



Decision and Reasons for Decision

Citation:	<i>Maurice Blackburn Lawyers and Department of Transport and Main Roads; City North Infrastructure Pty Ltd (Third Party) [2014] QICmr [6] (25 February 2014)</i>
Application Number:	311419
Applicant:	Maurice Blackburn Lawyers
Respondent:	Department of Transport and Main Roads
Third Party:	City North Infrastructure Pty Ltd
Decision Date:	25 February 2014
Catchwords:	ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - NONEXISTENT DOCUMENTS - DOCUMENTS OF AN AGENCY - an agency may refuse access to a document because the document is nonexistent - whether the agency has taken all reasonable steps to locate the documents - sections 47(3)(e) and 52(1)(a) of the <i>Right to Information Act 2009</i> (Qld) - whether requested documents are documents of an agency - section 12 of the <i>Right to Information Act 2009</i> (Qld)

REASONS FOR DECISION

Summary

1. Maurice Blackburn Lawyers applied to the Department of Transport and Main Roads (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to a range of documents referred to in a deed for the construction of the Airport Link and Northern Busway (Windsor to Kedron) project.
2. The Department refused access to the requested documents on the basis that it had taken all reasonable steps to locate the documents and was satisfied the relevant documents did not exist. The Department's decision did, however, note that the documents may be in the possession of City North Infrastructure Pty Ltd (**CNI**) but that any such documents did not comprise documents of the Department.
3. The applicant applied to the Office of the Information Commissioner (**OIC**) for external review of the decision to refuse access to the requested documents.
4. For the reasons set out below, if any of the requested documents are in the possession of relevant persons acting in the capacity of Chief Executive Officer (**CEO**) of CNI, they are documents to which the Department has a present legal entitlement to possession and these documents therefore comprise 'documents of an agency' for the purposes of section 12 of the RTI Act. In the absence of the Department making enquiries of

relevant persons acting in the capacity of CEO of CNI about whether the requested documents exist (and if so, taking steps to obtain physical possession of such documents), the Department has not taken all reasonable steps to locate the requested documents and is not entitled to refuse access to the requested documents under sections 47(3)(e) and 52(1)(a) of the RTI Act.

Background

5. Significant procedural steps relating to the application and the external review are set out in Appendix A to this decision.

Reviewable decision

6. The decision under review is the Department's decision dated 12 February 2013 refusing access to the requested documents.

Evidence considered

7. Evidence, submissions, legislation and other material considered in reaching this decision are disclosed in these reasons (including footnotes and appendices).

Issue for determination

8. The relevant issue for OIC to determine on external review is whether the Department was entitled to refuse access to the requested documents under sections 47(3)(e) and 52(1)(a) of the RTI Act on the basis that they are nonexistent. As discussed below, the Department's decision allows that the requested documents may be held by CNI. Accordingly, to determine this issue in the circumstances of this case, it is necessary to decide whether the requested documents (if any exist) are 'documents of an agency' in accordance with the definition provided under section 12 of the RTI Act.

Relevant law

9. Under the RTI Act, a person has a right to be given access to documents of an agency.¹ However, this right is subject to other provisions of the RTI Act including the grounds on which an agency may refuse access to documents.² Access to a document may be refused if the agency is satisfied the document does not exist.³
10. To be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience having regard to various key factors which will vary in each case. Where an agency relies on searches to justify a decision that a document does not exist, the agency must take all reasonable steps to locate the requested document.⁴

Findings

11. The documents to which the applicant seeks access in this review (**Requested Documents**) are identified in the Airport Link and Northern Busway (Windsor to Kedron) Project deed (**Deed**).⁵ According to the relevant clauses of the Deed, the

¹ Section 23 of the RTI Act.

² As set out in section 47 of the RTI Act.

³ Section 52(1)(a) of the RTI Act.

⁴ *PDE and The University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) at paragraphs 37-38. Although this decision concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld), the requirements of that section are replicated in section 52 of the RTI Act.

