



Pennant Hills District Civic Trust Inc.

P.O. Box 454, Pennant Hills, NSW 1715

'Preserving the residential amenity of Pennant Hills and its environs'

The Chair
Review of the F3 to M7 Corridor Selection.
P O Box 593
Canberra ACT 2601.

April 23, 2007

Subject: Review of the F3 to M7 Corridor Selection.

This **Submission #4** is made following receipt of a letter dated 16/04/07 from Ms Joan Armitage, General Manager – Review Secretariat (file ref. 20070160), referring to page 3 of the Trust's Submission #3 in which the Independent Review was asked to secure the release of information requested under Freedom of Information (FOI) free of charge to the community on public interest grounds.

The referenced letter advised that the Review Chair was prepared to accept an additional submission if we wished to provide further information. The opportunity to make this additional submission is appreciated.

This submission focuses on **Freedom of Information** and particularly information related to the specific matter of traffic modelling seen as essential to a meaningful response to the Independent Review's Terms of Reference which emphasise the assumptions, data and projections underpinning the Government's tunnel decision.

The subject FOI request (ref. DOTARS FOI request number FOI 2006-17) was lodged by Dr John Goldberg by letter dated 14/03/06. Dr Goldberg is an Honorary Associate of the School of Architecture, Design Science and Planning, University of Sydney and he is acting on behalf of the local community organisations. His direct participation has been interrupted by his being hospitalised.

The following documents are referenced below (copies provided by hardcopy with the Submission Coversheet or e-copy as shown emailed with this submission):

- DOTARS/Auslink letter (14/07/06) in response to Dr Goldberg's FOI request
- DOTARS/Auslink letter (11/08/06) in reply to issues raised with the above
- Mr Powell's letter (28/09/06) raising charges exemption in the public interest
- Mr Ruddock's letter (9/10/06) referring to Minister Lloyd
- Minister Lloyd's letter (2/11/06) in response to Mr Powell above
- Mr Ruddock's letter (13/11/06) conveying the Minister's reply
- Trust Open Letter (24/12/06) on the subject of Freedom of Information in Australia (e-copy)
- Mr Ruddock's letter (8/02/07) in reply to the Open Letter above
- Trust letter (1/04/07) to Mr Ruddock re Review Terms of Reference & subject FOI (e-copy)
- Mr Ruddock's letter (10/04/07) in reply to Trust letter above
- Review Secretariat letter (16/04/07) responding to the Trust's Submission #3.(e-copy)

The following **observations** are made from the community's perspective:

- (a) the subject FOI request was made one week before the Masson Wilson Twiney (MWT) report was issued on March 22, 2006. The MWT review, comparing the F3/Sydney Orbital Link Study (SKM) and Transurban traffic forecasting and modelling, was completed during the January to March period of 2006. The MWT review and report is covered at length on our Submission #2.
- (b) it is evident that SKM modelling information would have been assembled for the purpose of the MWT review, as the alternative of one consultant directly providing information to another is hard to imagine. We therefore question why the same information was not promptly provided in answer to the subject FOI request.
- (c) the four (4) month delay in the DOTARS/Auslink response to the subject FOI request was explained as being "due to the extensive volume of the search" but, given the completion of the MWT review in March 2006, we question why this would be so. How does "the extensive volume of the search" over four months reconcile with the 118.33 hours of 'search and retrieval' time included in the \$20208.33 FOI charges quotation (ref. DOTARS/Auslink letters 14/07/06 and 11/08/06)
- (d) with the subject FOI request seeking documents relating to "the specific matter of traffic modelling" and this information being central to the decision-making process as evidenced by the Independent Review's Terms of Reference, it is hard to accept that it would not be filed separately to facilitate prompt retrieval.
- (e) the FOI charges quotation (ref. DOTARS/Auslink letter dated 14/07/06) indicates the need for 900 hours of decision-making and consulting with 200 third parties for a total cost of \$17900 which, according to Mr Ruddock, the Attorney General and the local Federal member, is incurred in order to ensure the balance between competing community interests including national security, law enforcement and the private affairs of individuals and businesses (ref. letter dated 8/02/07). With 200 third parties already involved any exposures are already widespread.
- (f) were the same exposure considerations applied to the MWT review or is there a distinction between a review aimed at defending the Government's decision and an FOI request aimed at questioning the Government's decision.
- (g) the often repeated DOTARS/Auslink suggestion that the scope of the subject FOI request should be refined is no more than a diversion or red herring. The validity of a traffic model cannot possibly be judged other than by having access to the complete information set.
- (h) although the DOTARS/Auslink correspondence raises the option of FOI charges not being imposed, under public interest provisions, when this option was pursued it was completely ignored in the Minister Lloyd's response (2/11/06). This subject was first raised at a meeting with Mr Ruddock on 21/07/06 and followed up in Mr Powell's letter dated 28/09/06. .

- (i) at a public meeting on September 10, 2006 Mr Ruddock advised that Minister Lloyd would be shortly announcing his intention to carry out an Independent Inquiry headed by a retired judicial officer. In response to questioning Mr Ruddock, the Attorney General, advised that he was pressing for an open public inquiry. The expectation generated was that an official investigation would be undertaken with all relevant evidence/information tabled.

