Disclaimer: This is not legal advice and independent legal advice should be sought.

Beaches Link Project EIS SSI - 8862

Objection Based on Beaches Link's impact on children - Consideration of Article 24 of the Convention on the Rights of the Child

I object to the Beaches Link Project ("Project") on the basis of its impacts on children.The Project has the potential to be contrary to Article 24 of the Convention on the Rights of the Child, which states that all children are entitled to "the enjoyment of the highest attainable standard of health".

Overview

1. Australia is a party to the Convention on the Rights of the Child (the "Convention"). By ratifying a treaty, a country voluntarily accepts legal obligations under international law.

2. The Beaches Link Project has the potential to be contrary to Article 24 of the Convention. Article 24 states that all children are entitled to "the enjoyment of the highest attainable standard of health". Under Article 24, children are arguably entitled to:
- the right to clean air;
- the right to a clean and healthy environment; and
- the right to a sustainable environment.

See section 1 under Analysis.

3. The Beaches Link Project has the potential to be detrimental to the respiratory health of children, noting:

- children are likely to be exposed to high levels of **construction dust**, at levels significantly exceeding the national maximum limit, based on the WestConnex experience). This dust may include **silica dust**.

- there is a significant risk that children will be exposed to **contamination**, including from **asbestos** and **leachate gas**. Several construction sites have a moderate to high contamination risk and one is located at a legacy landfill site (Flat Rock Reserve) adjacent to Australia's Largest Netball Club, a Baseball Diamond, walking tracks and in a catchment upstream from additional playing fields.

- diesel emissions will increase from additional construction vehicle movements - 900 per day at Flat Rock and 580 per day at Cammeray (in addition to 965 per day for the Western Harbour Tunnel Works).

- there will be an **increase in roadside pollution** from surface traffic, not only before, but **after** construction (in the vicinity of schools and playing fields).

- "safe" levels of particulate particles (PM 2.5 and PM 10) are already high, and the Beaches Link and related projects will be see them exceeded.

- the combined Western Harbour Tunnel/Beaches Link projects will create an increase of CO 8.4%, NOx 6.5%, PM10 7.1% and PM2.5 7.1% across the project ten years after opening (2037).

See section 2.1 and 3.2 under Analysis.

Other impacts on children include:

- loss of green spaces (20.9 Ha) and poorer quality ovals and green spaces (from noise exceedances, dust risks and access issues during construction)
- the restriction on use of the harbour recreationally (for swimming and sailing)
- noise at a level disturbing sleep and affecting mental health
- a significant increase in GHG emissions (a form of air pollution) and a contributor to climate change

In addition to the ongoing impacts on clean air affecting school children, there will be additional intergenerational impacts because of:

- significant biodiversity loss/impacts.

- Sydney Harbour, a public asset of national and heritage significance, will be impacted and has the potential to be contaminated through the use of immersed tubes for the harbour crossing which requires dredging of the harbour (displacing the contaminants which have been identified). Transport NSW previously **rejected** the use of immersed tubes as a harbour crossing for the Sydney Metro in 2016 because of environmental impacts.

See section 2.2 under Analysis.

4. The Beaches Link Project will involve construction over a 5 year period. However, the Beaches Link Project will overlap with, and continue, after the Western Harbour Tunnel and Warringah Freeway Projects. The **cumulative impacts** must be considered when assessing if there is a breach of the Convention. Schools in Cammeray (3), Neutral Bay (2) and North Sydney (4) will be impacted by construction activities for at least 7-8 years.

5. There is no express legislative intention to exclude the rights of children under the planning rules or under the SEARS.

6. The EP&A Act requires a consideration of the **social impacts** of the Project. Social impacts includes **changes in health and wellbeing** and negative social impacts include the **increase in dust and noise impacts affecting community health, surroundings and wellbeing**: see section 1.4(a) under Analysis.

7. EP& A Act is broad enough to require the Minister to consider the impacts of the Project on the health and well being of children and Article 24 of the Convention: see section 1.5 under Analysis.

8. The potential infringement of Article 24 of the Convention is not reasonable as there is a public transport alternative which has not been considered by Transport NSW eg a rail link between DeeWhy and Chatswood.

9. There are currently no effective mitigation measures proposed to deal with dust suppression or contamination: see section 3 under Analysis.

10. The Premier, Transport NSW and the DPIE have been presented with submissions from numerous health organisations and medical experts concerning the risk of serious and irreversible harm to young people resulting from the Beaches Harbour Tunnel, the related Western Harbour Tunnel and other similar infrastructure projects. Accordingly, under the precautionary principle, this Project should not be allowed to proceed until there is an epistemological study to show children's health would not be affected: see section 4 under Analysis.