⁵ Airport Link/Northern Busway (Windsor to Kedron)/EWAG Projects - Project Deed dated 2 June 2008 between the State of Queensland and BrisConnections Operations Pty Limited and BrisConnections Nominee Company Pty Ltd as trustee of the BrisConnections Asset Trust available at <http://www.citynorthinfrastructure.com.au/deed-documents.php>.

Requested Documents were required to be created by or produced to the State.⁶ The Requested Documents can generally be described as:

- the 'Base Case Financial Model' and audit report⁷
 - cost to complete information and financial statements⁸
 - minutes of meetings of the 'Senior Project Group';⁹ and
 - progress reports on the 'D&C activities'.¹⁰
12. The Department refused access to the Requested Documents on the basis that it had taken all reasonable steps to locate the documents and was satisfied the relevant documents did not exist. The Department's decision did, however, note that the documents may be in the possession of CNI but that any such documents did not comprise documents of the Department.
13. The State established a separate entity, CNI, to manage the project on the State's behalf. CNI is a special purpose vehicle¹¹ and a wholly State Government-owned company¹² which is funded by the State of Queensland. CNI and the State entered into a project management agreement (which was amended and restated a number of times) to provide a framework for CNI to manage the procurement of the projects and provide ongoing management services in relation to the contracts awarded for the projects. The Second Amended and Restated Project Management Agreement dated 1 July 2009 between the State and CNI (**Agreement**) is one of these relevant agreements between CNI and the State.

Are the Requested Documents 'documents of an agency' for the purposes of section 12 of the RTI Act?

14. Yes, for the reasons that follow.
15. A document not in the physical possession of an agency will nevertheless be a 'document of the agency' for the purposes of the RTI Act, if it is under the control of the agency (or under the control of an officer of the agency in the officer's official capacity). This includes documents to which the agency is entitled to access – to which it has a 'present legal entitlement' to physical possession.¹³
16. I am satisfied that the Department has a present legal entitlement to possession of any of the Requested Documents physically held by relevant persons acting in the capacity of CEO of CNI on the basis that the Department (as the relevant administrative unit representing the State under the Deed) is, as principal, legally entitled to possession of the documents created or received by the CEO of CNI (the State's agent), on the State's behalf.¹⁴

⁶ The relevant clauses of the Deed which refer to the Requested Documents are set out in Appendix B to these reasons for decision. In relation to the Senior Project Group meeting minutes, the Deed imposed an obligation on the State to convene and chair these meetings and take and distribute the minutes. The remaining Requested Documents (i.e. the Base Case Financial Model and audit report, cost to complete information and financial statements and progress reports on the 'D&C activities') were required to be made and produced to the State.

⁷ The Base Case Financial Model and audit report required as a Condition Precedent and defined at 7(a) and 7(c) in Schedule 1 to the Deed, including any subsequent updates provided pursuant to clause 38.4 of the Deed.

⁸ Cost to complete information and financial statements provided to the State in accordance with clauses 38.2 & 38.3 of the Deed.

⁹ Minutes of meetings of the Senior Project Group held in accordance with clause 6.6(d) of the Deed.

¹⁰ Progress Reports on the D&C Activities provided to the State in accordance with clause 12.3 of the Deed (as defined in clause 1.1 of Attachment 2 to Part 1 of Annexure 9 to the Deed).

¹¹ See <http://www.dsdp.qld.gov.au/infrastructure-delivery/special-purpose-vehicles.html> which relevantly explains that special purpose vehicles are proprietary limited companies established under the *Corporations Act 2001*, in accordance with the Queensland Treasurer's powers under the *Financial Accountability Act 2009*. They are not government owned corporations.

¹² A company search of CNI on 6 February 2014, shows that CNI's sole shareholder is Queensland Treasury Holdings Pty Ltd.

¹³ *Price and Nominal Defendant* (1999) 5 QAR 80 at paragraph 18.

