



Probity Advisor's Report

Evaluation of the Operator Franchisee Initiated Modification to the Gold Coast Light Rail Network Project Deed to Initiate Stage 3

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CONFIDENTIAL

19 November 2020

████████████████████
Project Director – GCLR Stage 3
Department of Transport and Main Roads

Copies to: ██████████
Program Manager – GCLR Stage 3
████████████████████ – Commercial & Financial Manager, GCLR 3
Department of Transport and Main Roads

Dear ██████████,

Probity Advisor's Report - Evaluation of the Operator Franchisee Initiated Modification to the Gold Coast Light Rail Network to Initiate Stage 3

Introduction

As with the Stage 2 Operator Franchisee Initiated Modification Process, the Department of Transport and Main Roads (DTMR), representing the State, outlined its requirements for Argus Probity and Procurement Pty Ltd (Argus Probity), the jointly appointed Probity Advisor, for Stage 3 by way of the tri-partite agreement between the State, Argus Probity and GoldlinQ Pty Ltd (GoldlinQ), carried forward from 15 October 2015, and re-appointment on 17 January 2020. DTMR requirements were as follows:

1. The parties shall jointly appoint a Probity Advisor who will, among other matters, be responsible for oversight of the process and procedures for the duration of the Operator Franchisee Modification Process (OF Mod) on terms to be agreed between the parties.
2. The parties agree that subject to paragraph 7.1(c) (point 3), the Probity Advisor will be able to perform both Upstream Probity Services and Downstream Probity Services.
3. The parties agree that Upstream Probity Services represent the paramount role of the Probity Advisor, with the intent that if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream Probity Services and any Downstream Probity Services, the Upstream Probity Services will prevail.
4. Operator Franchisee (OF) will provide (or procure) access for the Probity Advisor to the records, books, accounts and personnel of the OF and its Associates for the purpose of verifying any matters connected with the OF Mod or compliance with this letter.

As Probity Advisor I have had the full cooperation of GoldlinQ, as Operator Franchisee (OF), and the Department of Transport and Main Roads, representing the State, again throughout the Expression of Interest (EOI) and the Design and Construction Request for Tender (RFT)

phase. [REDACTED]

The general commercial principles, contractual mechanisms and operating environment accepted by the State for Stage 1 and Stage 2 are replicated under the proposed OF Mod for Stage 3. This includes delivery through a private finance model supplemented with State Capital Contributions (SCC). The State has implemented a transparent, “open-book” environment throughout the OF Mod process and has maintained full visibility throughout the development of the key components of the proposal.

Pursuant to the OF Mod process, the State is now finalising the evaluation of the submission from GoldLinQ for the design, construction, operations, maintenance and financing of GCLR Stage 3. This follows a competitive tender process for the D&C Contract for construction and delivery, and the selection of the preferred contractor, the carry-over of Keolis Downer Rail (KDR Gold Coast Pty Ltd) as the Operations and Maintenance Contractor (O&M) and appointment of Bombardier Transportation (BT) as the preferred subcontractor, for core scope rail systems supply, as priced into the tenderer’s bid¹.

The OF Mod Evaluation Plan (EP) was endorsed by Argus Probity on 26 September 2020.

The context

Quoting from the EP:

“Under the franchise arrangement, GoldLinQ provided a level of private financing to support the delivery of the project.

Stage 2 of the project was procured via the Operator Franchisee Initiated Modification (OF Mod) mechanism in the Project Deed.

The Stage 3 Detailed Business Case recommended that delivery of Stage 3 as an OF Mod was considered to provide best overall value, and this approach was subsequently endorsed by the State through the various governance and approval arrangements. Accordingly, following endorsement of the Detailed Business Case the State entered into a new OF Mod process with GoldlinQ on similar terms to those agreed for Stage 2.