11. The consultation and decision making procedure on its own has the potential to amount to a breach of Article 24. In particular, the Proponent's request to properly scope and identify risks to the environment and health, and then determine mitigation measures to deal with those risks, **after** the Project is approved is contrary to Article 24: see section 5 under Analysis.

12. Before the Project is approved, the DPIE should:

(1) consider the public transport alternative;

(2) require the Proponent to identify in sufficient detail:

- the risks of, and extent of, contamination after a Stage 2 Investigation
- the mitigation measures it proposes to deal with dust suppression, and contamination as identified in the Stage 2 Investigation
- the risks of subsidence from groundwater drawdown of more than 20 metres (to determine the likely number of properties which will be impacted in Northbridge and Willoughby area)
- the risks of harm to trees and vegetation from groundwater drawdown
- a full study of the biodiversity impacts and consultation with Industry groups to identify mitigation measures to minimise harm to flora and fauna

- full baseline data on water, groundwater, soil and sediments (eg in the harbour, at the tip, in creeks and boreholes).

(3) re-advertise the EIS so the public have a right to comment on these properly scoped risks and proposed mitigation measures.

(4) at the very minimum, modify the Project to:
- provide for filters on ventilation stacks
- not permit spoil to be stockpiled outside acoustic sheds at any time
- move the dive site at Flat Rock Gully away from children, and especially out of the Long Bay Catchment area (ie Bicentennial Reserve/ Flat Rock Reserve and Gully), due to the high level contamination risks and proximity to children's activities.
- not permit contaminated spoil to be retained on the construction site - it should be immediately taken away after excavation
- require real time dust monitors at construction sites, as well as at schools and playing fields in close proximity to construction sites
- require **real time silica dust monitors** in and outside acoustic sheds on construction sites and at schools and on playing fields in close proximity to construction sites. The commencement of works on the Beaches Link (and the Western Harbour Tunnel) should be delayed until such monitors are available
- re-assess the need for an immersed tube design due to the need to dredge (and if still relevant) require full length silt curtains anchored to the sea floor to prevent the spread of contaminants in the Harbour and Middle Harbour.

(5) The Conditions of Approval should require that contractors/private entities engaged to carry out construction activities that may cause material harm to the environment pay a **security deposit**, and take out a **pollution legal liability policy**. This is to ensure that there will sufficient funds available to pay for the remediation of pollution or contamination incidents eg pollution or contamination of Sydney Harbour whilst dredging, and to rehabilitate the land after construction finishes.

(6) There is the potential that failure to approve a Project that reduces, rather than increases, GHG emissions amounts to a breach of human rights. Accordingly, the DPIE should consider a public transport alternative that would reduce GHG emissions: section 6 below under Analysis.

(7) The DPIE should follow the other recommendations in section 5 -7 below under Analysis.

Disclaimer: This is not legal advice and independent legal advice should be sought.

Analysis

1 The Project in its current form has the potential to be contrary to Article 24 of the Convention on the Rights of the Child

1.1 Background

Australia is a party to the Convention on the Rights of the Child ("Convention"). By ratifying the treaty, a country voluntarily accepts legal obligations under international law.

The Australian Government has stated that:

> "The Australian Government is committed to protecting and promoting traditional rights and freedoms, including freedom of speech, opinion, religion, association and movement. These rights and freedoms are protected by **the common law principle that legislation should not infringe fundamental rights and freedoms unless the legislation expresses a clear intention to do so and the infringement is reasonable" :**https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-protections**.**

The NSW Parliament's website states:

> The UN Convention on the Rights of the Child sets out children's human rights. This includes children's civil and political rights as well as their economic, social and cultural rights. The Convention is not part of the law in Australia but complaints can be made to the Human Rights and Equal Opportunities Commission about breaches of the Convention by the Federal Government. **The Federal Government has a duty under international law to implement the Convention and to ensure that the States and Territories also implement it.** The UN Committee on the Rights of the Child monitors Australia's compliance with the Convention.

https://www.parliament.nsw.gov.au/researchpapers/Pages/childrens-rights-in-nsw.aspx

1.2 Article 24 Convention on the Rights of the Child

Article 24 of the Convention states that all children are entitled to "the enjoyment of the highest attainable standard of health".

The Australian Human Rights Commission has confirmed that "in order for children to be healthy, they need access to **clean air**": https://humanrights.gov.au/about/news/every-childs-right-good-health-focus-2019-national-childrens-week

Article 24 is broad enough to to include the right to a **healthy and clean environment** and the right to a **sustainable environment**.

1.3 Government Decision Making

Australia's commitment to the Convention gives rise to a legitimate expectation that Governments will take into account the best interests of children in making key public policy decisions that will affect children; and in this case that the NSW Government will take their best interests into account in deciding whether, and how to, approve the Beaches Link Project. A failure to do so would be a breach of our obligations under international law.

