates that the Queensland Government wanted to change the definition of 'public authority' which has now been tested in the justice system determining City North Infrastructure Pty Ltd (CNI P/L) is not a 'public authority' as per definition within section 16(1)(a)(ii) *Right to Information Act 2009*. Therefore CNI P/L are not subject to the requirements within the *Right to Information Act 2009*

24 (p.90)	The definition of "public authority" in s. 9 of the Act should be extended to include bodies established for a public purpose under an enactment of Queensland, the Commonwealth or another State or Territory.	<b>Supported</b> The government supports this recommendation which is intended to ensure that Government bodies incorporated under the <i>Corporations Act 2001</i> (Cth) (such as company GOCs) are included in the operation of the proposed Right to Information Bill. The impact of changes to the definition of a "public authority" on other legislation, such as the <i>Public Records Act 2002</i> , will be considered. The advice of the Queensland Parliamentary Counsel will be sought as to the appropriate form of drafting for the proposed provision.
--------------	---	--



This Queensland Government had adopted a positive attitude towards the *Right to Information Act 2009*, as can be seen in the Premiers Hansard Speech 16 May 2009:

Speech by Hon. ANNA BLIGH extracted from Hansard of Tuesday, 19 May 2009

---

My government is committed to increasing the proactive and administrative release of information outside of the legislation and promoting a prodisclosure culture across the Queensland public sector. This work is already well underway. Summaries of cabinet decisions are now available online, departments are publishing more information proactively, and publication schemes and disclosure logs are set to go live on 1 July. The government is also making strategic changes to information management and promoting good record keeping practices.

With this bill and the Information Privacy Bill, my government is putting into law the important reforms recommended by the independent review panel. The bills are the product of extensive consultation, expert advice and much careful consideration.

The Right to Information Bill recognises the information rights of Queenslanders. This bill, and the broader package of policy reforms that my government is rolling out with it, will make Queensland the most open and accountable government in Australia.

**One question that remains unanswered was why has the Government not corrected the definition in the *Right to Information Act 2009*?**

### **The establishment of City North Infrastructure Pty Ltd**

The Queensland Government, by decision of Cabinet in November 2006, established special purpose vehicles (SPVs) to deliver water and transport infrastructure projects.

SPVs are private companies with boards and directors that provide governance in accordance with the *Corporations Act 2001*.

City North Infrastructure Pty Ltd

- Airport Link (PPP)
- Northern Busway—Kedron to Windsor (design and construct)
- Airport Roundabout

The department [DIP] has developed a governance, policy and performance reporting framework for SPVs. This provides a suite of guiding principles, information and templates aligned with the Australian and Organisation for Economic Co-operation and Development (OECD) standards for corporate governance and risk management.



SPVs are asked to comply with the Australian Securities Exchange *Corporate Governance Principles and Recommendations* and the United Kingdom's National Audit Office *Efficiency Toolkit*.

The department provides certain corporate support services to the SPVs, usually by way of communications and marketing services, and liaises with the board of each SPV including attendance at board meetings. Support services are provided to the SPVs until completion of the project. Once the project is completed, these services are provided by other government agencies.

City North Infrastructure (CNI) were incorporated in December 2006 as a wholly owned, funded, managed and controlled private company to oversee the procurement of the Airport Link Project. **In a 6 December 2006 briefing note from Treasury to the Deputy Premier, Treasurer and Minister for Infrastructure the following issue was noted as:**

***'The risks associated with this approach are that the entity will not be subject to the usual public sector accountability regimes...'***

It is obvious at this point in time that the Queensland Government does not want CNI P/L to be subjected to RTI requests.



**This is another example of the Queensland Government not wanting CNL P/L to be subjected to RTI requests.**

### **Airport Link Tunnel Project:**

<http://www.dip.qld.gov.au/projects/transport/tunnels-and-bridges/airport-link-tunnel-project.html>

Following a competitive tendering process spanning most of 2007 and 2008, BrisConnections was selected to deliver Airport Link, as well as the next section of the Northern Busway from Windsor to Kedron and the Airport Roundabout Upgrade project. **Procurement of these three projects is being managed by City North Infrastructure Pty Ltd (CNI), acting as the State's proponent representative.**

CNI was established in 2006 to represent the State and communities of Queensland on major infrastructure projects. A wholly owned Queensland Government operation, we act autonomously as a Special Purpose Vehicle (SPV).

*We don't create the project. We don't build the project. We do make it happen, by linking government vision with the*

*infrastructure and construction industry specialists who will bring the vision of world-class infrastructure in Queensland to life.*

***Our involvement is complete, from business case and environment assessment, through to procurement, contract management, handover, and community engagement.***

**Source: <http://www.citynorthinfrastructure.com.au/>**

I received a second Notice of Intention to Resume - Volumetric Title of my residential property dated 23 July 2009. In response to a letter detailing grounds of objections was sent to the Chairman of the Board, City North Infrastructure Pty Ltd via e-mail and Express Post on 24 August 2009.

My concern was my research had revealed that there was no Hydrogeological Environmental Impact Assessment undertaken on the new alignment and therefore no geological mapping and modelling and therefore no adequate groundwater monitoring scheme in place to manage dewatering issues.

In Adams, D.A., McRae, M.T., Huthison, B.J., Porter, J.P. (1999). Design and Construction of The City Link Driven Tunnels. Vail, Colorado 1999. 3rd Annual Geo Institute Conference.