Under the OF Mod arrangement GoldLinQ is required to submit a proposal for the design, construction, financing and operation of the Stage 3 extension in accordance with State requirements. If accepted, the project will be delivered through a modification to the Project Deed (based on the procedures set out in Clause 31 - Operator Franchisee Initiated Modifications). If the OF Mod does not meet the State’s requirements, the State reserves the right not to proceed.”

The State’s key objectives in relation to the OF Mod process (as set out in the OF Mod Phase 2 Process Letter dated 24 December 2019) are to ensure:

¹ Note BT is also responsible for supplying 5 new LRV’s to GoldlinQ for Stage 3 under a separate LRV modification / supply contract agreed between the State and GoldlinQ

- the probity and competitiveness of the procurement activities to be undertaken by Operator Franchisee for the purposes of preparing the OF Mod for Stage 3, including the D&C Tender Process;
- that it receives an OF Mod which provides Value for Money in relation to Stage 3 (on an overall basis and for each element of Stage 3) and implements Stage 3 within the required timeframe; and
- certainty of deliverability, noting the Operator Franchisee's rights under the Project Deed.

As with Stage 1 and Stage 2, the OF Mod includes the delivery of Stage 3 capital works as well as integration with the existing system, and operations and maintenance (O&M) of the extended system to provide a seamless user experience.

Pursuant to its instructions as Probity Advisor to the modification, Argus Probity has provided Probity Advice and Audit services to the evaluation of the OF Mod submission by GoldLinQ throughout the following broad stages in the process:

- Negotiations between the Queensland Government and GoldLinQ relating to the OF Mod under the existing Project Deed for delivery of the Stage 3;
- Establishment of initial probity framework for the OF Mod including settlement of the initial Probity Plan and Probity and Process Deed Poll;
- Probity oversight of the evaluation process of the OF Mod Evaluation Panel meetings, reports and correspondence, and correct application of the relevant evaluation assessment structure as implemented; and

Accordingly, at all times, probity and process management retained regard to the following relevant State and Federal Legislation, and policy:

- *Queensland Procurement Policy*, June 2013;
- *Financial Accountability Act* 2009;
- *Financial and Performance Management Standard* 2009;
- *Ethics, Probity and Accountability in Procurement – Better Purchasing Guide*: Queensland Purchasing, Department of Housing and Public Works;
- *Australian Consumer Law* (Cth);
- *Corporations Act* 2001 (Cth);
- *Crime & Misconduct Act* 2001;
- *The Public Service Act* 2008; and
- *Public Sector Ethics Act* 1994.

On behalf of Argus Probity, [REDACTED], Director, and [REDACTED], Senior Consultant, have provided the probity advisory and auditing services from the GoldLinQ led procurement

process up to and including the RFT evaluation process, followed presently by the continuation of Probity advisory and auditing services to the State-managed evaluation process for the appointment of a project Independent Verifier and Independent Certifier, and OF Mod contained in this Report.

Argus Probity continues to provide Probity Advice and Audit services in relation to the procurement process on behalf of the State.

State Observers to the GoldLinQ Procurement Process

The State has fostered a transparent and “open-book” environment throughout the OF Mod process, providing full visibility throughout the development of key components of the present GoldLinQ Proposal.

Of note within the context of the present evaluation stage of the OF Mod being undertaken by the State was the presence throughout the procurement process to date of State observers.

The State engaged 6 principal observers to the GoldLinQ procurement process for the EOI, D&C, O&M, and rail systems core scope procurements which formed the basis of the submission of the GoldLinQ OF Mod proposal.