1.4 SEARS and Part 3 of Schedule 2 to the Environmental Planning and Assessment Regulation 2000

There is no express legislative intention to exclude the rights of children.

Indeed, to the contrary:

(a) EP&A Act requires a consideration of social impacts of the Project

The Environmental Planning and Assessment Act 1979 requires **social impacts** to be assessed and considered as part of the overall environmental impact assessment of all State significant projects.

The objectives of the EP&A Act include:
- to promote the **social and economic welfare** of the community and a better environment by the proper management, development and conservation of the State's natural and other resources
- to facilitate **ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making** about environmental planning and assessment: see section 1.3.

Cases and draft DPIE Social Assessment Guidelines for State significant projects recognise that:

- **social impacts** include **changes to people's health and wellbeing**, including physical and mental health, as well as **changes to overall public health**.

- **negative social impacts** include the **increase in dust and noise impacts affecting community health, surroundings and wellbeing**.

https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/00+-+Planning+Portal+Exhibitions/SIA/SIA+Publication+for+Publication+Online+20201022.pdf

See also *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7

(b) Principles of ESD must be addressed

In justifying the Project, the Proponent must address the principles of **ecological sustainable developmen**t (EDS): see requirements of the EIS in Part 3 of Schedule 2 to the Environmental Planning and Assessment Regulation 2000; SEARS requirement 1. ESD principles include:

- **intergenerational equity** - namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

- the **precautionary principle** - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
  (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
  (ii) an assessment of the risk-weighted consequences of various options.

- **conservation of biological diversity and ecological integrity** - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

See clause 7(4), Part 3, Schedule 2 to the Environmental Planning and Assessment Regulation 2000.

(c) Regard must be had to the public interest

In particular, where multiple reasonable and feasible options to avoid or minimise impacts are available, they must be identified and considered and the proposed measure justified taking into account the public interest: see SEARS requirement 3(3)

1.5 EP& A Act is broad enough to be interpreted to require the Minister to consider Article 24 of the Convention

Mason CJ and Deane J in Teoh's case noted that:

> "If the language of the legislation is susceptible of a construction which is consistent with the terms of the international instrument and the obligations which it imposes on Australia, then that construction should prevail."

The references to “social impact” and “”social welfare” in the EP &A Act are broad enough to include the health and well being of children. A Court could therefore adopt a construction of the EPA & Act that at least requires the Minister to consider children’s rights under Article 24 of the Convention as part of the mandatory relevant consideration of “social impacts” under the EPA & Act, in order to uphold Australia’s obligations under the Convention.

The principles of ESD permit a consideration of how the Project will affect future generations of children.

2 Impacts on children

The Project has the potential to be contrary to the children’s right to the highest attainable standard of health, including the right clean air, under Article 24 of the Convention.

2.1 Respiratory health

The Beaches Link Project has the potential to be detrimental to the **respiratory health** of children, noting:

- children living, attending schools, or using playing fields, in close proximity to construction sites are likely to suffer from exposure to **high levels of dust pollution (including silica dust).** This is based on the WestConnex Project and the findings of the NSW Parliamentary Inquiry into the impact of the WestConnex Project: see below.

The land based spoil to be generated by the Beaches Link project is as per the attached:

Table 24-6 Indicative land-based spoil generation

Construction site	Spoil volume (cubic metres)	Spoil composition
Cammeray Golf Course (BL1)	222,000	Sandstone
Flat Rock Drive (BL2)	929,880	Sandstone
Punch Street (BL3)	450,860	Sandstone
Balgowlah Golf Course (BL10)	673,940	Sandstone and soil
Wakehurst Parkway surface works	157,120	Sandstone and soil
Wakehurst Parkway east (BL13)	564,850	Sandstone
Gore Hill Freeway surface works	32,080	Sandstone and soil
Total land-based spoil generation	3,030,730	-

Please note that **construction spoil is permitted to be stockpiled outside** according to the EIS. This is of concern as all construction / dive sites sit in densely populated residential areas and are in, and around, schools and sporting fields. The EIS admits that dust is "difficult to contain".

The EIS states that:

- 4500 cubic metres of spoil from the construction site at the Cammeray Golf Course Site can be stockpiled outside. This is near schools, preschools and playing fields.

- 500 cubic metres of spoil from the site at Flat Rock Gully can be stockpiled outside - again near playing fields and areas used by children.

- All spoil from the tunnelling overnight will be stockpiled until trucks pick the spoil up in the morning.

Construction will take place over 5 years. The Flat Rock Gully site alone will involve the removal of 450 truck loads of spoil per day (with 900 truck movements in total).

- there is a significant risk that children will be exposed to other forms of **harmful dust (including asbestos)** from the excavation of old tip at Flat Rock Gully to be used as a dive point.