At p617,

*Hydrogeologic modeling was carried out to predict the impact the tunnel would have on the surrounding groundwater regime. The model indicated that during construction up to 80 L/s could flow into the tunnel and that drawdown of the alluvial aquifers would occur. Although the water within the rock and alluvial aquifers is saline in nature, and thus the effects of drawdown on potable wells, due to tunnel inflows, were not an issue, concerns were strong with respect to potential affects of increased consolidation of overlying compressible deposits due to aquifer depressurization.*

At p618,

*However, as excavation advanced beneath the freeze wall, and the initial tunnel drives were started, grouting of the*

*Silurian ahead of excavation did not reduce the drawdown of the groundwater, **despite placing substantial amounts of grout into the rock mass. It became apparent that the risk of potential long-term settlement problems, combined with the effect on construction programming, made the use of pre-excavation grouting unacceptable to the project team.***

I requested access to and the need to photocopy the test hole bore results within a 5 kilometre radius of [REDACTED] Woolloowin before I was to attend a hearing on the matter. This information will enable a third party independent audit to occur so that as a property owner one can determine the risk attaching itself to the property and others.

CNI P/L stated that they did not have any borehole log test results.

I did not believe CNI P/L as if the company was conducting itself as stated:

***Our involvement is complete, from business case and environment assessment, through to procurement, contract management, handover, and community engagement.***

The company would have such documents in their keeping as part of the contract as stated in the Deed Agreements:

## Disclosure and publicity

---

### 9. Disclosure and publicity

#### 9.1 Disclosure by the State

The State may publish or disclose (on the internet or otherwise):

- (a) the terms and conditions of this deed and any other Project Document; and
- (b) any document or information arising under, out of or in connection with this deed or any other Project Document or relating to the performance of this deed or any other Project Document,

including information which is specified in Schedule 9 (Confidential Information) of the Project Deed. Prior to publishing or disclosing any of the information specified in Schedule 9 of the Project Deed, the State will, where circumstances reasonably permit, give the State Works Contractor 5 Business Days notice of its proposal to publish or disclose all or part of that information. If the State Works Contractor's preference is that the State not publish or disclose all or part of that information, then the State Works Contractor may provide the State with written reasons within that 5 Business Day period. While the State may consider any written reasons provided by the State Works Contractor within this period, the State Works Contractor acknowledges that the State may still publish or disclose such information in such

Legal\106239208.7

11

manner as the State sees fit.

#### 9.2 Public disclosure

- (a) **(Public Disclosure Obligations):** The State Works Contractor acknowledges and agrees that disclosure by the State, the Council or any Authority may be required:
  - (i) by Law, including under the Transport Infrastructure Act and the *Freedom of Information Act 1992 (Qld)*; or
  - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,**("Public Disclosure Obligations").**
- (b) **(Endeavours to assist):** the State Works Contractor must, at its own cost and expense, use all reasonable endeavours to assist the State, the Council or an Authority in meeting its Public Disclosure Obligations.

[http://www.citynorthinfrastructure.com.au/userfiles/file/projectdocuments/state\\_project\\_documents/otherstateprojectdocs/stateworksdeed.pdf](http://www.citynorthinfrastructure.com.au/userfiles/file/projectdocuments/state_project_documents/otherstateprojectdocs/stateworksdeed.pdf)



## **CONFIDENTIAL**

### **Email Response from CNI P/L**

Dear Mr XXXX

Fri 1/05/2009 4:52 PM

We refer to our letter dated 29 April 2009 and your written objection to the Notice of Intention to Resume over your land at [REDACTED] Woolloowin.

We note that the bulk of your objection relates to the potential effects of dewatering. You have asked the State to supply bore logs. Previously we identified the appropriate report for your review which was under the power and control of the State. You seem to indicate that this report was insufficient or not current. We have not obtained any more bore data. We understand that you have suggested that we are withholding such data from you. That suggestion is denied.

We have been considering the nature of your request and assessing its relevance to the objection process. You have objected on the grounds of the dewatering of your home and the potential risk that such dewatering will cause damage to your home. The State's position is that the PPP Co's contracted to build this project is contracted to ensure that no damage is caused to your or your neighbours' houses. In other words, construction methodology should, as required by the contract, prevent the damage you are anticipating.

Technically, we are advised that the dewatering issue you have raised could be a possible result of tunnel construction. However, it cannot be localised to your property. The TBM tunnel being bored beneath your property is an entirely watertight tunnel both during construction and operations and thus should not have the effect of dewatering the land underneath your home. However, we note that construction at other locations on the Airport Link project by way of road-header or cut and cover tunnelling methods may have the effect of dewatering the surrounding areas.

We consider that the issue of dewatering and any adverse consequential effects ultimately goes to compensation. In terms of your objection, the State could only consider an extension of time for the objection hearing in circumstances where it was satisfied that you have some basis for a valid objection, however we will in this instance agree to one last extension to the date for the hearing. The delegate will be ready to hear you in support of the grounds of your objection at the offices of City North Infrastructure at 10am on Wednesday 13 May 2009. At the hearing on 13 May 2009, it may be appropriate subject to the delegate's discretion, to establish as a preliminary issue, a valid basis as to why dewatering is a ground of objection. If a valid basis is established the delegate may provide directions as to the completion of the hearing.

Regards,

**Stella Schilling**

**Property Coordinator**

**CNI**

In the decision of *Little v The Minister for Land Management* [1993] QCA10, the Queensland Court of Appeal described the statutory requirements dealing with the hearing of objections as imposing on the constructing authority an obligation to accord natural justice to the affected landowner.

The Court of Appeal did decide that the right of objection included the right of the objector to timely access to information reasonably required for the preparation of a properly detailed notice of objection.