The purpose of the State observers to the process were to ensure alignment of the procurement process with the requirements of the State in the undertaking of the procurement. This has further allowed the State to enter into the evaluation phase of the OF Mod with the direct understanding of the conduct with which the process to date has been undertaken. This is particularly salient as the State Evaluation Panel in the instant evaluation process are to conduct the evaluation based upon the proposal, which does not include retrospective analysis of the process to date. The key State observers to the process were the following:

- [REDACTED] (State Project Director GCLR 3 and D&C Selection Panel observer);
- [REDACTED] (Program Manager GCLR3)
- [REDACTED] (Technical & Operations Manager GCLR3)
- [REDACTED] (Commercial & Financial Manager, GCLR3)
- [REDACTED] (Technical Manager GCLR3); and
- [REDACTED] (Commercial Evaluation Team observer).

The Observer Report was submitted to the Evaluation Panel by DTMR, attesting to the alignment of GoldLinQ's procurement process with State objectives.

The Evaluation Panel

These 6 key observers also reported to the Evaluation Panel for the OF Modification. The Departments of the Treasury, and the Premier and Cabinet, are represented on the Evaluation Panel The members of the Evaluation Panel:

Name	Position	Organisation
██████████ (Chair)	Project Director – GCLR Stage 3	Department of Transport and Main Roads
██████████	Program Director (Gold Coast Light Rail)	Department of Transport and Main Roads
██████████	Program Manager – GCLR Stage 3	Department of Transport and Main Roads
██████████	Deputy Regional Director (South Coast Region)	Department of Transport and Main Roads
██████████	Senior Policy Officer, Economic Policy	Department of the Premier and Cabinet
██████████	Commercial Group	Queensland Treasury

Other invitees to the Evaluation Panel who assisted and reported are:

DTMR

- ██████████, Principal Contract Manager, TransLink
- ██████████, Program Manager
- ██████████, Technical Manager GCLR 3
- ██████████, Commercial & Financial Manager GCLR3
- ██████████, Operations Manager GCLR 3
- q ██████████ Stakeholder & Communications Manager GCLR3
- q ██████████, Administrative Support
- ██████████, Commercial Group, Queensland Treasury
- Corrs ██████████, Partner
- Corrs ██████████, Snr Associate
- Aurecon, ██████████, Lead Technical Advisor GCLR3
- PwC ██████████, Financial Advisor
- PwC ██████████, Financial Advisor

Evaluation Panel Meetings

To the date of this report Argus Probity has observed and advised at the meetings of the Evaluation Panel on the following dates: 7 September, 21 September, 6 October, 26 October, 2 November, 9 November 2020 and 16 November.

The Guiding Documents

The **DTMR Probity Plan titled-Gold Coast Light Rail-Phase A-Stage 3A (Detailed Business Case)** guided not only the procurement process during the Detailed Business case, but carried over in terms of the probity procedures, strictures, and protocols to the anticipated Stage 3 two phase OF Mod procurement process. At Section 3.2, page 12, the Plan states:

“Future Phases-Delivery method, Procurement Evaluation Panels and Advisors

The Detailed Business Case will recommend a Project Delivery method. Should negotiations proceed participants of government and private industry will be governed by the principles of probity. Particular probity protocols will be introduced.

Evaluation of competitive bids shall be carried out by an Evaluation Panel(s), assisted as required by advisors. A requirement for other advisors may subsequently be identified in which case the Project Director may approve such appointment.

Approval to proceed with final design, construction, operation and maintenance of Stage 3A is the objective of this Pre-Procurement Phase of the Detailed Business Case.”

Further, DTMR reviewed and agreed with GoldlinQ the Stage 3 Probity Plan which monitored all probity requirements for the balance of the processes managed by GoldlinQ leading to the current OF Mod submission and subsequent evaluation. GoldlinQ developed its own OF Mod Probity Plan specifically adapted to its OF Mod related procurement activities, appropriately aligned with the overarching Stage 3 Probity Plan established by Argus Probity (unless otherwise noted, all subsequent references to the 'Probity Plan' or 'Plan' refer to the Argus developed Stage 3 Probity Plan), which was updated and settled by Argus Probity, and adopted on 9 January 2020.