¹⁴ During the external review, OIC formed the preliminary view that the Requested Documents were also public records of the State in accordance with the *Public Records Act 2002* (Qld) and the Department was the responsible public authority in relation to these documents. However, I have not made any findings on this issue in these reasons for decision.

Department represents the State

17. I am satisfied that, for the purposes of the Deed, the Department represents the State and carries all the legal obligations and receives all benefits conferred on the State by the Deed.
18. The term 'State' is not defined in the Deed, and should therefore be taken as a reference to the executive government of Queensland.¹⁵ As a body politic, the State must necessarily act through natural persons.¹⁶ In this case, the State executed the Deed through:
 - the Minister for Main Roads and Local Government; and
 - the Chief-Executive of the Department of Main Roads and a delegate of the Chief-Executive of Queensland Transport¹⁷ (which were then the two relevant administrative units of the State).¹⁸
19. As a result of machinery of government changes in 2009, the Department of Main Roads and Queensland Transport were amalgamated into the Department of Transport and Main Roads, with their respective responsibilities also largely transferred into the Department.¹⁹ Consequently, benefits conferred or responsibilities imposed on the State by the Deed are now in my view ultimately borne by the Department's Director-General, as the 'natural person' succeeding the chief executives of the earlier agencies which were signatories to the Deed.
20. The Department submits²⁰ that obligations for the maintenance of CNI's functions, documents and systems have been transferred under machinery of government changes to the Department of Treasury and Trade who is now the responsible government agency for CNI matters.
21. Transfer of administrative responsibilities for CNI²¹ would not, however, appear to have any impact on the legal obligations owed by the Department on behalf of the State under the Deed nor the rights and entitlements conferred on the State under the Deed. The Department did not contest OIC's view that it is the relevant administrative unit of the State answerable under the Deed, and has not provided any evidence to suggest that the relevant rights or obligations under the Deed have been assigned by the Department to the Department of Treasury and Trade, or any other agency.
22. For these reasons, I am satisfied that the Director-General of the Department carries all obligations imposed and receives all benefits conferred on the State by the Deed, including the obligation to create and receive the Requested Documents under the Deed. In other words, any documents the Deed provides are to be created or received by 'the State' are therefore documents to be created or received by the Department.

¹⁵ Adopting the definition used in section 51(1) of the *Constitution of Queensland 2001* (Qld).

¹⁶ N Seddon, *Government Contracts* (Federation Press, 2009), page 139.

¹⁷ Section 24(2) of the *Transport Planning and Coordination Act 1994* (Qld) relevantly provides that anything done in the name of or for the State by the chief executive in performing the chief executive's functions is taken to have been done for, and binds, the State.

¹⁸ See Administrative Arrangements Order (No. 1) 2008 which relevantly entrusted responsibility for land transport, busways, roads and transport infrastructure to one or both of the Ministers for Main Roads and Transport, and identified the administrative units responsible for these functions as the Department of Main Roads and Department of Transport.

¹⁹ See Administrative Arrangements Order (No. 1) 2009.

²⁰ CNI applied to become a participant in this external review under section 89 of the RTI Act. OIC conveyed its preliminary view to CNI and invited it to provide submissions supporting its case. CNI advised OIC that it did not accept the preliminary view and adopted the Department's submissions.

²¹ Which, on OIC's understanding, were in any event historically borne by agencies other than the Department, such as the former Department of Infrastructure and Planning.