In examining procedural fairness, one must bear in mind the concept of 'practical justice' as introduced by the Chief Justice Gleeson in the High Court case of *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* [2003] HCA 6 where, in discussing the manner in which procedural fairness cases are approached by the courts, he said (at [37] ):

*'Fairness is not an abstract concept. It is essentially practical. Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice'*.

The kinds of practical injustices that may occur in the context of the work of an administrative decision-maker are numerous. Most of them are unforeseen

I recommend that the definition section of the *Right to Information Act 2009* be modified to cover all corporate activities directly or indirectly funded by the State government regardless of its business model e.g. special purpose vehicles (SPVs); State Owned Enterprises.

Regards 



# DEPARTMENT OF INFRASTRUCTURE AND PLANNING

## BRIEF FOR NOTING

**Our Ref:** 09/12417  
**Date:** 8 May 2009  
**TO** **Coordinator-General and Director-General**  
**FROM** City North Infrastructure  
**SUBJECT** Objection by [Contrary to] to resumption of [Contrary to P] Woolloowin  
**Requested by** Director-General's Office

---

### Recommendations

- That you **note** the information regarding the volumetric resumption of Woolloowin for construction of the Airport Link tunnel. [Contrary to Public]
- That you **sign** the attached letter to [Contrary to] in response to his email of 30 April 2009 (**Attachment 1**).

### BACKGROUND SUMMARY

- There is a sub-surface land requirement from [Contrary to Public Int] Woolloowin for the Airport Link. A title search shows that the registered owners are [Contrary to P] and [Contrary to P].
- The State, through the Department of Transport and Main Roads (DTMR) as the constructing authority, is seeking to acquire the land through the statutory resumption process under the *Acquisition of Land Act 1967* (the Act).
- Both of the registered owners objected to the resumption and have requested to be heard in support of their written objection. The hearing was due to take place on 6 May 2009 before the delegate, Mr Terry Griffiths at the office of City North Infrastructure Pty Ltd (CNI). At [Contrary] request, the hearing has been postponed to 13 May 2009.
- This is the usual process for dealing with objections to resumptions for the Airport Link, Northern Busway and the Airport Roundabout Upgrade projects.

### Issues

- In his email to the Coordinator-General on 30 April 2009, [Contrary] raised the issue of timely access to information he requires for the objection.
- DTMR is complying with the resumption process, as provided for by the Act and relevant court precedents. This process will continue to be complied with at all times. This process ensures a transparent and fair process for dealing with resumptions including objections.

- The attached letter advises that it is not appropriate for the Coordinator-General or any other person aside from DTMR and its relevant delegates, to make comment about (and during) the resumption process (including in relation to objections).
- The letter also advises that the process is managed by DTMR and its relevant delegates and that any further enquiries should be directed to DTMR or CNI.

#### **Cultural Impact**

- Nil.

#### **Employment impact**

- The resumption process does not have any employment impact.

#### **CONSULTATION WITH STAKEHOLDERS**

- The normal consultation process for property resumptions has been carried out with Contrary to Publi

#### **FINANCIAL IMPLICATIONS**

- Nil.

#### **POTENTIAL MEDIA**

- The volumetric resumption of this property is unlikely to receive media attention.

RTI RELEASE

NOTED or APPROVED / NOT APPROVED

Comments

Colin Jensen  
Coordinator-General  
Director-General

/ /

**Political Representatives**

**Local Government**

N/A

**State Government**

N/A

**Federal Government**

N/A

Contact Officer:  
Adam Cradick  
Property Manager,  
CNI  
07 3237 7455  
\_\_\_\_\_ signed by Adam Cradick \_\_\_\_\_  
7 / 5 / 2009

Approved:  
David Lynch,  
Chief Executive  
Officer, CNI  
\_\_\_\_\_ signed by David Lynch \_\_\_\_\_  
7 / 5 / 2009

Endorsed:  
Damian Gould  
A/Deputy  
Coordinator-  
General  
3898 0469  
\_\_\_\_\_ signed by Damian Gould \_\_\_\_\_  
8 / 5 / 2009

Election Commitment

CBRC / Cabinet related

ECM related

# MUR108 Right to Information Release

## BRIEFING NOTE

FROM	Treasury		
FOR	Deputy Premier, Treasurer and Minister for Infrastructure		
SUBJECT	Airport Link and Northern Busway Projects – Establishment of City North Infrastructure Pty Ltd		
Contact Officer:	Kath Begley	Record No: TRO-18918	Date: 6 December 06
Requested by:	N/A	Date Approval Required By: / /	URGENT

### PURPOSE

1. To seek your approval to establish a company, City North Infrastructure Pty Ltd, under section 44 of the *Financial Administration and Audit Act 1997*.

### BACKGROUND

2. Sch. 3(1)
3. A range of ownership structures were considered for the purpose of managing procurement and delivery of the Airport Link and Northern Busway Projects (the "Projects"). A proprietary company limited by shares, established under the *Corporations Act 2001*, is considered the most appropriate project delivery structure.

### ISSUES

4. City North Infrastructure Pty Ltd (CNI Pty Ltd) is proposed to be established with the objectives of:
  - Managing procurement of the Projects, including:
    - undertaking overall management responsibility for the effective procurement;
    - coordinating the conduct of the procurement processes;
    - evaluating bid proposals received for the delivery;
    - development, evaluating, negotiating and recommending the project documents;
    - providing recommendations to the State regarding shortlisting of proponents and awarding of contracts following a competitive bid process;
    - acquiring and disposing of associated land;
    - doing all other things necessary to bring the Projects to completion and commissioning the commencement of operations;
  - Providing ongoing management services in relation to contracts awarded; and
  - Doing all things necessary or incidental to the above tasks as directed by the State.
5. A proprietary company is proposed on the basis that it will facilitate focus on the procurement process and provide an appropriate governance arrangement under the *Corporations Act 2001*. The risks associated with this approach are that the entity will not be subject to the usual public sector accountability regimes and would face higher risk exposure to competitive neutrality provisions of the *Trade Practices Act 1974*.
6. The proposed constitution has been developed with specific provisions addressing the company's objectives, restitutions on amendment of constitution, audit requirements, director's conflicts of interest and appointments and remuneration (Attachment 5).