The Plan itself contained specifically the protocols and procedures to be adhered to throughout the process. Further, the Plan retained as its basis a vigilant reference to the relevant and applicable legislation and policy. It was strictly adhered to.

The following personnel were subject to, and abided by, the Probity Plan:

- GoldLinQ officers involved in the OF Mod process including those having access to confidential information (e.g. administrative personnel)
- Officers from other State and local government entities, who provide advice or assistance or are otherwise involved in the Project;
- Consultants and advisors providing advice to GoldLinQ in relation to the RFT process for the Project,
- The State project team and their advisors, and any other persons who were otherwise involved or in a position to influence project team recommendations.

The **Probity and Process Deed Poll** is the Deed executed by the D&C Tenderers in favour of GoldLinQ and the State of Queensland to regulate conduct within the context of the RFT process to ensure its probity and competitiveness.

The Deed related to, and principally regulated conduct in respect of the following:

- Tender requirements, Conforming Tenders, and Tender validity;
- Cost of participation in the RFT Process and State contribution to costs;

- Treatment of Proprietary information;
- Discretion of GoldLinQ in the RFT process;
- Parties' responsibilities and obligations as to information;
- RFT Process protocols;
- Probity in the RFT process; and
- Security and control of Confidential Information

The Deed declared the purpose of the interactive sessions was to:

- avoid unproductive work being carried out by the Tenderers;
- provide guidance from GoldLinQ in relation to the acceptability of alternatives that the Tenderers are considering; and
- reduce the likelihood of the Tenderers submitting unacceptable solutions in their Tenders.

As Probity Advisor, Argus Probity, was vigilant to see that these principles were adhered to.

The **Operator Franchisee Initiated Modification Evaluation Plan (EP)** was endorsed by Argus Probity on 26 September 2020. This Evaluation Plan is described above.

The **Request for Tender (RFT) Evaluation Plan** for the RFT Phase is contained in the document Stage 3 - Evaluation Plan for Request for Tender, incorporating the Evaluation Management Procedure, adopted on 8 May 2020. The RFT Evaluation Plan:

- provides guidelines for the Procurement Team members;
- outlines a uniform evaluation process and procedures;
- places a strong emphasis on probity in the procurement and the duties and responsibilities of the Probity Advisor; and
- Seeks to ensure all Tenders are evaluated fairly and no Tenderer is given an unfair advantage or disadvantage.

The RFT Evaluation Plan was for internal use only and not released to Tenderers at any time. The RFT Evaluation Plan was prepared in accord with the *Queensland Procurement Policy* 2019 and adhered to.

Of particular importance, the following activities were undertaken by the Probity Advisor in relation to Conflicts of Interest:

- Conducting face to face (and remote audio/visual session) probity induction workshops and briefings
- Distributing conflict of interest declarations and reviewing the versions that were signed and returned by the Procurement team members.
- Liaising with the Procurement Team as necessary to ascertain the most appropriate course of action to remedy an actual, potential or perceived conflict.

Every participant in the process; from the GoldlinQ Pty Ltd Board members, the GoldlinQ's Selection Panel, the Procurement team, officers and consultants of DTMR, officers and consultants from the Council of the Gold Coast, Public Utilities Providers representatives, representatives of the O&M Contractor and Bombardier Transportation, and other stakeholders, contracted consultants, external consultants and advisors, attended a Probity Induction and was required to complete a Confidentiality and Conflicts of Interest Declaration, as to potential conflicts of interest, as to present, past or potential associations, and contact.

Document Security and the Virtual Data Room

Due to the size and complexity of the Stage 3 project Argus Probity works in tandem with the DTMR GCLR 3 Project Team and the GoldlinQ Transaction Team, Document Controller and other Authorised Persons (as relevant) , in the oversight and probity protocols initiated for the Virtual Data Room (VDR), and for document security in the respective offices.

