



16 August 2021

Our ref: 21T-2181

Mr Ted Nye

[Redacted address]

By email: [Redacted email address]

Dear Mr Nye,

Notice of remitted decision on your access application under the Government Information (Public Access) Act 2009 (GIPA Act)

Applicant: [Redacted]

File reference: 21T-2181

Decision maker: Catherine Nguyen

Received date: 13 April 2021

Remitted decision due: 16 August 2021

Date of remitted decision: 16 August 2021

1 Your access application

1.1 On 13 April 2021, Transport for NSW (TfNSW) received your valid access application under the GIPA Act which sought access, relevantly, to the following information:

"... The report(s), working papers and analysis that support the [Environmental Impact Statement] statements which refer to why rail access is dismissed in the BLRT EIS (refer to Page 4-13, para 4, of the EIS for example)..."

1.2 In your access application you indicated a preference for receiving correspondence by email at [Redacted email address]

1.3 The Western Harbour Beaches Link and Gore Hill Freeway Connection (**Beaches Link**) is a major road transport project being undertaken by TfNSW, linking the Northern Beaches with the Warringah Freeway and North Sydney, the inner west via the Western Harbour Tunnel, and Macquarie Park via the Gore Hill Freeway connection.

1.4 As part of that project, the NSW Government has published the Environmental Impact Statement (EIS) as part of the public consultation process, which is publicly available.¹ The

¹ <https://caportal.com.au/rms/bl/documents#eisChapters>

EIS includes analysis about the challenges associated with a rail option to the Northern Beaches, which can be summarised as:

- Physical geography (including topology and established rural areas) presenting challenges
- Large implications for cost and amenity during construction, with a long lead time for development.
- The low density of the Northern Beaches means demand would not be high enough.
- The development of high-speed bus is preferable.
- The complexity of origin and routes to travel to the CBD suggests a road development is preferable.

1.5 The access application essentially seeks any analysis or reports which supports this material in the EIS.

1.6 On 11 May 2021, TfNSW identified the Western Harbour Tunnel and Beaches Link Strategic Business Case 2015 (SBC) as the information within scope and refused access to that information under s. 58(1)(d) of the GIPA Act. That document is a cabinet document. However on further review of this document it has now been determined that it does not, in fact, fall within the scope of information you seek by this access application (see further at [4.14] below).

1.7 On 26 July 2021, the NSW Civil and Administrative Tribunal remitted the decision to TfNSW pursuant to s. 65(1) of the *Administrative Decisions Review Act 1997* (NSW), such decision to be made by 16 August 2021.

1.8 This is the decision made pursuant to that order.

2 Searches for information

2.1 Under the GIPA Act, TfNSW must conduct reasonable searches to locate the government information for which you have applied.

2.2 The following divisions of TfNSW have conducted searches:

- Infrastructure and Place
- Safety, Environment and Regulation
- Customer Strategy & Technology
- Greater Sydney

3 Decision

3.1 I am authorised by the Principal Officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

3.2 I have decided that some of the information:

- is already available to you under section 58(1)(c);
- is not held under section 58(1)(b).

3.3 Please see below a summary of my decision:

Para ref.	Information	Act Ref.	Access
4.21	Land Use Forecast Data	58(1)(c)	Information already available

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4.21	Journey to Work Data	58(1)(c)	Information already available
4.26	No further information held	58(1)(b)	Not applicable

Information already available to you (point 1)

3.4 Under section 59 of the GIPA Act an agency can decide that information is already available to an applicant, if the information is of a kind described in that section. The information listed at [3.3] is publicly available information. As this information can be accessed via the links provided in this decision, section 59(1)(e) of the GIPA Act applies. As such, I have decided under section 58(1)(c) that this information is already available to you.

4 Reasons for Decision

4.1 Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

4.2 Under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

4.3 In reaching the decision that no further information is held, I must consider whether TfNSW has sufficiently conducted a reasonable search under section 53 of the GIPA Act.

4.4 Two issues arise for consideration:

(i) *Are there reasonable grounds to believe that the requested documents exist and are the documents of the agency; and*

(ii) *Have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case?*

(i) ***Are there reasonable grounds to believe that the requested information is held by the Agency?***

4.5 On 1 December 2012, the NSW Government published the NSW Long Term Transport Master Plan (**Master Plan**), which remains publicly available.² It was signed by the Minister for Transport and the Minister for Roads and Ports. That document deals with proposed bus transport to the Northern Beaches and includes the following, without reference to any underlying reports or analysis:

“[Bus Rapid Transit] usually involves very frequent services, exclusive bus roadways and high quality stations and vehicles. BRT can deliver fast travel times when demand is high, but not high enough to make investing in a mass transit such as heavy rail a viable alternative.”