7. It is proposed that CNI Pty Ltd will have four shareholders in total – Mr Ross Rolfe for the Coordinator-General, Mr Bruce Wilson for Queensland Transport, Mr Alan Tesch for the Department of Main Roads and Queensland Treasury Holdings Pty Ltd for Queensland Treasury. The shares will be held in trust by the natural person members for the State of Queensland.
8. It is anticipated that the shareholding role of Mr Ross Rolfe will be transferred to the newly appointed Coordinator-General as part of the administrative arrangements effecting the creation of the new Department of Infrastructure.
9. It is understood that the approval of the board of Queensland Treasury Holdings Pty Ltd to hold the share for Queensland Treasury is currently being sought.
10. Nominees for the Board of Directors have been identified by the proposed member agencies – Mr David Stewart (Chair) for the Coordinator-General; Mr Les Ford for the Department of Main Roads; Mr Colin Jensen for Queensland Transport; and Mr Ian Munro for Queensland Treasury. Each State agency board would be supported within its own agency and an Alternate Director nominated.
11. In addition, Mr Scott Stewart will represent the Brisbane City Council on the Board.
12. Two external board members will also be approached. Mr Ken Mathers, CEO of SEITA (statutory authority responsible for managing the procurement of EastLink in Victoria) has been identified but is yet to be formally approached. The other external board member is yet to be identified. It is common practice for all proposed directors to be identified as part of the application.
13. There is an urgent need to establish the company to secure consultants so as to meet time commitments for the procurement process in early 2007. Therefore, under the proposed constitution, the two external board members are proposed to be appointed by ordinary resolution of the Board. It is noted that appropriate background checks will be undertaken before appointment and it is proposed that you would be advised of the identity of the external board members prior to the board considering their appointment.
14. It is proposed that directors who are not public servants will be remunerated at a rate to be unanimously agreed by the Board. It is anticipated that this will be in line with the *Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities*. Directors who are public servants (including both State and local government representatives) will not receive director's fees.
15. The Auditor General will be the auditor of CNI Pty Ltd.
16. It is proposed that monthly progress reports will be made to the shareholders through the Board. In addition, reports will also be made to CBRC by the Coordinator-General to proceed at each major decision point and to report outcomes of each major milestone.
17. Legal Services Unit and the Strategic Asset Management have been consulted on this application.

#### FINANCIAL IMPLICATIONS

18. CNI Pty Ltd will be wholly funded through the Coordinator-General and its accounts will be consolidated into the accounts of the Coordinator-General. Additionally, it is anticipated that CNI Pty Ltd will on-charge its services to Queensland Transport for some project management activities associated with the Northern Busway project.
19. Sch. 3(1)

20. Funding will be provided via a proposed Funding Agreement. It is currently proposed that the Coordinator-General advance funds to CNI for a period of up to three months in line with the Project Budget to be included in the Project Management Agreement.

21. Sch. 3 (1)

**RECOMMENDATION**


22. It is recommended that you:

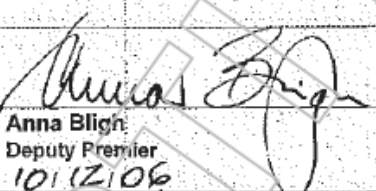
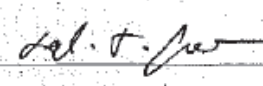
(a) approve the formation of City North Infrastructure Pty Ltd under section 44 of the *Financial Administration and Audit Act 1997* subject to the following conditions being met before incorporation:

- agreement from the Premier and Minister for Transport and Main Roads being obtained to the proposed company being formed as part of the appropriate governance arrangements to undertake the project;
- finalisation of the funding arrangements between City North Infrastructure Pty Ltd and the Coordinator-General in consultation with the Financial Management Branch of the Department of Premier and Cabinet and Queensland Treasury; and
- agreement from Queensland Treasury Holdings Pty Ltd to hold shares in City North Infrastructure Pty Ltd on behalf of Queensland Treasury;

(b) request the Coordinator-General to confirm to you in writing the identities of the remaining two board members, their consent and that appropriate background checks have been completed prior to the board of City North Infrastructure Pty Ltd considering their appointment; and

(c) subject to your approval of the above recommendations, note the attached letter from the Under Treasurer to the Coordinator-General advising of your decision.

  
 Gerard Bradley  
 Under Treasurer Date 7/12/06

<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Not approved	<input type="checkbox"/> Noted
Deputy Premier's Comments		
 Anna Bligh Deputy Premier 10/12/06	Senior Policy Advisor 1 1	 Policy Advisor 7/12/06

Name	Action/Officer/Author	Director	ED/AU	(Initials)	DUT	(Initials)
Kath Begley	Drew Eitem	dh	Ian Munro			
Transport & Industry	Transport & Industry		(07) 322 46866			
(07) 322 42697	(07) 323 41268	6/12/06	1 1			1 1



Please quote: TN105662/DS18/CG

Mr Gerard Bradley  
Assistant Under Treasurer  
Level 9 Executive Building  
100 George Street  
BRISBANE QLD 4000

UT		Reply	<input checked="" type="checkbox"/>
DUT		Briefing Coordinator-General	<input checked="" type="checkbox"/>
D/OUT		FYI	
MLU	<input checked="" type="checkbox"/>	Ack Ltr	
AUT/ED	<input checked="" type="checkbox"/>	Referral	
F&TP	H&CS	Key Word:	
FMB	EIGR	Airport	
E&J	GRAM	LINK.	
RESOURCES	SAM	Due:	
T&I	<input checked="" type="checkbox"/>	PS	
OUT	SSIO	Notes:	
CORPTECH	LSU		
GSO	QDGR		
MAIC	OSR		
OESR	OGOC		

Sch. 3(1)

Projects.