The VDR is provided via Ansararda. DTMR Project Team, the GoldlinQ Transaction Team, Evaluation Panel Members, Tenderers, other stakeholders, associated advisors and consultants have accessed the VDR provided they complied with the relevant VDR protocols.

The first essential element of that protocol is that to gain access to the information the entire complement of those requiring access must attend a Project Briefing and Probity Induction, followed by the execution of the Impartiality, Confidentiality and Conflict of Interest Declarations. Over 160 individual participants have been inducted into the probity principles and the VDR, overseen by Argus Probity.

Due to the Covid-19 precautions over the last five months, and continuing, as Probity Advisor a RFT Project Briefing and Probity Induction video has been produced and protocols and strictures put in place for "Agile Space" (external) access to the VDR. The Argus Probity Induction Briefing and a signed acknowledgement that it has been seen, and the accompanying paper, *Probity Principles for Tendering Evaluation and Award-a Summary*, has been read as a prerequisite. As Probity Advisor, the participation in the video training and the signing of all required probity declarations, is checked before access is granted. Random inspections of various stakeholders' offices for adherence to the probity and security protocols have been undertaken.

General Probity Undertakings

In overseeing the State OF Modification evaluation process from a probity perspective and in implementation of the probity requirements detailed in these binding structures, Argus Probity have applied the following general probity actions to the process:

- Ensuring that the evaluation process is transparent, accountable, and auditable;
- Ensuring that probity standards had been met during the evaluation process as failure to meet these standards may lead to the integrity of the process being questioned and may result in delays, inappropriate publicity and/or legal action;
- Ensuring that members of the Steering Committee, Evaluation Panel, and external advisors are aware of their responsibility for probity through probity induction and training, including the same being made aware that the role of the Probity Advisor is not to provide a form of insurance against errors in decision making or an alternate party to which risk can simply be transferred;
- Where issues of probity arose, requiring those members to document these in writing and seek the advice of the Probity Advisor;

- Provide advice on probity matters generally to the Evaluation Panel and Steering Committee (if requested);
- Development and settlement of a Probity Plan (initially settled 20 August, 2015, updated and revised version adopted 9 January 2020);
- Development of necessary transaction protocols;
- Providing inductions and other training to ensure that there was an appropriate level of knowledge and understanding of probity requirements;
- Monitoring confidentiality and conflict of interest declarations;
- Advising upon management of conflicts of interest;
- Reviewing and providing advice on probity related issues with regard to evaluation documents and policy;
- Reviewing evaluation plans ensuring that clear criteria are established prior to the Modification submission being received and establishing that there is a clear understanding of the basics of assessment of each criteria/sub-criteria;
- Observing Evaluation Panel, Steering Committee (if requested), and negotiation meetings;
- Reviewing any related party issues raised as between the Evaluation Panel members and GoldLinQ/subcontractors;
- Observing presentations or interviews with GoldLinQ;
- Remaining available at all times for consultation concerning any issues of a probity nature which arise during the evaluation process
- Monitoring security arrangements; and
- Providing information on probity or propriety related to the evaluation for the inclusion in reports for DTMR or Cabinet.
- Observing key evaluation meetings;
- Reviewing evaluation reports at the conclusion of the evaluation;

Current Status

GoldlinQ's RFT evaluation process has concluded, and the GoldlinQ board accepted the GoldlinQ Evaluation Panels' recommendation to appoint John Holland as Preferred Tender and to execute a Commitment Deed (which was subsequently formalised between GoldlinQ and John Holland prior to GoldlinQ's formal submission of the OF Mod to the State on 29 September 2020). At the date of writing, GoldlinQ is continuing negotiations with John Holland on a small number of residual contractual matters, with the view to finalising the D&C Contract by 30 November 2020.

Based on activities to date, this report will conclude that there are no outstanding probity issues such as to warrant a questioning of the transparency, thoroughness or equity in the process undertaken up to and including the tenderer contract negotiations with GoldLinQ Pty Ltd to provide the Design and Construction Contract for the delivery of the GCLR Stage 3.