The Flat Rock Gully site is of particular concern as it has been confirmed as a legacy landfill with a risk of serious contamination (including asbestos), but a Stage 2 Contamination Investigation is yet to be completed. The dust risk assessment has therefore been done on the basis of "clean" fill presenting a dust issue rather than contaminated. Some of the contaminated spoil at Flat Rock Drive is to kept onsite for 5 years in flood prone areas before being reburied, and there is a significant risk that the dust will be spread by the movement of trucks (as occurred in the WestConnex Project) or by the elements. See also the discussion of contamination below.

- there will be an **increase in roadside pollution** from surface traffic **both before and after** construction (in the vicinity of schools and playing fields).

900 construction vehicle movements per day will be needed at the Flat Rock Gully site and will take spoil up a steep incline adjacent to Australia's largest Netball Club, the Willoughby Leisure Centre and Baseball Diamond - this site is also upstream from Tunks Park where thousands of children play sport. There are serious concerns about diesel pollution flooding the valley.

In Cammeray, there will be 580 construction vehicle movements per day for the Beaches Link, which is in addition to 965 per day for the Western Harbour Tunnel works.

The EIS notes the risk of increased diesel emissions to receiver's health.

- **“safe” levels of particulate particles (PM 2.5 and PM 10) will be exceeded.**

Our background levels already appear high, however, local monitors were not used to establish a baseline. They were installed but the results were disregarded.

The Human Health assessment in the EIS does assess asthma risk based on the known information in the EIS and states that the asthma risk is within a "tolerable" range: see Table 5-28 below. Given the large volume of students coming into the project footprint for school and sport, this is not acceptable. There are around 26 schools in the area, each with 500-1000 children each. The Project’s contribution in terms of health is also predicated on a redistribution of pollution from main roads to highly residential areas and assumes that surface level traffic will decrease - an assertion that has been challenged by both North Sydney and Willoughby Council due to the significant changes to the Warringah Freeway required to add in two tunnel ports and prioritise through traffic.

Table 5-28 **Maximum calculated risks associated with short-term residential exposure changes in $PM_{2.5}$ concentrations: regulatory worst case ‘Do something cumulative 2037" scenario**

Scenario	Maximum change in individual risk for the following short-term health endpoints					
	Cardiovascular hospitalisations (65 years+)	Respiratory hospitalisations (65 years +)	Mortality all causes (all ages)	Mortality cardiovascular (all ages)	Mortality respiratory (all ages)	Asthma ED admissions (1– 14 years)
The project						
Maximum annual risk – expected operations	$5x10^{-5}$	$1x10^{-5}$	$3x10^{-6}$	$9x10^{-7}$	$4x10^{-7}$	$1x10^{-5}$
Increase in risk for 1 day of worst case emissions (24 hours which is highly conservative)	$2x10^{-6}$	$4x10^{-7}$	$9x10^{-8}$	$3x10^{-8}$	$1x10^{-8}$	$4x10^{-7}$
Increase in risk assuming worst case event occurs 1 day each week (52 days per year)*	$9x10^{-5}$	$2x10^{-5}$	$5x10^{-6}$	$1x10^{-6}$	$7x10^{-7}$	$2x10^{-5}$
Maximum annual risk – expected conditions plus worst case event**	$1x10^{-4}$	$3x10^{-5}$	$8x10^{-6}$	$2x10^{-6}$	$1x10^{-6}$	$3x10^{-5}$
Negligible risks	$< 1x10^{-6}$					
Tolerable/acceptable risks	$\geq 1x10^{-6}$ and $\leq 1x10^{-4}$					
Unacceptable risks	$> 1x10^{-4}$					

Cumulative Impacts

The Western Harbour Tunnel was recently approved. The Western Harbour Tunnel connects with the Beaches Link and the cumulative impacts of both Projects must be

considered in relation to Cammeray, Naremburn, Northbridge and Middle Harbour. For example, there are additional truck movements associated with the construction site at Cammeray Oval and unfiltered ventilation stacks.

The "safe" levels of particulate particles (PM 2.5 and PM 10) are already high, and these projects will see them exceeded. By selecting a road-based option along a school corridor and increasing vehicles in an already congested area (the runway to the Harbour Bridge), the government is failing to address, and is exacerbating, the pollution issues. The EIS confirms that the combined WHTBL projects create an increase of CO 8.4%, NOx 6.5%, PM10 7.1% and PM2.5 7.1% across the project ten years after opening (2037).

Letter from Sydney Children Hospital

I attach a letter from Sydney Children's Hospital to the Premier dated 29 November 2018: See Attachment A. This letter discusses the ambient and traffic pollution (including particulate matter (PM2.5)) in affected areas and its likely impact on respiratory health (including asthma). The letter also comments on the high number of high schools, primary schools, preschools, hospitals and nursing homes which are a short distance from the unfiltered ventilation stacks and construction sites at Cammeray.