The recommended governance arrangement requires establishment of a proprietary company limited by shares, incorporated under the *Corporations Act 2001* and which is wholly owned by the State. As Coordinator-General, I would be responsible to procuring the Projects on behalf of the Minister for Infrastructure.

Accordingly, I seek your assistance in this application for the Treasurer's approval under section 44 of the *Financial Administration and Audit Act 1977* to establish a special purpose company under the *Corporations Act 2001*.

Should you have any queries in relation to this application, please contact Mr David Stewart on (07) 3227 8543.

Yours sincerely

Ross Rolfe  
Coordinator-General  
Director-General  
Enc

DUPLICATE COPY



The Coordinator-General  
Formation of a Special Purpose Company  
City North Infrastructure Pty Ltd

**1. Introduction**

The following information is provided in support of The Coordinator-General's application to the Treasurer under section 44 of the *Financial Administration and Audit Act 1977* (FAA Act) to establish a special purpose company under the *Corporations Act 2001*.

**2. General details of Company**

**2.1. Background**

Detailed Business Cases have recently been completed for both the Airport Link and Northern Busway projects.

The Airport Link Project involves the construction of a predominantly underground tollroad proposed to connect the northern arterials of Gympie Road at Kedron, Sandgate Road and the East-West Arterial Road at Toombul to the Inner City Bypass, the proposed North-South Bypass Tunnel and the road network at Bowen Hills.

The Northern Busway Project involves the construction of a 5.3 km two-lane, two-way bus-only roadway proposed between Herston, north through the suburbs of Windsor, Lutwyche, Kedron, Chermide, Aspley and Bracken Ridge.

sch. 3(1)

make the following



## 2.2. Objectives for preferred governance structure

Based on discussions to date between the Project team and key government agencies, it is proposed the primary roles and responsibilities of the proposed entity (Project Vehicle) would include:

- overall responsibility for the effective delivery of these two major infrastructure projects;
- coordination of the conduct of the Project procurement processes;
- making recommendations to the State regarding the short listing of bidders and the awarding of contracts following the bid process; and
- potentially, the ongoing oversight and management of contractual arrangements put in place by the State over the long term. Responsibility for this role requires consideration by the Board and relevant key issues are canvassed further in this paper.

To carry out these functions in an effective and transparent manner, and given the commercial operating environment, the key objectives of a proposed governance structure for the Airport Link and Northern Busway Projects (the "Projects") are outlined as follows:

- management and coordination of the Projects through the procurement phase (and potentially the subsequent development phase);
- empowerment of the Project Vehicle to represent the various State Agencies and Brisbane City Council (BCC);
- facilitates prompt decision making;
- responsible for management of State/Council processes;
- able to access experienced and highly skilled personnel to drive the process;
- represents a single point of accountability for Government, and contact for the private sector; and
- represents a cost-effective project management structure.

Key requirements of these objectives are explained in more detail in Attachment 1.

## 2.3. Alternative Ownership Structures

A number of alternative governance structures were considered in the context of a framework that took into account:

- the necessary legislative steps to achieve the particular model;
- the applicable accountability framework that will apply to the model;
- taxation issues;
- competition issues;
- other legal issues; and
- other issues particularly as they relate to the objectives of a governance structure described above.

The options considered included:

- a. the establishment of the new entity as part of a Department of Government;
- b. the establishment of the new entity as a Project Board under the State Development and Public Works Organisation Act 1971 (“SDPWO Act”);
- c. the establishment of a separate statutory authority constituted under special purpose legislation or separate legislative amendments;
- d. the establishment of a company GOC under the Government Owned Corporations Act 1993; and
- e. the establishment of a company that is incorporated under the Corporations Act 2001 (Cth) (“the Corporations Act”) and which is wholly owned by the State.

A comparative summary of the advantages and disadvantages of each governance option is attached as Appendix 2.

The recommended governance arrangement requires establishment of a proprietary company limited by shares, incorporated under the *Corporations Act 2001* and which is wholly owned by the State.

A proprietary company is proposed as it is relatively simple to establish, is a cost-effective governance arrangement and from an accountability perspective, will be regulated by the *Corporations Act 2001*.

The key advantages of this model include:

- quarantining of procurement/management activities, costs, risks and liabilities associated with the Airport Link and Northern Busway (Kedron to Windsor) within one transparent and accountable entity;



- ensuring clarity of purpose and focusing of resources on the specific procurement;
- increased flexibility and commercial focus;
- ability to access experienced and highly skilled personnel to drive the process; and
- the potential separation of liability from the State.

The key disadvantage of this model is that it will be more time consuming to establish than setting up a project board under an existing agency and the entity is not subject to the more detailed public sector accountability regimes (this is more of a perception issue). It is however faster to establish than a statutory authority.

The competition law risks are higher under this option. Mitigation of these risks includes Trade Practices Act training for all staff and the development of an indemnity deed for Directors.

#### 2.4. Proposed company structure

It is proposed that a special purpose company be established under the *Corporations Act 2001* for the predominant purpose of coordinating the procurement of the Airport Link and Northern Busway (Windsor to Kedron) Projects on behalf of the State.