Relationship of principal and agent

23. The Deed provides that the State may appoint a person to be its representative for any purpose under the Deed²² and any person appointed by the State as a representative acts at all times as the agent of the State and is subject to the direction of the State.²³
24. By notice of appointment dated 28 July 2008 (**Notice**), the CEO of CNI was appointed as the State's representative under clause 6.4 of the Deed. The Notice relevantly provided for the appointment of '*...you or any person acting in the capacity of Chief Executive Officer of City North Infrastructure Pty Ltd to be the State's representative for any purpose under the Project Deed...*'. I am satisfied that the CEO of CNI is, as a consequence of this appointment, an agent of the State for the purposes of the Deed.²⁴
25. Documents brought into existence by an agent while in the employ of a principal belong to the principal and not to the agent.²⁵ It follows then that the State (as principal) is legally entitled to possession of the documents created by the CEO of CNI (its agent), and, by extension, documents received by that officer, in fulfilling his responsibilities as the State's representative under the Deed.
26. However, the Department submits that this general proposition can be displaced by contrary contractual arrangements arrived at by the relevant fiduciaries²⁶ and that this has occurred in this case, as a result of the Agreement. The Department argues:
- the relevant clauses of the Agreement provide the State with only a qualified right of access to documents of CNI (i.e. unfettered access to inspect them and a right upon request to be provided with a copy of them)²⁷
 - the State and CNI recognise that CNI was the intended legal owner of any proprietary rights in the materials and records created by CNI for the purposes of the project;²⁸ and
 - the State has no immediate or present legal entitlement to possession or ownership of CNI's books, records and documents.
27. I have considered the relevant clauses of the Agreement together with the Department's submissions and I do not agree with the Department's interpretation of these clauses.
28. In my view, clause 2.14 of the Agreement (which relates to access to records) at best operates only to restrict access to '*books, records and documents of CNI*', where no other specific right of access applies to the Requested Documents. The Requested Documents, however, are not and were never documents of CNI, but documents of the State – documents created or received by its agent on its behalf. The Department does not accept this interpretation of these clauses and submits that '*the parties were intending to address their agreements ... with regard to all the books, records and documents that CNI would create or receive in the course of performing the Services under the Agreement...*'.
29. In my view, clauses 9.1 and 9.2 (which relate to intellectual property and the transfer of other rights) do not expressly assign property or title in information, but merely oblige CNI to assign any title at the request of the State, should same arise in the course of it

²² Clause 6.4(a)(i) of the Deed.

²³ Clause 6.4(b) of the Deed.

²⁴ I note and accept the Department's submission that there is no express appointment of CNI as agent for the State for the purposes of the Deed and that it is an individual person, the CEO of CNI, that has been appointed as agent of the State.

²⁵ *Breen v Williams* (1996) 186 CLR 71 per Dawson and Toohey JJ (citing *Leicestershire County Council v Michael Faraday and Partners Ltd* [1941] 2 KB 205 at 216.)

²⁶ Referring to *Alliance Craton Explorer Pty Ltd v Quasar Resources Pty Ltd* [2013] FCAFC 29 at paragraph 72 and *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 at 206.

²⁷ Clause 2.14 of the Agreement which is set out in Appendix C to these reasons for decision.

²⁸ Clauses 9.1 and 9.2 of the Agreement which are set out in Appendix C to these reasons for decision.

carrying out its duties under the Agreement. As noted, however, the Requested Documents would in my view have been created/received by relevant persons acting in the capacity of CEO of CNI in carrying out duties as State's representative under the Deed (i.e. as agent for the Department) with the consequence that title in those materials belongs to the Department, and it enjoys a present legal entitlement to possession.

30. I do not accept the Department's submissions that relevant clauses of the Agreement operate to displace the general proposition that the State (as principal) is legally entitled to possession of the documents created or received by its agent. The terms of the Deed and Notice are clear – the State has appointed a representative of the State for any purpose under the Deed. There is nothing in either the Deed or the Agreement suggesting that the former is to be read subject to the latter, and I can identify no reasonable basis on which it could be inferred that relatively general provisions as to management of records and intellectual property in an entirely separate instrument ought to be read so as to displace the express and unambiguous wording of relevant provisions of the Deed and the Notice issued pursuant to the Deed.
31. For these reasons, I find that the Requested Documents, if they exist, were created or received by the CEO of CNI in discharge of his duties as the State (and thus the Department's agent) under the Deed, and in accordance with the ordinary principles of the law of principal and agent are therefore documents of an agency within the meaning of section 12 of the RTI Act.