4.6 The Master Plan was updated in 2013 and 2014, both of which remain publicly available.³ That records the following at page 5:

“Released the *Northern Beaches Transport Action Plan*, a \$633 million package of public transport and roads improvements including the \$233 million Northern Beaches kerbside Bus Rapid Transit project. \$25 million was committed in the 2014-15 Budget to commence Bus Rapid Transit development and delivery, including traffic projects for faster and more reliable buses, five new public transport interchanges, modern bus stops and up to 800 commuter car parking spaces. Additional funding was also allocated to

² This document is publicly available: TfNSW, NSW Long Term Transport Master Plan (<https://www.transport.nsw.gov.au/newsroom-and-events/reports-and-publications/nsw-long-term-transport-master-plan>)

³ TfNSW, NSW Long Term Transport Master Plan (<https://www.transport.nsw.gov.au/newsroom-and-events/reports-and-publications/nsw-long-term-transport-master-plan>)

feasibility studies on a motorway tunnel connection between the Northern Beaches and the Warringah Freeway and the CBD.”

- 4.7 The 2014 Update to the Master Plan again records the position that improvements to the Northern Beaches were road and bus improvements. There is no reference to any feasibility studies to be conducted as to rail to the Northern Beaches.
- 4.8 In June 2012, TfNSW released the Northern Beaches Bus Rapid Transit (BRT) Pre-Feasibility Study. That Pre-Feasibility study did not refer to any commissioned analysis regarding rail to the Northern Beaches, and assessed the value of a road connection which connected to rail at North Sydney (see section 3.4, page 13).
- 4.9 Significantly, in 2014 Infrastructure NSW developed its State Infrastructure Strategy (SIS) which is also publicly available.⁴ Infrastructure NSW is a NSW government agency which is responsible to the Premier, and provides advice to Government as to the development of infrastructure strategy.
- 4.10 The SIS discusses transport solutions for the Northern Beaches being road and bus projects, but does not refer to any feasibility work or analysis undertaken in relation to rail options, or otherwise suggest that it is being considered by Infrastructure NSW or the NSW government.
- 4.11 In June 2014, the NSW Government developed the Northern Beaches Transport Action Plan. That Plan identifies the action being taken by the NSW government to deliver transport improvements to the Northern Beaches, and planning for future growth in the area. The plan identifies road improvements (including feasibility studies for a Northern Beaches Motorway Tunnel), faster and more frequent ferries to the CBD, and the development of a Kerbside Bus Rapid Transit from Mona Vale to the Sydney CBD (see pages 1, 4, 7 in particular). The Transport Action Plan does not identify rail as an option being considered or pursued.
- 4.12 Accordingly, leading up to the development of the SBC TfNSW (at the time, Roads and Maritime Services (RMS)) was not commissioned to consider or develop a rail option to the Northern Beaches.
- 4.13 The understanding of TfNSW is that the decision for the Beaches Link to be developed as a motorway tunnel was made prior to the project being transferred to RMS. Accordingly, there is no real expectation that TfNSW would prepare a feasibility report in relation to a government decision which has already been made.
- 4.14 Consistently with this position, the SBC, which TfNSW prepared, is only directed to the development of road transport. It does not contain the information sought by the access application and it is outside the scope of the access application.
- 4.15 As noted above at [1.4], the EIS developed as part of that project included brief analysis as to why a rail option to the Northern Beaches presents challenges. Before identifying the reasonable searches which have been undertaken by TfNSW for any analysis or work underlying those statements, I note the following by way of summary:
- There is no reference to any feasibility work being required from TfNSW for a rail link to the Northern Beaches
 - At least since 2012, there is no suggestion that the NSW Government has been considering a rail option to the Northern Beaches
 - Infrastructure NSW, which advises the NSW Government on major infrastructure strategy, has not publicly referred to any work or priorities relating to a rail link to the Northern Beaches.
- 4.16 Having regard to the above, I consider it unlikely that TfNSW holds any reports or detailed analysis beyond the statements in the EIS.

⁴ Accessible:

https://www.infrastructure.nsw.gov.au/media/1090/inf_j14_871_sis_report_book_web_new.pdf

4.17 In circumstances where the SIS was released in 2014 identifying road and bus transport solutions for the Northern Beaches (as discussed in [4.9] above), it could be speculated that either the Department of Premier and Cabinet or Infrastructure NSW could hold information within the scope of this access application request. If held, such information would probably be dated prior to 2014, when the SIS was developed. There is no evidence available to me that Infrastructure NSW has considered any rail options since 2014, and as noted above at [4.10], the SIS does not refer to a rail option being considered.