The company will be established as a proprietary company limited by shares, as there will be no need to raise funds from the public. All funding is anticipated to be provided by the State (refer further discussion in Section 7 and Attachment 3 -- Draft Funding Agreement).

The company's registered name will be City North Infrastructure Pty Ltd. The name has been reserved and complies with the requirements prescribed in Schedule 6 of the *Corporations Regulations 2001*.

It is not anticipated that any subsidiary companies would be required. There may be benefits in future years for other major projects to be procured through the company, although this would be subject to a future application to the Treasurer to change the Constitution.

There exist precedents in the use of state-owned companies to deliver the procurement of major infrastructure, including the procurement of the Gateway Upgrade Project by Queensland Motorways Limited Pty Ltd and the development of the Paradise Dam by Burnett Water Pty Ltd.

Given these precedents and the advantages and disadvantages set out above, it is considered the establishment of a special purpose company, wholly owned by the State of Queensland, is the most appropriate means of effectively procuring the Airport Link and Northern Busway (Windsor to Kedron) Projects.

The Responsible Minister for procurement of the Projects will be Hon. Anna Bligh, Deputy Premier, Treasurer and Minister for Infrastructure. The current legislative regime requires the Minister for Transport and Main Roads to be the contracting party with the concessionaire for the purposes of a tollroad franchise (specific approvals by the Transport Minister are also required for the Northern Busway). A decision to proceed to delivery phase with a preferred proponent will require a decision by CBRC (and Cabinet) of which, the Minister for Transport is a member. The Minister for Transport will also have representatives on the Board and in the Government Working Group to provide advice through the process as required.

The sponsoring 'agency' for the Projects will be the Office of The Coordinator-General.

## 2.5. Risk Assessment

### 2.5.1 Corporate Structure risk assessment

City North Infrastructure Pty Ltd (CNI) will be a separate legal entity to that of the State. One of the advantages in establishing a company structure is the limited liability enjoyed by the shareholders of the company (that is, the State) and the quarantining of risks within the company. In this case, CNI will only be responsible for the risks associated with the management and coordination of the procurement process. Under current legislation, the franchise agreement for the tollroad concession and busway contract will be signed by the Minister for Transport. As such, the State would retain responsibility for project-related 'retained risks', regardless of how the Projects are procured.

A number of the Directors are representatives of the State and will remain indemnified by the State in the course of conducting their duties on behalf of the State. They will however, be exposed to a higher level of risk on account of their obligations under the *Corporations Act 2001*. These risks will be mitigated by the implementation of risk management strategies (including for example, *Corporations Act 2001* training, appropriate controls in the company's constitution and the development of Codes of Conduct). These risks will also be managed through the purchase of Directors' Indemnity Insurance immediately after incorporation. Directors will also be required to sign a Deed of Indemnity, Insurance and Access (a draft version is attached as Appendix X).

### 2.5.2 Corporate Activity risk assessment

Specific risks deriving from the conduct of the company's activities will be addressed by the company's Board of Directors in conjunction with the company's senior management through the development of a risk register and where appropriate, the development of written risk management policies. The risk register will be updated regularly throughout the duration of procurement and will:

- identify project and process risks
- identify the expected/perceived impact of each risk (in terms of cost and time overruns as appropriate);
- allocate a level of risk to either the process or project; and will



- identify appropriate risk mitigation/management strategies for implementation.

Risk management and mitigation strategies will be developed and are likely to include:

- sub-contracting of exposures through contractual terms and conditions (for example through using capped fee arrangements with consultants where appropriate);
- cost control and performance management (through strategic planning, budgeting and variance reporting and review);
- application of other internal controls (eg: delegation and authorities manual, separation of duties);
- appropriate staffing levels;
- the appointment of suitably qualified staff to supervise particular activities;
- the purchase of insurances as required, in addition to
- other specific mitigation strategies

Qualified advisers will be utilised and peer reviews conducted for key risk items. By continual review and reporting of the risks and their management, it is anticipated that the company will identify and respond effectively to issues as they arise.

It is considered that the most significant process risks for the company will include:

- Delays to establishment of the government SPV;
- Lack of competition in the procurement process – this risk includes the potential need for a significant change to the transaction plan and bid strategy due to lack of competition;
- Inability to meet published project timetable – this risk may be a result of other risks below and could also be exacerbated by competition for resources;
- Delays to finalising the scope of works;
- Delays to progressing interface agreements; and
- Issues associated with the EIS and CDIMP processes.

A comprehensive project risk assessment was carried out in line with the State's Value for Money Guidance material during the Feasibility Stage for both the Airport Link and Northern Busway, respectively. From these assessments, the key project risks likely to be retained as residual risk by the State post-Financial Close include:

- Land acquisition;
- Scope of works changes;
- Lack of finalisation of interface agreements;
- Non-completion of early works; and
- Legal challenges to the Planning Approval



### 3. Constitution of Company

The constitution of the company is a standard document with specific provisions dealing with:

- Objects
- Restrictions on amendment of the constitution
- Audit requirements, and
- Director's conflicts of interest, appointment/removal and remuneration.

City North Infrastructure Pty Ltd will be established with the following objects:

The Company is established to:

1. manage the procurement of the Projects, including the following tasks:
  - (a) undertaking overall management responsibility for the effective procurement of the Projects;
  - (b) coordinating the conduct of the procurement processes for the Projects;
  - (c) evaluating bid proposals received for the delivery of the Projects;
  - (d) providing recommendations to the State regarding the shortlisting of proponents and the awarding of contracts following a competitive bid process for the works to be undertaken in respect of the Projects;
  - (e) development, evaluating, negotiating and recommending the project documents for the Projects;
  - (f) doing all other things necessary to bring construction of the Projects to completion and commissioning the commencement of operations; and
2. provide ongoing management services in relation to the contracts awarded by the State for the Projects; and
3. do all things necessary or incidental to the above tasks as directed by the State.