Has the Department taken all reasonable steps to locate the Requested Documents?

32. No, for the reasons that follow.
33. I am satisfied that the Department has a present legal entitlement to physical possession of the Requested Documents, if they exist, on the basis that they were created or received by the Department's agent in discharge of duties as the Department's representative under the Deed. Accordingly, I consider the Requested Documents are 'documents of an agency' within the meaning of section 12 of the RTI Act and any of the Requested Documents that exist are therefore subject to the RTI Act.
34. In the absence of the Department making enquiries of relevant persons acting in the capacity of CEO of CNI about whether the requested documents exist (and if so, taking steps to obtain physical possession of such documents), I am not satisfied that the Department has taken all reasonable steps to locate the Requested Documents.

DECISION

35. For the reasons set out above, I set aside the Department's decision and find that the Department has not taken all reasonable steps to locate the Requested Documents and is not entitled to refuse access to the Requested Documents under sections 47(3)(e) and 52(1)(a) of the RTI Act.

R Rangihaeata
Information Commissioner

Date: 25 February 2014

APPENDIX A

Significant procedural steps

Date	Event
21 December 2012	The Department received the access application under the RTI Act. The Department issued a notice to the applicant under section 42 of the RTI Act stating an intention to refuse to deal with the application as the work involved in dealing with the application would substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions. The Department invited the applicant to consult with the Department with a view to narrowing the scope of the access application.
30 January 2013	The applicant agreed to narrow the scope of the access application.
12 February 2013	The Department issued a decision to the applicant refusing access to the Requested Documents.
12 March 2013	The applicant applied to OIC for external review of the Department's decision.
13 March 2013	OIC requested a number of procedural documents from the Department.
18 March 2013	OIC received the requested documents from the Department.
5 April 2013	OIC notified the applicant and the Department that the external review application had been accepted. OIC indicated to the Department that OIC had considered similar issues in a previous external review with the Department and asked the Department to consider the preliminary view that was conveyed to it in the previous review.
16 April 2013	The Department notified OIC that it did not accept the preliminary view and wished to rely on the submissions it made in the previous review.
16 August 2013	OIC conveyed its preliminary view to the Department in writing and invited it to provide submissions supporting its case by 2 September 2013 if it did not accept the preliminary view.
4 September 2013	The Department notified OIC it did not accept the preliminary view and provided submissions supporting its case.
13 September 2013	CNI applied to participate in the external review and requested the opportunity to provide submissions supporting its case.
20 September 2013	OIC provided the applicant with a copy of the preliminary view letter and Department's response and invited the applicant to provide any submissions supporting its case by 4 October 2013.
8 October 2013	OIC reiterated its preliminary view to the Department and invited it to provide any further submissions supporting its case by 16 October 2013. OIC notified CNI that OIC would consult with CNI at a later stage of the external review if necessary.
16 October 2013	The Department requested an extension of time until 25 October 2013 to provide submissions in response to the preliminary view.
17 October 2013	OIC agreed to extend the time for the Department to respond until 25 October 2013.
31 October 2013	OIC received the Department's further submissions.
1 November 2013	OIC provided the applicant with a copy of the Department's submissions and invited the applicant to provide any submissions supporting its case by

Date	Event
	18 November 2013.
18 November 2013	OIC received the applicant's submissions.
20 November 2013	OIC provided the Department with a copy of the applicant's submissions and invited it to provide any final submissions supporting its case by 5 December 2013. OIC provided CNI with a copy of the Department's submissions and applicant's submissions and invited it to provide any submissions supporting its case by 5 December 2013.
5 December 2013	CNI notified OIC that it adopted the Department's submission and had nothing further to add.
10 December 2013	OIC received further submissions from the Department.

APPENDIX B

Relevant clauses of the Deed

1.1 Definitions

In this deed:

...

“**PPP Co**” means either or both BC Trustee in its own capacity and as trustee of the BC Asset Trust and BC Operations as the context requires.