Following the State's evaluation process, the following steps are to take place:

- Formalisation of the suite of project agreements in readiness for execution by the various contracting parties (including the State, GoldlinQ group entities, debt and equity financiers, Council of the City of Gold Coast, Independent Verifier and Independent Certifier, project insurers, security providers, security trustee, facility agent, John Holland and guarantor (and certain core subcontractors), the O&M Contractor and BT).
- State Government approval of the OF Mod
- Financial Close, satisfaction of all conditions precedent to activation of project agreements
- Commencement of the Stage 3 works program

Prior Findings

In accordance with advice and a framework provided by, or settled by, Argus Probity, a transparent process led by GoldLinQ as a “sole and selective tenderer” negotiation has been undertaken for the RFT evaluation for the D&C Contract for Stage 3. This is equated by the Government with a policy of Value for Money and in the public interest.

No known probity issues arose that would compromise the process or lead to a challenge to the process or the recommendation of the Selection Panel.

The impartiality in dealing with Tenderers with numerous competing and aligning interests, and the commitment of the Transaction Team, Evaluation Teams and Selection Panel members, and advisors, accorded with the requirements of Probity.

A Probity and Process Deed Poll was adhered to by all bound parties throughout the process.

Preparing a separate report to accompany the evaluation report commenting on compliance with probity requirements, the soundness of conclusions reached (in terms of compliance with the evaluation plan) together with any matters arising from a probity perspective (the Final probity Report).

Governance Arrangements – Project Approval

The recommendations of the OF Mod Evaluation Panel will be considered by the DTMR Project Supervisory Board (PSB) . Subject to PSB endorsement, a submission to the Cabinet Budget Review Committee (CBRC) (the body formally required to approve the OF Mod) will be prepared and progressed through DTMR / ministerial governance arrangements with the view to consideration by CBRC².

Key Reports to be Utilised in Assessment

² An DTMR Evaluation Steering Committee consisting of the Director-General (DTMR), the Director General of the Department of the Premier and Cabinet and the Under Treasurer has also been established as part of the OF Mod evaluation governance arrangements, and may be convened at the discretion of Director-General (DTMR) to consider matters relevant to the evaluation process.

The Evaluation Plan required that the following reports are to be developed to support the Evaluation Panel's assessment of the OF Mod:

- Finance & VfM Assessment Report (developed by State advisor PwC) (including an O&M price report by operations advisor SNC Lavalin)
- Legal / Commercial Assessment Report (developed by State legal advisor Corrs)
- Technical & Delivery Assessment Report (including a technical advisor report by Aurecon)
- Operations Assessment Report
- Insurance due diligence report by State insurance advisors Lockton

As at the date of this report, the Evaluation Panel has been provided with various draft reports and supporting presentations to assist in their deliberations, and these reports will be finalised in accordance with the Evaluation Plan (with supplementary notes to be developed as required to provide any further details relevant to the Evaluation Panel between the finalisation of the evaluation and Financial Close).

Evaluation Plan - State Produced Business Case as a Benchmark for Value for Money

Probity of process mandates a value for money outcome as a consequence of procurement generally, and probity principles substantially may be said to flow from this goal.

Attainment of value for money is, as detailed above, a key outcome sought by the State in the OF Mod process. The Evaluation Plan, in aid of this outcome, details the methodology by which this may be calculated, and the degree to which Value for Money is evident in the GoldLinQ proposal. This general methodology is detailed in the Evaluation Plan in the following terms:

- The State has produced a Detailed Business Case pursuant to its procedure under the QLD Project Assessment Framework, which provides an appropriate reference point to consider the Value for Money parameters of the OF Mod
- The Public Sector Comparator (PSC) was utilised as reflecting the estimated risk adjusted, whole-of-life cost to government of delivering the project assuming the most likely and efficient form of publicly financed delivery, specifically:
 - GoldLinQ led competitive D&C process (with State funding of D&C works);
 - GoldLinQ delivery of allocated scope (LRVs, depot modification, systems);
 - GoldLinQ (KDR) provision of O&M services³.
- The evaluation process was to run independently of the GoldLinQ procurement and evaluation arrangements to ensure integrity of process.