2.2 Other impacts

The Project also has the potential to be contrary to Article 24 as it will result in:

- loss of green spaces (20.9 Ha) **and** poorer quality ovals and green spaces (from noise exceedances, dust risks and access issues during construction)

- the restriction on use of the harbour recreationally

Sydney Harbour is a public asset and the Project will restrict accessibility to the use of the harbour or the foreshore, contrary to Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. It is likely that the harbour foreshore will not be able to be used recreationally eg for swimming at Northbridge Baths, and the use of the harbour for sailing also will be restricted.

- noise at a level disturbing sleep and affecting mental health

- a significant increase in GHGs (a form of air pollution) and a contributor to climate change

2.3 Intergenerational impacts

In addition to the ongoing impacts on clean air affecting school children, there will be additional intergenerational impacts because of:

- biodiversity loss/impacts

23 vulnerable species will be affected and whole ecosystems in Middle Harbour/ Harbour, Flat Rock Gully and Manly Dam.

- Sydney Harbour, a public asset of national and heritage significance, will be impacted and has the potential to be contaminated through the use of immersed tubes for the harbour crossing (which requires dredging of the harbour, displacing the contaminants).

Transport NSW in the Sydney Metro (Chatswood to Sydenham) Project considered different alternatives to the harbour crossing (including using immersed tubes) and it recommended that the harbour crossing for the Sydney Metro (Chatswood to Sydenham) **should not be by immersed tubes because of the considerable environmental impacts** associated with dredging and cofferdam construction in the harbour: https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSI-7400%2120190227T104311.781%20GMT (page 74)

Sydney' Main Harbour (WHT) and Middle Harbour (BL) will both be dredged. There also is a significant risk that contamination will occur occur due to run off from the legacy landfill site at Flat Rock Gully.

- Urban Heat Island Effect

Hundreds of trees will be removed in, and around, the expressway and another 3000+ will be destroyed for the Beaches Link tunnel. The Warringah Freeway is a very large open area of concrete surrounded by schools, and the removal of trees is likely to have a significant heating effect.

- Loss of Indigenous and Local Heritage at 11 sites

There are 11 sites assessed as potentially suffering damage as a result of this Project. These areas are rich in local history, and it is important to retain these sites intact as much has already been lost to urban development.

The Project has the potential to expose known and unknown terrestrial and submerged Aboriginal sites to damage or destruction.

- Future generations of children will be locked into toll roads

Sydney has the the largest and most extensive toll road system in the world. Our children in the future will be dependent on using cars, because of the lack of an effective public transport alternative, which in the short to medium term will be a significant contributor to GHG emissions.

3 No effective mitigation measures

There are currently no effective mitigation measures to deal with:

3.1 Dust suppression

(a) WestConnex Project - findings of Parliamentary Inquiry relevant to respiratory health

This Project is similar to the WestConnex project which was subject to a NSW Parliamentary Inquiry: https://www.parliament.nsw.gov.au/lcdocs/inquiries/2497/Final%20report%20-%20Impact%20of%20the%20WestConnex%20Project%20-%20FINAL%20-%2014%20December%202018.pdf

The Final Report of the WestConnex Project Inquiry noted the following:

- high levels of particulate matter recorded in 2017 and 2018 by St Peters Public School's air quality monitoring station: see para 4.60.

- residents who live or work near WestConnex construction sites reported health impacts such as first-time diagnoses of asthma among children, worsening asthma or other respiratory symptoms, conjunctivitis and skin irritations since construction began. The view was put forward that these diagnoses were 'all consistent with exposure to airborne pollutants': see para 4.61.

- Dr Sarina Kilham noted that there was anecdotal evidence of 'children having more frequent asthma attacks, of children who did not previously have asthma starting to have asthma ... [and] children being diagnosed with dust allergies' which was associated with the WestConnex construction: see para 4.62.

- a dust storm in April 2018:

> 'On 9 April 2018, during school pick-up, the Haberfield Public School community were confronted by 'strong winds carr[ying] copious amounts of dust' with parents reporting that the dust 'was so extreme they needed goggles and face masks to deal with the pollution. Many locals attest to seeing the dust blowing off the construction sites'.
>
> At the peak of the dust storm the air quality monitoring station at the school recorded particulate matter (airborne particles) eight times higher than the recommended air quality target' : see para 4.101.

- numerous safety breaches. The CFMMEU expressed concerns about the safety of WestConnex construction sites, in particular, the level of dust emanating from work sites and an apparent lack of steps to ameliorate this risk:

'The CFMMEU along with community groups have made representations to the principal contractors and SafeWork NSW about the amount of silica dust being produced on the project, the effect this dust has on workers and the surrounding community, and the lack of attention given to minimizing the risk.': see para 4.93.