6.4 The State’s representatives

- (a) The State:
 - (i) may appoint a person to be its representative for any purpose under this deed, the EWAG Works Deed or the NB Works Deed;
 - (ii) may at any time replace any person appointed as a representative, in which event the State may appoint another person as a representative; and
 - (iii) must give written notice of all appointments under clauses 6.4(a)(i) and 6.4(a)(ii) to the PPP Cos.

The State must not appoint more than 1 person to discharge the same function or functions under this deed, the EWAG Works Deed or the NB Works Deed.

- (b) Each PPP Co acknowledges and agrees that any person appointed by the State as a representative acts at all times as the agent of the State and is subject to the directions of the State.

6.6 Senior Project Group

- (a) **(Composition):** A Senior Project Group must be established consisting of:
 - (i) one representative of the State appointed under clause 6.4;
 - (ii) one representative of the PPP Cos and the NB Works Contractor appointed under clause 6.5;
 - (iii) 2 persons from each party holding positions more senior than the persons referred to in clauses 6.6(a)(i) and 6.6(a)(ii); and
 - (iv) such other persons as the parties may from time to time agree.
- (b) **(Delegates):** The persons referred to in clauses 6.6(a)(i), 6.6(a)(ii) and 6.6(a)(iii) may appoint delegates to attend Senior Project Group meetings in their absence.
- (c) **(Objectives):** The objectives of the Senior Project Group are to:
 - (i) monitor the overall progress of the Projects;
 - (ii) assist with the resolution of any matters referred to the Senior Project Group by a party; and
 - (iii) review progress reports provided by the PPP Cos in accordance with the Documentation Schedule.
- (d) **(Frequency of meetings):** The Senior Project Group will meet monthly before the Date of Close-Out and at times requested by either party after that.
- (e) **(Administration):** The State will convene and chair meetings of the Senior Project Group and will take the minutes of all meetings and distribute the minutes to the members of the Senior Project Group.
- (f) **(The State may require certain representatives to attend):** At the State's request, the PPP Cos must procure the attendance of representatives of the Independent Verifier, the D&C Contractor, the O&M Contractor and/or the Debt Financiers at meetings of the Senior Project Group as observers. The State is also entitled to have a representative of the State or any Authority attend meetings as observers.

- (g) **(The PPP Cos may bring certain representatives):** The PPP Cos are entitled to have a representative of the D&C Contractor and/or the O&M Contractor attend any meeting of the Senior Project Group as an observer.
- (h) **(No legal responsibilities or powers):** The Senior Project Group will have no legal responsibilities. Nothing which occurs during a meeting of the Senior Project Group will:
 - (i) relieve a PPP Co from, or alter or affect, a PPP Co's liabilities or responsibilities whether under the State Project Documents or otherwise according to law;
 - (ii) prejudice the State's rights against a PPP Co whether under the State Project Documents or otherwise according to law; or
 - (iii) be construed as a direction by the State to do or not to do anything.

12.3 Progress reports

Without limiting each PPP Co's other reporting obligations under this deed, the PPP Cos must give the State and the Independent Verifier monthly reports on the D&C Activities in accordance with the Documentation Schedule.

38.2 Cost to complete information

Each PPP Co must give to the State the same information required to be given to any Debt Financier under the Debt Financing Documents in relation to the costs to complete construction of the Project Works, at such times as are required under the Debt Financing Documents, and must ensure that each other Group Member does likewise.

38.3 Financial statements

- (a) **(Consolidated audited financial statements):** Not later than 30 September in each year, each PPP Co must give to the State certified copies of its unconsolidated audited financial statements for the previous Financial Year and the audited financial statements for the previous Financial Year of any consolidated entity (within the meaning of the Corporations Act) of which a PPP Co forms part, and must ensure that each other Group Member does likewise.
- (b) **(Cashflow and profit and loss statements):** Not later than 30 days after the end of each Quarter, each PPP Co must give to the State certified copies of cashflow and profit & loss statements, and must ensure that each other Group Member does likewise.