Value for Money Assessment Methodology

In attaining Value for Money, the Evaluation Plan described the following methodology:

³ GoldLinQ's role as present deliverer of Stage 1 and 2 was taken into account in assessment of follow-up traditional delivery for Stage 3.

- **Quantitative Assessment:** An overall quantitative assessment is to be performed similar to that adopted on typical PPP projects, comparing:
 - The project cost as proposed by GoldLinQ and reflected in the net present cost (NPC) of the SCCs and the incremental service payments, and State retained risk; and
 - The PSC, being the whole of life, risk adjusted cost (NPC) of the project under State-financed delivery.
- **Qualitative Value for Money (VfM) assessment:** This assessment of key components of the OF Mod is undertaken to support the quantitative assessment given the absence of a competitive process for the Project as a whole. The qualitative assessment considers GoldLinQ's Proposal against appropriate financial benchmarks and qualitative aspects of the approach adopted by GoldLinQ in developing its OF Mod. The qualitative assessment will have reference to and consider:
 - **Financing and commercial proposal:**
 - **Debt finance and hedging:** The approach used to secure the pricing and key terms for the senior debt and any associated hedging products must demonstrate the efficiency of the financing structure for Stage 2 delivery and take into consideration the Extended Operation, including to the extent relevant, the proposal for sharing in any refinancing gains for Stage 1 as a result of the Refinancing of Stage 1 debt as part of the Stage 2 process.
 - **Equity:** Where it has not been practically possible to subject equity to a true competitive process, given the Stage 2 interface, a qualitative assessment of the equity parameters as contained in the OF Mod will be performed. This will take into consideration the benchmarking assessment undertaken prior to the OF Mod submission, and will provide a basis for determining the extent to which pricing and key terms associated with equity (and any equity like products) are reflective of the current market and that reasonable assumptions have been used.
 - **Risk profile and commercial regime:** The VfM assessment will review the extent to which GoldLinQ has accepted and secured with its sub-contractors the State's preferred risk allocation profile (for Stage 3 and Extended Operations), together with the extent Stage 1 risk transfer has been retained.
 - **Design and Construction:** GoldLinQ are running a competitive tender process for the D&C element of stage 3. The VfM assessment will include findings from the State's observer role undertaken during the D&C procurement to assess the process run by GoldLinQ (including with reference to the State's observations of the process) to confirm the preferred design and construction contractor (and associated price and terms) were secured on a competitive basis.
 - **Operations and Maintenance (including lifecycle):** In the absence of a competitive process for appointment of an O&M provider, to test whether O&M

demonstrates VfM for O&M costs (Stage 3 and incremental impact to Stage 2), the VfM assessment will consider benchmarks for O&M from Stage 2, the State's independent estimates of O&M costs and the OF Mod's demonstration of value. Benchmarks had been finalised and documented prior to receipt of the OF Mod.

- **Impact management:** The extent to which GoldLinQ has demonstrated that it can and will manage the impacts of the OF Modification on:
 - Stage 1 and 2 operations and maintenance; and
 - The environment, surrounding landscape, various stakeholders and the community.