The Inquiry recommended a a review of safety measures.

(b) Complaints to EPA and SafeWork NSW

EPA informed the NSW Parliamentary Inquiry into the Impact of the WestConnex Project that it had received 120 dust complaints: https://www.parliament.nsw.gov.au/lcdocs/other/14178/AQON%20-%20Attachment%20A%20-%20EPA.pdf.

In addition, SafeNSW received numerous complaints about the amount of silica dust being produced on the Project, as confirmed by the CFMMEU's submission to the WestConnex Parliamentary Inquiry. See also https://www.theaustralian.com.au/breaking-news/westconnex-and-northconnex-workers-risked-exposure-to-dangerous-dust/news-story/34a0496c331ad2ea141ce5717ded960f.

(c) Recent experience

Dust measures still exceed national limits on the WestConnex Project (even after a review of safety measures following the WestConnex Inquiry). https://www.westconnex.com.au/media/jnulr4gw/m4m5-lsbj-prw-en-ge01-rpt-0044-01-ndifi.pdf see section 5.4 on final page of Report. Depositional dust exceedances are assessed against the annual maximum level of 4 g/m2/month. During the reporting period 28 November 2019 – 27 May 2020, the Construction Compliance Report: M4-M5 Link Mainline Tunnels, states there were 22 monthly dust results greater than 4 g/m2. At one location, there were exceedances which were three times the maximum limit (at Campbell Road). This was attributable to the **high generation of dust from sandstone stockpiles** within the adjacent New M5 site.

Please note these dust exceedances occurred even though it was stated the sites followed the dust mitigation measures proposed to be followed in the EIS. This shows that in practice, construction dust is difficult to contain, and breaches of dust mitigation measures are likely to occur, putting children's health at risk (as well as the health of the wider community).

(d) State initiatives to control silica dust in tunnelling

There has been a material increase in silica cases since 2017, and cases include workers on tunnelling projects. The NSW government is concerned that exposure to silica dust could pose even more serious risks to respiratory health than asbestos.

As a result, SafeWork NSW has:
- identified respirable crystalline silica as a priority chemical for the elimination and reduction of exposures to silica dust in the workplace; and
- launched a Dust Strategy Campaign 2020-2022

According to SafeWork NSW:

- it is estimated that one in every 100 workers exposed to silica dust will develop disease due to past exposures where the safety measures were not adequate.
- exposure to silica dust can lead to lung cancer, silicosis (which is an irreversible scarring and stiffening of the lungs), kidney disease and increase the risk of chronic obstructive pulmonary disease (such as emphysema).
- it is possible to breathe silica dust in without knowing it as it is more than 100 times smaller than a grain of sand

https://www.safework.nsw.gov.au/__data/assets/pdf_file/0004/923431/NSW-Dust-Strategy-2020-2022.pdf
https://www.safework.nsw.gov.au/__data/assets/pdf_file/0003/386445/Construction-sector-plan.pdf
https://youtu.be/cpaLhmoy1tg

3.2 Contamination

(a) Handling of contaminated spoil at Flat Rock Gully

At Flat Rock Gully, approximately 10,000 cubic metres of contaminated spoil is to be excavated from the landfill site of the old tip. This is required to build a dive point for the excavation of the tunnel and the acoustic shed, and this spoil includes **asbestos**. This site is opposite the Baseball Diamond (where baseball, netball and other sports are played and next to walking tracks through Flat Rock Reserve).

Some of the contaminated spoil will remain on site outside for 5 years in flood prone areas. I understand that some of the spoil will be encapsulated (I am not sure when), but before it is encapsulated, the spoil will be treated as detailed below.

Transport NSW has confirmed by email that:

- Excavated contaminated soil may be temporarily stockpiled or stored onsite before being removed to a licensed disposal location or before being encapsulated onsite.

- For spoil that is on site, but not encapsulated, depending on the contaminants found, measures to prevent impacts to non-contaminated soil and watercourses and also to mitigate health impacts to the community and workforce include:
· Contaminated stockpiles are to be covered at all times

· Weather events will be tracked to ensure stockpiles can be covered in time prior to rain or high wind events to prevent erosion or wind-blown dust
· Contaminated stockpiles are to be bundled with clean soil to prevent runoff
· Placing compacted clean soil to stabilise the site.

These measures have the potential to be inadequate to deal with contaminated spoil from excavation before its encapsulation as:

- there is the risk that spoil could spread when high winds blow suddenly and before the spoil can be covered.
- there also is the risk that covered stockpiles could spread contaminants if this area floods - this is an identified flood prone area: see 1995 Flat Rock Gully Plan of Management.
- placing compacted clean soil to stabilise the site will not stop groundwater in the spoil from leaching.

