



# Premier & Cabinet

Ms Lynn Lovelock  
Clerk of the Parliaments  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

Dear Ms Lovelock

## **Request for Papers – Building Australia Fund.**

I refer to the Resolution of the Legislative Council under Standing Order 52 made on 9 June 2010 concerning submissions to Infrastructure Australia for funding from the Building Australia Fund.

I am now delivering to you documents referred to in that Resolution.

The documents have been obtained from the Office of the Premier the Department of Premier and Cabinet (the "Department").

In addition to the documents being delivered today, the Department has identified that it also holds further relevant documents that it has not been able to produce within the required time period. I am advised that these documents comprise supporting material to the relevant submissions and that they may amount to thousands of pages. Those documents will be produced as soon as possible and I would anticipate by Friday, 9 July 2010.

Subject to the above, I certify that to the best of my knowledge all documents held by the Department and covered by the terms of the Resolution have been provided.

Enclosed at **Annexure A** is a certification letter from the Chief of Staff to the Premier indicating that, to the best of his knowledge, all documents held and covered by the terms of the Resolution have been provided.

Enclosed at **Annexure B** are indexes of all non-privileged documents that have been provided in response to the Resolution.

In accordance with Item 5(a) of Standing Order 52, those documents for which a claim for privilege has been made have been separately indexed and the case for privilege has been noted. Enclosed at **Annexure C** is the index of privileged documents that have been provided in response to the Resolution and a submission setting out the case for privilege.

I note that submissions in support of a claim of privilege may sometimes reveal information that is privileged. To the extent that they do, such submissions should be considered to be subject to the same confidentiality as the documents over which the privilege claim is made.

Should you require any clarification or further assistance please do not hesitate to contact Ms Rachel McCallum, Acting Executive Director, Legal Branch on (02) 9228 5543.

Yours sincerely

  
Brendan O'Reilly  
Director General

Received at 5.00pm  
Wednesday 30 June 2010  
Lynn Rowlock  
Clerk of the Parliaments  
  
1 box privileged  
1 box non-privileged

*Annexure A*

Mr Paul Miller  
Acting Deputy Director General (General Counsel)  
Department of Premier and Cabinet  
Level 37, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

21 June 2010

**ORDER FOR PAPERS – Building Australia Fund**

Dear Mr Miller

I certify to the best of my knowledge all documents held by the Office of the Premier and covered by the terms of the resolution have been provided.

Yours sincerely



Walter Secord  
Chief of Staff

NSW DEPARTMENT OF PREMIER AND CABINET

NON-PRIVILEGED DOCUMENTS

CALL FOR PAPERS – BUILDING AUSTRALIA FUND

Abbreviations:

DPC – Department of Premier and Cabinet

RTA – Roads and Traffic Authority

Document Number	Document description	Date Created	Author	Privilege Yes/No
<b>A. All submissions for funding from the Building Australia Fund made by the government to Infrastructure Australia in 2008 and 2009 in the possession, custody or control of the Premier or the Department of Premier and Cabinet</b>				
Item (A) 1	Submission by the NSW Government to Infrastructure Australia <ul style="list-style-type: none"> <li>▪ Overview</li> <li>▪ Northern Sydney Rail Freight Corridor</li> <li>▪ Sydney Metro Network Stage 2 (Central-Westmead), (formerly West Metro)</li> <li>▪ South West Rail Link</li> </ul>	30/10/09	Transport and Infrastructure	No
Item (A) 2	(Redacted) Submission by the NSW Government to Infrastructure Australia <ul style="list-style-type: none"> <li>▪ M5 East Motorway Expansion</li> </ul>	30/10/2009	Transport & Infrastructure	No
Item (A) 3	Covering letter and submission (Redacted) on NSW Infrastructure Australia Projects – Metro Rail Projects and Road Projects	13/2/2009	DPC and Sydney Metro	No
Item (A) 4	Covering letter and submission on M5 Motorway Expansion – response to minimum information requirements	20/1/2009	DPC and RTA	No
Item (A) 5	Covering letter and (Redacted) Sydney Metro (CBD Metro and West Metro) – response to minimum information requirements	19/1/2009	DPC and Sydney Metro	No
Item (A) 6	Covering letter and (Redacted) Sydney Metro (CBD Metro and West Metro) – additional information CBD Metro Product Overview Report	16/12/2008	DPC Sydney Metro	No