38.4 Model information

- (a) **(Annual printouts):** Not later than 30 September in each year, the PPP Cos must give to the State certified copies of:
 - (i) a printout of the Financial Model (and an electronic copy on which the Financial Model is encoded) updated in accordance with clause 37.2 showing the actual performance of the Group in the previous Financial Year and cumulatively since the date of Financial Close, and the then current performance projections for the remaining years of the Concession Period (assuming no, or no further, extension);
 - (ii) a statement in such detail as the State may reasonably require reconciling the information in the printout and the electronic copy with the audited financial statements of the PPP Cos for the same period and the Base Case Financial Model; and
 - (iii) a statement in such detail as the State may reasonably require reconciling the information in the printout and the electronic copy of the Financial Model provided under clause 38.4(a)(i) with any financial information or Financial Model information provided for, or utilised for the purposes of, the Debt Financing Documents.
- (b) **(Form of information):** Without limiting clause 38.4(a), the PPP Cos must ensure that the State is provided with such results from the operation of the Financial Model, in a form and substance reasonably satisfactory to the State, as and when reasonably requested by the State.

- (c) **(No duty to review):** The PPP Cos acknowledge that:
 - (i) the State owes no duty to a PPP Co to review the Financial Model; and
 - (ii) no review of Financial Model will in any way:
 - A. indicate the State's acceptance of Financial Model for the purposes of this deed; or
 - B. otherwise affect either party's rights and obligations under this deed.

Schedule 1 (Conditions Precedent)

7. Base Case Financial Model

The State receiving:

- (a) a printout and electronic copy of the Base Case Financial Model with the print out initialled for identification by the legal advisers of each party;
- ...
- (c) An audit report on the Base Case Financial Model in a form and substance acceptable to the State and addressed to the State by an auditor acceptable to the State.

Annexure 9, Part 1, Attachment 2

1.1.1 PROGRESS REPORTS ON THE D&C ACTIVITIES

- (a) From the date of Financial Close to the Date of Tolling System Completion, PPP Co must provide:
 - (i) monthly progress reports for the AL Works;
 - (ii) monthly progress reports for the NB Works;
 - (iii) a monthly executive summary report of the Project Works; and
 - (iv) the monthly updated D&C Program;to the State ... by the fifth Business Day of each month and in the format required by the State.
- (b) Without limiting the requirements of section 1.1(a) above, from the date of Financial Close to the Date of EWAG Practical Completion, PPP Co must provide monthly progress reports for the EWAG Works to the State ... and the Independent Verifier ... by the fifth Business Day of each month and in the format required by the State.

APPENDIX C

Relevant clauses of the Agreement

2.14 Access to records

To the extent permitted by law and subject to any probity protocols developed for the Projects, CNI will provide the State and any of its representatives with unfettered access to inspect all books, records and documents of CNI upon reasonable notice and will provide copies of any such books, records and documents at CNI's cost upon request by the State.

9.1 Intellectual Property

In the event that:

- i. CNI has Intellectual Property Rights, in respect of the Projects including the rights in any original works created for the purposes of the Projects; and
- ii. the State requires CNI to assign or otherwise authorise the use of Intellectual Property Rights created for the purpose of the Projects,

CNI will assign or otherwise authorise the use of such Intellectual Property Rights to such party and in such manner as may be directed by the State. CNI shall do all acts and execute all instruments necessary to effect the assignment or authorisation of use, required by the State.

9.2 Transfer of other rights in relation to the Projects

In the event that:

- (a) CNI has acquired any other rights, property or entitlements which do not fall within the scope of clause 9.1 for the purposes of the Projects; and
- (b) the State requires CNI to assign, or otherwise give the State the benefit of, any such rights, property or entitlements,

CNI will assign or otherwise give the State the benefit of any such rights, property or entitlements and in such manner as may be directed by the State. CNI shall do all acts and execute all instruments necessary to effect the assignment or giving of the benefit, required by the State.