(ii) **Have the search efforts made by the agency to locate such documents been reasonable in all the circumstances of a particular case?**

4.18 TfNSW conducted internal searches to identify, review and record the matters identified in paragraphs [4.5] to [4.17] which involved the review of many thousands of pages of documents. Those documents did not refer to any information which would be within scope of the access application, and tended to confirm the position that no further information is held.

4.19 *First*, five separate senior employees in TfNSW have been consulted as to whether they have any knowledge of any reports prepared or any underlying analysis. Each person confirmed that they have no knowledge of such a report held by TfNSW, and expected that one would not exist given the government priority for road transport development to the Northern Beaches.

4.20 *Second*, the searches have included a review of the SBC, including its annexures, which confirmed the position at [4.14].

4.21 *Third*, TfNSW understands that the analysis in the EIS was likely drafted based on pre-existing available raw data including:

- Land use forecasts to 2056, which are published by TfNSW.⁵ That data would have informed the EIS analysis that there is unlikely to be sufficient population growth or demand to justify a rail line to the Northern Beaches. The data is accessible by a Travel Zone Explorer – Visualisation, whereby a user can identify an area and access the data on population projection (as at 2016, 2021, 2026, 2031, 2036, 2041, 2046, 2051, and 2056). That data supports the EIS analysis.
- Journey to work data. That data is derived from the five-yearly Census of Population and Housing conducted by the Australian Bureau of Statistics.⁶ It is published as part of an Open Data Catalogue. The data also tends to confirm the EIS analysis.⁷ Section 4.2.1 of the EIS confirms that Journey to work data for the Warringah Freeway was analysed to determine travel patterns for residents and workers in the project generally
- Household Travel Survey (HTS) data, which is published by TfNSW.⁸ The HTS collects information on personal travel behaviour in the Sydney Greater Metropolitan Area.⁹

⁵ As this information is available in an interactive format, I do not attach it to this decision. It can be accessed via the following link: <https://www.transport.nsw.gov.au/data-and-research/forecasts-and-projections>

⁶ <https://www.transport.nsw.gov.au/data-and-research/passenger-travel/surveys/journey-to-work> (Infosheet)

⁷ As this information is available in an interactive format, I do not attach it to this decision. It can be accessed via the following link:

https://opendata.transport.nsw.gov.au/search/type/dataset?query=%22journey+to+work%22&sort_by=changed&sort_order=DESC

⁸ <https://www.transport.nsw.gov.au/data-and-research/passenger-travel/surveys/household-travel-survey-hts>

⁹ As this information is available in an interactive format, I do not attach it to this decision. It can be accessed via the following link:

<https://opendata.transport.nsw.gov.au/search?query=household%20travel%20survey>

- 4.22 These data inputs would allow a qualified analyst to understand the future demand to the Northern Beaches and produce the kind of analysis which is the subject of this access application.
- 4.23 Similarly, a qualified analyst is unlikely to require bespoke internal analysis or the commission of a separate, detailed report in order to make the statements in the EIS about the challenging physical geography of the Northern Beaches and longer lead time for new rail development.
- 4.24 After consultation with the five employees referred to above at [4.19], TfNSW has not identified further information which is held and would be expected to have informed the drafting of Section 4.3 of the EIS.
- 4.25 *Fourth*, for completeness, TfNSW has undertaken searches of the following divisions which have each confirmed that no information is held which is within scope:
- Safety, Environment and Regulation
 - Customer Strategy and Technology
 - Greater Sydney
- 4.26 Taking into account the searches undertaken by TfNSW, I am of the view that there are no reasonable grounds to believe that further information is held by TfNSW. I am satisfied that reasonable searches have been undertaken to identify whether there is any information within scope of the access application held by TfNSW.

5 Disclosure Log

- 5.1 If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).
- 5.2 In the letter acknowledging receipt of your application, you were told about the disclosure log. You were also advised of your right to object to the inclusion of details about your access application in the disclosure log.
- 5.3 As this decision is not releasing any information, I have decided not to include details about your access application.

6 Review rights

- 6.1 I note that you have commenced proceedings in the NSW Civil and Administrative Tribunal and will have the opportunity to elect to review this decision in those proceedings.

7 Further information

- 7.1 If you have any difficulty accessing the links in this decision, or have any questions in relation to it, please do not hesitate to contact the Crown Solicitor's Office (contact: Andrew Bell) (02 9474 9000) if you have any questions in relation to this letter.

Yours sincerely,

Catherine Nguyen

Catherine Nguyen

Senior Lawyer, Government Regulatory & Prosecutions