Annexure B

Document Number	Document description	Date Created	Author	Privilege Yes/No
Item (A) 7	(Redacted) NSW Submission to Infrastructure Australia 1. Supplementary Information: <ul style="list-style-type: none"> <li>▪ CBD Metro</li> <li>▪ West Metro</li> </ul> M5 Expansion	14/11/2008	DPC	No
Item (A) 8	(Redacted) NSW Submission to Infrastructure Australia 1. Completed Submissions: <ul style="list-style-type: none"> <li>▪ M4 Expansion (Stage 1 &amp; 2)</li> <li>▪ Northern Sydney Freight Corridor</li> <li>▪ F3 to M2 Link</li> <li>▪ Pacific Highway Upgrades</li> <li>▪ Princes Highway Upgrades</li> <li>▪ F3 to Branxton</li> <li>▪ Regional Water Reform Initiatives</li> <li>▪ Aboriginal Community Water Initiative</li> </ul> 2. Summary Information: <ul style="list-style-type: none"> <li>▪ CBD Metro</li> <li>▪ West Metro</li> <li>▪ M5 Expansion</li> <li>▪</li> </ul>	31/10/08	DPC	No
Item (A) 9	NSW Submission to Infrastructure Australia – Projects for Further Analysis <ul style="list-style-type: none"> <li>▪ F3 to Branxton Link (Lower Hunter Region NSW)</li> </ul>	6/1/2009	RTA	No
<b>B. Any document which records or refers to the production of documents as a result of this order of the House</b>				
Item (B) 1	Letter from Clerk of the Parliaments to Director General, Department of Premier and Cabinet regarding order and attaching extract from Hansard	9 June 2010	Lynn Lovelock, Clerk of the Parliaments	No
Item (B) 2	Brief to the A/Deputy Director General (General Counsel), Department of Premier and Cabinet regarding the order and attaching memoranda to the Chief of Staff of the Premier and relevant parts of the Department regarding the order.	10 June 2010	DPC	No
Item (B) 3	Memo from DPC DDG (Policy and Strategy)	15 June 2010	DPC	No

<b>Document Number</b>	<b>Document description</b>	<b>Date Created</b>	<b>Author</b>	<b>Privilege Yes/No</b>
Item (B) 4	Letter from the Premier's Chief of Staff.	21 June 2010	Chief of Staff	No
Item (B) 5	Memo from A/DDG, Government Co-ordination	23 June 2010	DPC	No
Item (B) 6	Memo from A/Executive Director, IEEDB	24 June 2010	DPC	No
Item (B) 7	Brief to the Director General, Department of Premier and Cabinet from DPC Legal Branch regarding the production of documents	30 June 2010	DPC	No
Item (B) 8	Email from Table Office regarding the arrangements for the production of documents	30 June 2010	Table Office, Legislative Council	No

**Office of the Premier  
ORDER FOR PAPERS**

Document No.	Item	Document	Date of Creation	Author	Privilege Claim Y/N?
1	That, under standing order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution all submissions for funding from the Building Australia Fund, made by the government to Infrastructure Australia in 2008 and 2009 in the possession, custody or control of the Premier or the Department of Premier and Cabinet, and any document which records or refers to the production of documents as a result of this order of the House.	Letter from Department of Premier and Cabinet to Office of the Premier and Minister for Redfern Waterloo	9 June 2010	Paul Miller, Acting Deputy Director General (General Counsel)	N

## PRIVILEGED DOCUMENTS

## CALL FOR PAPERS – BUILDING AUSTRALIA FUND

## Abbreviations:

DPC – Department of Premier and Cabinet, RTA – Roads and Traffic Authority

Submissions for funding from the Building Australia Fund made by the government to Infrastructure Australia in 2008 and 2009 in the possession, custody or control of the Premier or the Department of Premier and Cabinet