While the constitution provides for the overseeing of the maintenance and operations of the Airport Link project by the company, it should be noted that the primary objective of the company is to manage and coordinate the procurement of the Projects. Prior to tolling system completion and the opening of the tollroad for public use, consideration by Government will need to be given to the most appropriate structure for the ongoing management of the concessionaire's contracts over the life of the concession. It is possible that the ongoing management function may novate into the Department of Main Roads a couple of years following the commencement of tolling.

A draft constitution is attached (refer Attachment 6).

#### 4. Members of Company

There will be four shareholders, each from the key relevant agencies, including:

- Ross Rolfe – for the Office of the Coordinator-General;
- Bruce Wilson – for Queensland Transport;
- Alan Tesch – for the Department of Main Roads; and
- Qld Treasury Holdings Pty Ltd – for Queensland Treasury.

The shares will be held in trust for the State of Queensland. A draft Declaration of Trust document is attached (refer Attachment X). All shareholders, both 'natural persons' and the holding company will be required to sign a Declaration of Trust.

Each member will be issued with one ordinary share with the usual voting rights attached in accordance with the *Corporations Act 2001*.

#### 5. Directors of Company

It is proposed there would be seven Directors of the Board, including four representatives from relevant key State agencies, one representative from Brisbane City Council (BCC) and two external board members. The Board composition is diverse and covers all of the key Government stakeholders in the project while at the same time, bringing a broad range of skills and experience to the table.

Mr David Stewart would represent The Coordinator-General and would be Chair of the Board. Other agency representatives are expected to include:

- Mr Les Ford, for Main Roads;
- Mr Colin Jensen, for Queensland Transport; and
- Mr Ian Munro, for Queensland Treasury.

BCC has confirmed Mr Scott Stewart will join the Board as its representative.

It is proposed to have two external board members. Ken Mathers, CEO of SEITA (the statutory authority responsible for managing the procurement of EastLink in Victoria) has been suggested as a suitable nominee but has not as yet been approached. The Board has resolved to undertake discussions with Ken Mathers to determine his level of interest in the position and to source another potential external candidate with legal/finance/banking background to complement the skills and experience in the Board.

It is expected each State agency board member would be supported within its own agency. Further, an Alternate Director from each agency should be nominated.

A Director's code of conduct and Board charter will be put in place once the company is formed.

Appropriate background checks will be carried out on all non-State Directors prior to the first official board meeting in January 2007.

### **5.1. Independence and conflicts of roles**

All Directors will be required to confirm their independence and to identify any potential conflicts in their new roles. A strict Probity Framework for the Projects will also apply.

The Coordinator General's dual role in approving the EIS for the Airport Link and undertaking responsibility on behalf of the Minister for Infrastructure for the procurement of the Projects will be assessed. The Coordinator-General will ensure appropriate delegations and separations of duties are in place for all staff involved in the Projects.

### **5.2. Governance**

A Director's code of conduct and Board charter will be put in place once the company is formed.

### **5.3. Remuneration**

It is proposed non-Government board members be remunerated for their services to the Board (including meeting fees, attendance fees and out-of-pocket expenses) in accordance with the Department of Industrial Relations publication, *Remuneration of Parttime Chairs and Members of Government Boards, Committees and Statutory Authorities*.

## **6. Administrative and secretarial arrangements**

It is proposed the Company Secretary role will be undertaken in the interim by the Director, Commercial & Legal (within the Project team), Mr Peter Papantoniou, with legal advice provided, as required, by Clayton Utz. Supporting services will be outsourced.

It is proposed the company be incorporated in Queensland.

The proposed registered office would be:

The Coordinator General  
Executive Building  
100 George Street  
BRISBANE QLD 4000.

It is expected the Coordinator-General would sign a letter of consent to using the above address as the Registered Office of the company prior to incorporation.

The principal place of business is:

Level 30, Comalco Place  
12 Creek Street  
BRISBANE QLD 4000.

Administrative arrangements such as the preparation of accounts and the lodgement of ASIC returns will be performed within the company and certified as required by the Company Secretary.

**7. Funding, guarantees and indemnities**

Sch. 3(1)

RTI RELEASE

**8. Taxation**

Following incorporation, the company will be nominated as an entity for the purposes of the NTER.

## **9. Financial accountability and audit**

### **9.1. Financial accountability**

The Office of the Coordinator-General will have control of the company and the accounts will be consolidated with the Coordinator-General's accounts. At this stage, it is expected the company is not likely to hold significant assets, and the funding provided by the Coordinator-General would match the agreed Budget expenses. Hence, the annual balance sheet results are not expected to be significant and the impact on Coordinator-General's consolidated accounts is similarly not expected to be significant.

As the company is a small proprietary company under *Corporations Act 2001*, it will prepare special purpose financial reports as requested by The Coordinator-General.

The company's accounting and reporting policies will comply with Australian equivalents to International Financial Reporting Standards.

In addition to the statutory reporting requirements discussed above, it is proposed that the company will report to the Board on a monthly basis on the progress of the project and will outline expenses against agreed budget and identify expected commitments for the following month.

Further, it is proposed that the company will report to CBRC (via the relevant shareholders) on the outcomes of each major milestone and seek CBRC approval to proceed at each of the major decision points, including shortlisting of consortia at the EOJ stage and recommendation of a preferred proponent. A Protocol Agreement is currently being drafted to address Ministerial communications and media issues.