Leachate Gas

A risk of leachate gas release has been identified but not yet fully tested. Risks at the tip site are vastly under assessed. Gas was released at the St Peter's landfill site during the construction of WestConnex and had a detrimental impact on residents' health.

Given the Flat Rock site is in a valley, this may compound the health risk associated particularly for children who have asthma.

(b) Contamination of Sydney Harbour

In relation to the Western Harbour Tunnel which also poses contamination risks from the use of immersed tubes for the harbour crossing), NSW Australian Marine Sciences Association stated that shallow silt curtains will not be effective at full containment of contaminated resuspended sediments. **Full length silt curtains anchored to the sea floor** are needed: https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SUB-9777%2120200330T061320.656%20GMT. This has been confirmed by the Sydney Coastal Council in their submission on the Beaches Link: https://www.sydneycoastalcouncils.com.au/wp-content/uploads/2021/03/SCCG-Submission.pdf

Both submissions raised the issue of other contaminants being spread eg microplastics.

3.3 There are no filters on ventilation stacks

There are no filters for the four ventilation stacks in close vicinity to schools.

This is despite the Parliamentary Inquiry into the WestConnex project recommending " that the NSW Government install, on all current and future motorway tunnels,

filtration systems in order to reduce the level of pollutants emitted from ventilation stacks."

4 Precautionary Principle

The Premier, Transport NSW and the DPIE have been presented with submissions from numerous health organisations and experts concerning the risk of serious and irreversible harm to young people resulting from the Beaches Harbour Tunnel, the related Western Harbour Tunnel and other similar infrastructure projects.

Recommendation

Accordingly, under the precautionary principle, this Project should not be allowed to proceed until there is an epistemological study to show children's health will not be affected.
See letter from Sydney Children's Hospital attached below.

See presentation from Dr Nassar provided to the WestConnex Parliamentary Inquiry: https://www.parliament.nsw.gov.au/lcdocs/submissions/61864/0210 Dr Raymond Nassar.pdf

5 The consultation and approval procedure is contrary to Article 24

A UN Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment has suggested the following are needed for rights to be effective:

- States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request (Principle 7)

- To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the **prior assessment of the possible environmental impacts** of proposed projects and policies, including their potential effects on the enjoyment of human rights (Principle 8)

- States should provide for and facilitate **public participation** in decision-making related to the environment, and take the views of the public into account in the decision-making process (Principle 9)

- States should provide for access to **effective remedies** for violations of human rights and domestic laws relating to the environment (Principle 10)

- States should ensure the **effective enforcement** of their environmental standards against public and private actors (Principle 12)

The Report can be found at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/002/54/PDF/G1900254.pdf?OpenElement

The Framework Principles on Human Rights and the Environment can be found at https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx

Schools and sports fields should be given access information on air quality (and when available, silica dust particles) on a timely and effective manner

Recommendations

There should be real time alert style air quality monitoring during construction, as well as on a **ongoing basis.** The monitors need to be in the most highly impacted schools and sports fields (which is not provided for under the EIS).

There should also be real time alert style **silica dust monitors** in the same locations from December 2021, when they become available: https://www.safework.nsw.gov.au/news/safework-media-releases/world-first-real-time-silica-detector-helps-clear-the-air.

Construction on the Western Harbour Tunnel and the Beaches Link should be delayed until these real time silica dust monitors become available (to ensure that children are protected).

There has not been effective public participation in decision making

Recommendations

In this regard:

- the EIS should be re-advertised once a Stage 2 Contamination Investigation is completed and mitigation measures identified to deal with those risks, so that the Community can have an effective right of consultation.

- Steps to monitor and suppress dust should be outlined in detail with an opportunity for the community to comment. Ideally this should be before the Project is approved or prior to approval of relevant plans.

- Environmental experts and groups should be consulted on whether the mitigation measures proposed to deal with biodiversity impacts are effective. Ideally this should be before the Project is approved or prior to approval of the relevant plans.

There needs to be proper <u>prior</u> assessment of possible environmental impacts.

This can only be done by having the risks with the Project properly identified **<u>before</u>** approval of the Project. The Proponent's request to properly scope and identify risks to the environment and health after the Project is approved undermines an effective right to clean air and a healthy environment.

Recommendations

Before the Project is approved, the Proponent should identify in sufficient detail:
- the risks of, and extent of, contamination after a Stage 2 Investigation
- the mitigation measures it proposes to deal with dust suppression, and contamination as identified in the Stage 2 Investigation
- the risks of subsidence from groundwater drawdown of more than 20 metres (to determine the likely number of properties which will be impacted in the Northbridge and Willoughby area)
- the risks of harm to trees and vegetation from groundwater drawdown. The impacts on trees are much greater than stated in the EIS.
- a full study of the biodiversity impacts and consultation with Industry groups to identify mitigation measures to minimise harm to flora and fauna
- full baseline data on water, groundwater, soil and sediments (eg in the harbour, at the tip, in creeks and boreholes) so there is a reference point against which to assess harm to the environment.