The following Reports had been received by the Evaluation Panel as at the time of this report:

- **Value for Money & Capability and Capacity Assessment**
 - Prepared by PwC
 - Strategic Report provided 5 November 2020
 - Draft (Comprehensive) Report provided 30 October
- **Operator Franchisee Initiated Modification Proposal – Legal Assessment Report**
 - Prepared by Corrs Chambers Westgarth
 - Strategic Report provided 23 October 2020
 - Draft (Comprehensive) Report provided 2 November
- **Operator Franchisee Initiated Modification – Operations Assessment Report**
 - Prepared by Earlsfort Associates
 - Draft provided 23 October 2020
- **Operator Franchisee Initiated Modification - Technical Assessment Report**
 - Prepared by Aurecon
 - Draft provided 23 October 2020
- **Operator Franchisee Initiated Modification – Evaluation Panel Report**
 - Prepared by State project team
 - Draft provided 23 October 2020

Evaluation Panel Report

The Evaluation Plan requires the preparation, endorsement and submission of a final Evaluation Panel Report as an exhaustive exposition of the process of evaluation in relation to the GCLR Stage 3 OF Mod proposal.

The Evaluation Plan, requires of the Report, the following:

The Evaluation Panel will endorse an Evaluation Report to provide the basis for a submission by the Minister for Transport and the Commonwealth Games to the Cabinet Budget Review Committee (CBRC) summarising the evaluation of the OF Mod and recommending an appropriate course of action.

The Evaluation Report (reflecting on, or referring to Key Assessment Criteria reports as appropriate) will cover the following material:

- *Outline of the OF Mod and the development process (including clarifications and discussions with the State);*
- *Methodology for the evaluation of the OF Mod;*
- *Assessment of the Proposal including a summary of the Evaluation Panel deliberations, agreed evaluation outcomes and recommended course of action; and*
- *A report from the Probity Advisor confirming that the evaluation process was conducted in accordance with the Project's probity requirements.*

The Final Evaluation Report is to be prepared by the dates noted in the Indicative Evaluation Schedule (or as otherwise determined by the Project Director in consultation with the Evaluation Panel) The final report should be marked "Cabinet in Confidence" and "Commercial in Confidence".

Evaluation Process Probity Clearance Declaration

In all cases, the involved parties have correctly applied the evaluation methodology of the Evaluation Plan, remained cognisant of applicable procedure and policy, conducted such methodology with good probity and transparency of process.

It is the opinion of Argus Probity that to this date of the OF Mod evaluation that the process has been fair, has been properly conducted and has been conducted with probity.

Final Negotiations Process

It is noted in Box and Forde⁴ that the "*fundamental principle of contract negotiations is that the integrity of the tender requirement and the basis of the offer under negotiation is maintained*".⁵ The stipulations and representations within the RFT documentation as to the intended tender submissions and subsequent negotiation process supported probity of process within the context of these negotiations.⁶

Evaluation Panel discussions involved exclusively internal exchanges regarding the scoring of the submission. No undue influence, coercion or coaching of contributions was evident in Evaluation Panel meetings incorporating evaluation procedure, overseen by the Probity Advisor

⁴ Box, J., and Forde, M., *Probity and Managing Procurement: How to Avoid Corrupting the Process*, 2007.

⁵ *Ibid.* at p.118.

⁶ *Ibid.* at p.117.

Conclusion

The probity process as formulated was undertaken in accordance with *Queensland Procurement Policy*.

It is the opinion of Argus Probity and Procurement Pty Ltd that DTMR and the Queensland Government, officers, employees, contracted consultants, and external consultants engaged in the OF Mod process have conducted themselves with propriety and probity during the course of the GCLR Stage 3 transaction and evaluation process.

There are no outstanding probity issues such as to warrant a questioning of the transparency, thoroughness or equity in the process undertaken up to date by the Evaluation Panel, the State project team and associated advisors, including in respect of presentations, reports, and recommendations provided to the Evaluation Panel relating to GoldLinQ's OF Mod proposal for the design, construction, operations, maintenance and financing of Gold Coast Light Rail Stage 3.

Yours faithfully,

Argus Probity Auditors and Advisors Pty Ltd

A handwritten signature in black ink, appearing to read 'R. Taylor', is written over a solid black rectangular redaction box.

B.A. J.D. LL.M ProfCertArb.

Director