### **9.2. Audit**

The Department of Premier and Cabinet is progressing arrangements for the Auditor-General to conduct annual audits on the company.

## **10. Ancillary arrangements**

A Project Management Agreement is being drafted to provide a framework for the management of the procurement of the Projects to their practical completion. A draft Agreement is attached (refer Attachment 11).

## **11. Notification of formation or acquisition**

Following a Treasurer's approval, the Minister for Infrastructure will provide written notice to the Auditor-General and the Treasurer confirming the company has been established as a public sector entity.

## Attachment 1

### Key objectives of the proposed governance structure

---

1. **Management and Co-ordination of the Project through the procurement phase (and potentially the subsequent development phase).**

Key requirements include:

- Timeliness – ability to meet agreed timeframes essential to maintaining market confidence
- Project goal focus – separating the team away from direct departmental (agency) influences considered to be advantageous for the project
- Effectiveness – the team will be operating in a dynamic commercial environment and will need to operate on a comparable level
- Integrity – formality in role of company board members promotes higher levels of transparency and accountability
- Probity

2. **Empowerment of the Project Vehicle to represent the various State Agencies and Brisbane City Council**

Key requirements include:

- Direct access to relevant Department Heads and Ministers
  - At the same time, need to minimize unnecessary political influences on the procurement process

3. **Prompt decision making**

Key requirements include:

- Decision making taken out of bureaucratic process, reducing delays due to other priorities in Government
- Delegated authority at the Project team level (through the CEO), and at the Board level
- Experienced personnel within team
- Competitive and confidential bid process achieved



4. **Responsible for management of State/Council processes**

Key requirements include:

- Management of approvals process
- Management of land acquisition / compensation process
- Management of interfaces with key third parties, including other government agencies (Department of Main Roads and Queensland Rail)

5. **Ability to have access to experienced personnel to drive the process**

Key requirements include:

- Ability to retain experience from previous projects (especially NSBT) – builds market confidence in ability of project team to deliver
- Resourcing issues may impact on timeliness of team establishment
- Resourcing issues may impact on availability of experienced personnel
- Risk of poaching of key staff by private sector / or alternatively of transfer/relocation of government staff

6. **Single point of accountability for Government, and contact for the private sector**

Key requirements include:

- Clarity
- Confidence
- Accountability
- Single project focus - market confidence that the project team has a clearly specified directive – to deliver Airport Link and Northern Busway only, and will not have scope of works increased

7. **Cost-effective project management structure**

Key requirements include:

- Minimal establishment costs
- Preferable to not require legislative change to establish Project team (as required for Statutory Body or joint State/Council team)
- Separate cost-accounts for the team provides better indication of 'real' procurement cost for government



## Attachment 2

### A comparative summary of the advantages and disadvantages of each governance option

---

Establish the entity as part of a Department of Government

The key advantages of this model are that it does not require legislative amendment, has a high degree of public accountability and transparency and establishes a close connection between the new entity and the responsible Minister. This option also has lower competition law risks.

The key disadvantages of this model are that the State is more directly exposed to legal risks and liabilities, there is then less flexibility in terms of making commercial decisions and keeping and maintaining a commercial focus and as regards the provision of flexible terms and conditions for the engagement and retention of key staff.

Establish a Project Board under the SDPWO Act

The key advantage of this model is that there is an established framework under the SDPWO Act, an appropriate accountability framework and there is flexibility in terms of defining the scope of operation of the Project Board. Also the competition risks are lower.

The key disadvantages of this model are that the State is more directly exposed to legal risks and liabilities there is less flexibility in terms of making commercial decisions and maintaining a commercial focus and as regards the provision of flexible terms and conditions for the engagement and retention of key staff.

Establish a separate statutory authority

The key advantages of this model are that there is considerable scope in terms of the powers that could be given to the statutory authority.

The key disadvantages of this model are that new legislation would be required which may delay the establishment process by several months. Furthermore, the regulatory framework that will govern the question of a statutory authority may provide less flexibility than using a Corporations Act company as the relevant entity.

Establish a company GOC under the GOC Act

The key advantage of this model is that the framework is well established. The applicable accountability framework seeks to strike an appropriate balance between accountability drivers and the delivery of commercial/operational outcomes.

Establish a company under the Corporations Act

The key disadvantage of this model is that the GOC Act contains relatively onerous compliance requirements in terms of the establishment of a Corporate Plan, Statement of Corporate Intent and other associated documents. These requirements are also more appropriate for an entity which will have an ongoing commercial function in its own right. The proposed Project entity will initially be more akin to a special purpose vehicle and therefore would not seem initially to have the scope or functions normally demonstrated by a company GOC.

The key advantage of this model is the potential separation of liability from the State, the increased flexibility and commercial focus that can be achieved and the ability to have access to experienced personnel to drive the process.

The key disadvantage of this model is that the entity is not subject to the more detailed public sector accountability regimes. Also the competition law risks are higher under this option.

## Certificate of Registration

When ASIC receive the completed application with the correct fee it will:

- give the company an ACN
- register the company. A company comes into existence as a body corporate at the beginning of the day on it is registered and remains in existence until it is deregistered, and
- issue a Certificate of Registration. The company's name is the name specified on this certificate.

Within two days of registration, ASIC issue a unique eight-digit number associated with the company's ACN (known as the 'corporate key' to the company's registered office address. You can use your corporate key to register to view your company records, lodge forms for your company and receive annual statements online. It must be included on some paper forms you may lodge to change your company details.

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Starting%20a%20company%20or%20business?openDocument#step6>