There are currently no effective remedies for violations of human rights and domestic laws relating to the environment

Recommendations

The Conditions of Approval should require that contractors/private entities engaged to carry out construction activities that may cause material harm to the environment pay a **security deposit**, and take out a **pollution legal liability policy**. This is to ensure that there will sufficient funds available to pay for the remediation of pollution or contamination incidents eg pollution or contamination of Sydney Harbour whilst dredging, and to rehabilitate the land after construction finishes.

6 There is the potential that failure to approve a Project that reduces, rather than increases, GHG emissions amounts to a breach of human rights

UN High Commission for Human Rights states "governments have binding legal obligations, based on international human rights law, to undertake **strong reductions in emissions of greenhouse gases**".

Land and Environment Court

Preston CJ's comments in respect of a coal mine in the *Gloucester* decision are applicable to this Project, in particular, that:

> "Approval of the Project will not assist in achieving the **rapid and deep reductions in GHG emissions that are needed now** in order to balance emissions by sources with removals by sinks of GHGs in the second half of this century and achieve the generally agreed goal of limiting the increase in global average temperature to well below 2ºC above pre-industrial levels": para 697; and
>
> The Project was at the "**wrong time** because the GHG emissions of the [Project} will increase global total concentrations of GHGs at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions: para 699.

Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7

Other decisions world world wide

The Netherlands' highest court upheld an earlier decision by the appellate court in *Urgenda Foundation* v. *Netherlands* that insufficient action to address climate change posed a "risk of irreversible changes to the worldwide ecosystems and liveability of our planet" and a "serious risk that the **current generation of citizens will be confronted with loss of life and/or a disruption of family life…** that the State has a duty to protect against".

The decision confirms that the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human rights law, to undertake **strong reductions** in emissions of greenhouse gases.

Recommendations

DPIE should only consider a Project which would decrease GHG emissions. The DPIE should give proper consideration to alternatives to the Project, such as a public transport rail link between Dee Why to Chatswood. This would be preferable as it would not only reduce greenhouse gas emissions and have less harmful environmental impacts, but it would be easier to fund - this is because it presents less risks to investors who now must consider the Project's environmental impacts/impacts on climate change as part of their Environmental, Social, and Governance (ESG) responsibilities.

The DPIE should not consider approving road toll projects unless and until there has been a transition to electric cars, which are powered from renewable sources (assuming there are no other social or environmental impacts).

7 Urgent Action

As noted above, EP& A Act is broad enough to to require the Minister to consider children's rights under Article 24 of the Convention as part of the mandatory relevant consideration of "social impacts" under the EP&A Act, in order to uphold Australia's obligations under the Convention.

The Convention also gives rise to a legitimate expectation that the Minister must take into account the best interests of children in making a decision to approve the Beaches Link Project.

Similarly, the Minister should have taken the best interests of children into account in making its decision to approve the Western Harbour Tunnel.

7.1 Recommendations

(a) The DPIE should not approve a Project unless and until he considers the impacts of the Project on the health and wellbeing of children who go to schools, live and use playing fields/parks in close location to constructions sites and ventilation stacks. This is a mandatory relevant consideration being a social impact.

(b) The DPIE should not approve a Project which has the potential to contravene:

- Article 24 of the Convention
- human rights by increasing GHG emissions.

(c) The Minister should not approve the Project until:

- there is an independent review of the impact on the health of children and residents of short term and ongoing exposures to silica dust, and repeated exposures to other construction dust
- A occupational health and safety expert, preferably with expertise in tunnelling, has reviewed the adequacy of the dust suppression measures.

(d) The Beaches Link will not proceed without the Western Harbour Tunnel. The Minister should also not approve the Beaches Link until the expiry of:

- the statutory time frame for bringing judicial review proceedings brought in respect of the Western Harbour Tunnel; and
- any judicial review proceedings brought in respect of the Western Harbour Tunnel.

7.2 Recommendations in respect of the Western Harbour Tunnel

(a) The Minister should not allow work to commence on the Western Harbour Tunnel until the expiry of:

- the statutory time frame for bringing judicial review proceedings brought in respect of the Western Harbour Tunnel; and
- any judicial review proceedings brought in respect of the Western Harbour Tunnel.

(b) Construction work on the Western Harbour Tunnel should not begin until there is a review of the dust suppression measures and contamination measures and the DPIE has received expert advice on the impact on the health of children and residents of short term and ongoing exposures to silica dust (and repeated exposures to other construction dust).

Diane Staats

Disclaimer: This is not legal advice and independent legal advice should be sought.