



BELL GULLY

submission

WATERVIEW CONNECTION
Waterview Connection Steering Group c/- The Treasury

APRIL 2008

SUBMISSION DETAILS

Waterview Connection Submission

c/- Waterview Connection Procurement Steering Group

c/- The Treasury

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Brief details on Bell Gully's Infrastructure & Projects Group are attached to this submission.

1 INTRODUCTION

1.1

Bell Gully considers that it is important for the wellbeing of all New Zealanders that critical infrastructure projects, such as the Waterview Connection, are undertaken on an as soon as they can be afforded basis.

1.2

For this to occur, it is equally important that the policy framework allows for a measured approach in facilitating critical infrastructure projects to happen.

1.3

PPPs are an important additional funding source for infrastructure projects which allow for appropriate allocation of risk between the Government and the private sector. They represent best international practice for assisting projects to be delivered - with innovation, on time and on budget.

1.4

New Zealand is in a unique position of being able to draw on 15 years of international experience with PPPs to choose the best features of existing funding structures and to adapt them for New Zealand's needs. The level of local and international private sector interest in the Waterview Connection should ensure a level of competitive tension that drives best case outcomes.

2 BENEFITS OR COSTS

What specific benefits or costs do you consider would arise if the Waterview Connection was procured through a Public Private Partnership (PPP)? Please explain the reasons for your answer.

2.1

The international experience has been that greater private sector involvement in infrastructure development, by way of PPP/PFI schemes, results in infrastructure projects being undertaken on a quicker timescale.

2.2

PPPs are more likely to mean infrastructure projects are delivered with innovation, on time and within budget.

2.3

Large scale PPPs in New Zealand, such as the Waterview Connection will result in international providers (sponsors, contractors and funders), with their track record of completing projects of this type, getting involved in New Zealand's critical infrastructure development, while having clear flow-on benefits for local contractors and the local labour market.

2.4

PPPs allow for the appropriate allocation of risk on to the private sector. Ultimately the risk of the project remains with the Government but passing completion/performance risk on to the private sector allows the Government to manage a single point contract rather than the overall project and to appropriately incentivise/penalise a private sector contractor based on performance against objective targets.

2.5

PPPs result in cost effective procurement, assuming a positive 'value for money' assessment.

3 FORM AND VALUE FOR MONEY

If the Waterview Connection is procured as a PPP, what do you consider would be the best form of PPP to ensure value for money? Please explain the reasons for your answer.

3.1

We assume that the existing legislative framework will be used and that the Waterview Connection will involve 'real' tolls (as opposed to 'shadow' tolls). In our view careful consideration of the consultation obligations under the Land Transport Management Act (**LTMA**) and the Resource Management Act processes will be important in designing a successful PPP - sufficient certainty that the project can be achieved will be required before bidders will commit to the bid costs inherent in such a process.

3.2

Bearing the above in mind, a 35 year or similar concession agreement, within the LTMA framework, should be able to underpin the project on terms acceptable to sponsors and funders. We would expect the concession to take the form of DBFO or similar arrangement.

3.3

Obtaining cost-effective funding is critical to the success of a project of this nature. Many of the long-term PPP projects in the UK and Australia have been funded by way of long-term monoline insured bonds. The market for these is currently closed; there is an opportunity for the Government to innovate in assisting with a funding structure directly or indirectly funded, in part or in full, by Government bonds. Assuming the rationale for these transactions is value for money (as per the revised UK model) and not moving debt off the public balance sheet (which drove earlier PPPs), any consortium that can access funds at close to sovereign rates should be able to deliver an extremely competitive price.

4 PPP ADVANTAGES

Are there particular advantages you consider would be gained from procuring the Waterview Connection as a PPP that would not be gained through some other form of procurement? Please explain the reasons for your answer.

4.1

As identified above, the key advantage to be gained from PPP for the Waterview Connection is the ability to transfer risk to the private sector. In particular, the private provider will take traffic demand risk. A PPP is likely to be quicker with less use of Government resources once the form of concession is agreed.

5 APPETITE FOR PPPS

What do you consider to be the level of market appetite for PPPs in the New Zealand transport sector? Please explain the reasons for your answer.

5.1

Bell Gully has relationships with many domestic and international organisations, across the range of potential sponsors, funders and contractors. We have received feedback from a number of clients or contacts commenting on their organisations' keenness to be involved in this project. As noted above, managing consultation and Resource Management Act processes will be key to being able to deliver a workable structure.

6 GENERAL

Please provide any additional comments you may wish to make about the possible procurement of the Waterview Connection as a PPP?

6.1

We consider New Zealand has a real opportunity to create a PPP based on 15 years of international experience. This allows New Zealand the opportunity to take the benefit of the development phases other countries have gone through and to commence a PPP programme based on current international best practice tailored to the New Zealand market.

BELL GULLY INFRASTRUCTURE AND PROJECTS GROUP

Bell Gully's Infrastructure & Project Group comprises partners and senior staff with expertise across relevant disciplines of law including corporate, financing, resource management and local government.

The full expertise of other areas of the firm can also be called upon for particular projects including tax, regulatory, Maori and dispute resolution.

All of the partners in the group have worked in leading international law firms. While working at those firms, partners and staff in the group have advised on significant PPP projects in the UK and Canada, including:

- Tubelines (PPP long term services agreement for Jubilee, Northern and Piccadilly lines);
- Lloyds PFI Water Project with the UK's Ministry of Defence;
- Portsmouth Highways Management PFI project;
- A project to design, build, finance and operate a 608-bed hospital by William Osler Health Centre Healthcare Infrastructure Company of Canada (WOHC) Inc, the first major acute care hospital public-private partnership project in Canada to reach financial close;
- A130 (Essex bypass) PFI project;
- Bundled university, schooling and civil defence projects sponsored by Jarvis PLC; and
- GOGGS 2 (PFI redevelopment of English Inland Revenue/Customs office accommodation).

Recent New Zealand infrastructure projects include:

- The original Weiti toll road project (not proceeded with);
- The Mangawhai Ecocare Project (a wastewater deal in which ABN Amro is financier and Earthtech the contractor) in which we acted for the Kaipara District Council;
- Origin Energy Kupe gas field – on-shore gas production station;
- Auckland Regional Council and ARTA – Auckland transport integration strategy including electrification of Auckland rail network (ongoing);
- Tauhara North No. 2 Trust – recently announced joint venture development of the Nga Awa Purua 132 megawatt geothermal power station in Taupo; and
- Auckland Regional Holdings – Auckland tank farm redevelopment on the Auckland waterfront.

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