Document Number	Document description	Date Created	Author	Privilege Yes/No
1	Submission by the NSW Government to Infrastructure Australia <ul style="list-style-type: none"> <li>M5 East Motorway Expansion</li> </ul>	30/10/2009	Transport & Infrastructure	Yes
2	Covering letter plus submission on NSW Infrastructure Australia Projects – Metro Rail Projects and Road Projects	13/2/2009	Sydney Metro	Yes
3	Covering letter plus submission on M5 Motorway Expansion – response to minimum information requirements	20/1/2009	RTA	Yes
4	Covering letter plus submission on Sydney Metro (CBD Metro and West Metro) – response to minimum information requirements	19/1/2009	Sydney Metro	Yes
5	Covering letter plus submission on Sydney Metro (CBD Metro and West Metro) – additional information <ul style="list-style-type: none"> <li>CBD Metro Product Overview Report</li> </ul>	16/12/2008	Sydney Metro	Yes
6	NSW Submission to Infrastructure Australia <ol style="list-style-type: none"> <li>Supplementary Information: <ul style="list-style-type: none"> <li>CBD Metro</li> <li>West Metro</li> <li>M5 Expansion</li> </ul> </li> </ol>	14/11/2008	DPC	Yes
7	NSW Submission to Infrastructure Australia <ol style="list-style-type: none"> <li>Completed Submissions: <ul style="list-style-type: none"> <li>M4 Expansion (Stage 1 &amp; 2)</li> <li>Northern Sydney Freight Corridor</li> <li>F3 to M2 Link</li> <li>Pacific Highway Upgrades</li> <li>Princes Highway Upgrades</li> <li>F3 to Branxton</li> <li>Regional Water Reform Initiatives</li> <li>Aboriginal Community Water Initiative</li> </ul> </li> <li>Summary Information: <ul style="list-style-type: none"> <li>CBD Metro</li> <li>West Metro</li> <li>M5 Expansion</li> </ul> </li> </ol>	31/10/08	DPC	Yes

## **Submission in support of claim for privilege**

**by the Department of Premier and Cabinet**

### **Building Australia Fund**

The Department submits that the documents listed in the index of privileged documents are privileged and should not be disclosed.

#### **1. Commercial in Confidence – public interest considerations generally**

Documents 1 to 7 all contain commercially sensitive information regarding the costs and/or economic analysis of several major infrastructure projects proposed by the NSW Government.

The documents reveal how the government determines values for such projects and the release of this information has the potential to jeopardise future infrastructure projects.

The NSW Government's negotiating position, and accordingly the public interest in achieving the greatest value for money in the expenditure of public funds, would be significantly weakened if potential tenderers were to have access to economic and financial information and methodologies contained in these documents.

It would be contrary to the interest of the NSW public in general, and NSW taxpayers specifically, for this information to be released given the negative impact its release would have upon the Government's ability to obtain the best and most efficient outcome for the public in delivering future infrastructure projects.

#### **2. Commercial in Confidence – specific public interest considerations M5 East (Document 1)**

This document would reveal, expressly or by implication, the Roads and Traffic Authority's (RTA's) deliberative processes in relation to the development and assessment of major projects, thereby potentially placing the RTA at a commercial disadvantage.

In particular, it would be contrary to the public interest for the following sections of the submission to be disclosed:

- Demand modelling, assessments and results in relation to future transport drivers in the relevant transport corridor and current constraints to transport demand;
- Economic business case assumptions and impacts, information relating to the projects costs and benefits including base case assumptions
- Finance and funding options including relating to tolling and Public Private Partnerships, which may adversely impact on the competitive

position of the RTA, and the NSW Government, and their respective abilities to deal with the private sector;

- The key assumptions underpinning the demand forecasting and economic modelling in relation to the proposed M5 Expansion;
- The Monetised Cost Benefit Analysis Results in relation to the proposed M5 Expansion including traffic forecasts and demand modelling results.

### **3. Commercial in Confidence – public interest considerations, Sydney Metro**

Although the CBD Metro Rail project has been discontinued there are compensation issues regarding the discontinuation of the project. Release of sensitive commercial information could limit the Governments negotiating position in current and future compensation negotiations.

Also one government's decision not to proceed with a project does not preclude the possibility that a future government may do so. Release of the information would affect a government's commercial negotiating position if this information were to be released.

### **4. Other public interest considerations – redacted versions of the documents**

In order to serve the public interest in the release of government-held information and in the oversight of the Executive Government by the NSW Parliament, it has been practical to redact the commercial in confidence material that is contained within the documents over which a privilege claim is being made.

Redacted version of the documents has been provided in the Department's non-privileged documents.