The end result, more than five months later, was an independent review with very narrow terms of reference and apparently limited coercive powers to obtain critical information.

Questions arise concerning the ‘inquiry’ to ‘review’ transformation and the fit of the resulting Independent Review under federal Administrative Law.

- (j) the Attorney General’s Department web site, and specifically the section on Administrative Law, tells us that “*administrative law’ is the body of law regulating government decision-making. Review of administrative decisions can take place internally or externally. The federal system of administrative law is made up of four elements:*

- *Tribunals – independent bodies which provide ‘merit reviews’, that is, examining and remaking government decisions*
- *Courts – providing ‘judicial review’ of the lawfulness of government decision-making*
- *The Commonwealth Ombudsman – a permanent office holder with the power investigate maladministration*
- *Freedom of Information – laws which create a general right of access to official information, subject to exclusions.*

The benefits of having a system for review of administrative decisions that is well established and independent include encouraging higher-quality decision making and building public confidence in government administration”.

Administration Law, according to the web site, provides for internal, external and judicial reviews and Federal tribunals. With reference to FOI the web site tells us that “*documents which might be relevant to a decision can be sought under the Freedom of Information Act 1982, which imposes a legal duty on federal agencies to provide members of the public with access to government information, including official documents of Ministers, unless those documents fall within defined classes of exempt documents”.*

Again, the question arises as to how the Independent Review fits within federal Administrative Law since it is clearly the ‘reconsideration of a decision made by a federal Government agency’.

- (k) in a meeting with Mr Ruddock on March 30, 2007 the point was made that, with the Terms of Reference being so tied to assumptions, data and projections, any submission in response to these terms would be meaningless without the modelling information requested under FOI in March 2006.

Mr Ruddock advised that we should ask the Review Chair to exercise the independence of the role to obtain the release of the modelling information requested and that, having gained the information, we should ask for the time to make a supplementary submission.

The Trust followed the Attorney General's advice in its Submission #3.

- (l) the Trust's letter to Mr Ruddock (1/04/07), confirming (k) above, anticipated the possibility of the Review Chair not obtaining the release of the requested information and asked the Attorney General if he would exercise his powers consistent with his ministerial responsibilities.

In his letter of reply (10/04/07) the Attorney General advised that he had no independent role in directing the Independent Review.

The question therefore arises, considering the Attorney General's Department responsibilities above, as to whether the Independent Review has been set up consistent with federal Administrative Law. Whether the answer to this question is yes or no it needs to be explained.

- (m) The Independent Review's letter (16/04/07) advises that the resolution of the subject FOI request is solely a matter for DOTARS to determine, implying that the Review will not involve itself.

How can the Independent Review elect not to be involved when Freedom of Information is one of the four elements of the federal Administrative Law system?

- (n) The Independent Review's letter (16/04/07) also suggests that the Review is concerned that the pursuit of the FOI issue might impact upon its time deadline. There are a number of examples of time delays within our submissions one of which being that DOTARS/Auslink took four months to respond to an FOI request. To now decide that a time deadline is of more concern than the substance of the Review, already tied to very limited Terms of Reference, is clearly contrary to the previously stated benefits of the federal Administrative Law system.

Summary.

As indicated in our Submission #3 the effected community is obstructed from making a meaningful submission to the Terms of Reference, which emphasise assumptions, data and projections, without access to the modelling information requested under FOI.

The \$20208.33 FOI charge is beyond the financial capacity of community organisations and the attempt to gain exemption from charges on the legitimate grounds of public interest has been ignored.

The delays in processing the FOI request and the justification of the FOI charge are suspect for the reasons covered above and warrant investigation by this Review.

The fit of the Independent Review under federal Administrative Law is questioned.

The Attorney General, considering his responsibilities related to Administrative Law and Freedom of Information, has indicated the expectation that the Independent Review would be in a position to secure whatever information is necessary to properly conduct the Review.

Conclusion

We submit that the Review Chair should, in the interests of its independence and in fairness to those making submissions to it, engage the Attorney General's Department to ensure that the requirements of Administrative Law and Freedom of Information are properly satisfied in the community interest.

Brian Ash
President
Pennant Hills District Civic Trust Inc

Attachments

The following are to be considered as attachments to this submission:

1. The Register of Objectors (provided with our Submission #1) is provided as evidence of our representation of the effected community.
2. The Trust Membership list (provided with our Submission #1) is provided as evidence of our bona fides as a community organisation
3. The Public Notice posted with the Monthly Chronicle, a local newspaper covering the Pennant Hills Road suburbs effected (provided with our Submission #1).
4. Attendance forms from the March 12, 2006 Public Protest Meeting that unanimously rejected the Purple Option and called for an independent public inquiry (provided in hardcopy form with the hardcopy coversheet with our Submission #1) is provided as evidence of the communities continuing opposition to the tunnel proposal.
5. Copies of correspondence (see page 1) provided in part by e-copy with this submission and partly in hardcopy with the Coversheet for this submission.