



# Premier & Cabinet

Our ref: A1050386

03 DEC 2014

Mr David Blunt  
Clerk of the Parliaments  
Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Blunt

## Further Order for Papers – CBD and South East Light Rail Project

I refer to the resolution of the Legislative Council under Standing Order 52 made on Wednesday, 19 November 2014 concerning the production of documents, not previously provided to the House, relating to the CBD and South East Light Rail Project.

Enclosed at **Annexure A** are certification letters from the following officers certifying that, to the best of their knowledge, they hold no further documents covered by the terms of the resolution, that have not been previously provided:

- Chief of Staff, Office of the Minister for Transport
- Chief of Staff, Minister for Planning
- Secretary, Department of Planning and Environment
- Secretary, Transport for NSW and
- Secretary, NSW Treasury.

Should you require any clarification or further assistance, please contact Ms Karen Smith, Deputy General Counsel, on telephone (02) 9228 5543.

Yours sincerely

Paul Miller  
General Counsel

Received at 4.00 pm on  
Wednesday 3 December 2014.

Straffell

Clerk Assistant  
on behalf of the Clerk



**Office of the Minister for Transport and  
Minister for the Hunter**

The Hon. Gladys Berejiklian MP

A

2<sup>nd</sup> December 2014

Karen Smith  
Deputy General Counsel  
Department of Premier and Cabinet  
Level 37, Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Ms Smith,

I refer to a resolution under Standing Order 52 passed in the Legislative Council on Wednesday the 19<sup>th</sup> of November on the CBD and South East Light Rail.

This office holds no documents that fall under the terms of the resolution.

Regards,

Larry McGrath  
Chief of Staff

Tuesday 2 December 2014

To whom it may concern,

**Re: Standing Order 52- Further Order for Papers – CBD and South East Light Rail**

Apart from the documents our office provided to the house earlier this year, we have nothing further to provide.

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

I advise that our office took approximately 2 hours to complete the search.

Regards

A handwritten signature in black ink, appearing to read 'S. Fontana', written in a cursive style.

Simon Fontana

Chief of Staff



## Office of the Secretary

14/20037

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

Dear Mr Miller

Thank you for your letter received on 21 November 2014 in relation to the resolution of the Legislative Council of 19 November 2014 under Standing Order 52 ordering the production of documents in relation to the CBD and South East Light Rail Project.

The Department of Planning and Environment has not identified any documents that fall within the terms of the resolution and are required to be produced. In responding to the resolution the Department has acted consistently with the guidelines set out in your letter.

I certify to the best of my knowledge that the Department of Planning and Environment has no documents to provide that are covered by the terms of the resolution.

Yours sincerely

Carolyn McNally  
Secretary 2.12.14



Ms Karen Smith  
Deputy General Counsel  
Department of Premier and Cabinet  
Level 37, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Ms Smith

### **Standing Order 52 – Order for Papers – CBD & SE Light Rail**

I refer to the letter from Paul Miller, General Counsel, Department of Premier and Cabinet dated 21 November 2014 relating to a resolution of the Legislative Council passed on 19 November 2014 in the following terms:

(1) *That this House notes that:*

- (a) *on 8 May 2014, this House ordered the production of documents relating to the traffic and patronage modelling, the business case and cost-benefit analysis for the CBD and South East Light Rail Project;*
- (b) *on 5 June 2014, the House received a return to order which did not include the business case or traffic and patronage modelling other than the summaries of what was already publicly available; and*
- (c) *the index to the return to order included correspondence from the Secretary of Transport for NSW stating that: "Transport for NSW has reviewed its relevant files for the purposes of determining whether it holds any documents, other than Cabinet documents, that fall within the terms of the resolution. I note that all agencies are obliged to protect the confidentiality of Cabinet documents and not produce or refer to any such documents in complying with the resolution."*

(2) *That this House notes the following judgments by Chief Justice Spigelman and Justices Meagher and Priestley in the Court of Appeal in Egan v Chadwick (1999) concerning cabinet documents:*

- (a) *Spigelman CJ held that it is not reasonably necessary for the proper exercise of the functions of the Council to call for documents the production of which would conflict with the doctrine of collective ministerial responsibility by revealing the "actual deliberations of Cabinet"; that a distinction must be made between documents which disclose the actual deliberations within cabinet and those which are described as "Cabinet documents", but which are in the nature of reports or submissions prepared for the assistance of cabinet; and that the production of documents prepared outside cabinet for submission to cabinet may, or may not, depending on their content, be inconsistent with the doctrine of collective ministerial responsibility to cabinet,*
- (b) *Meagher JA took the view that the immunity of cabinet documents from production was "complete", arguing that the Legislative Council could not compel their production without*

*subverting the doctrine of responsible government, but without exploring the distinction between different types of cabinet documents drawn by Spigelman CJ; and*

- (c) *Priestley JA took a different view, noting that a court has "the power to compel production to itself even of Cabinet documents" and that the "function and status of the Council in the system of government in New South Wales require and justify the same degree of trust being reposed in the Council", and that "notwithstanding the great respect that must be paid to such incidents of responsible government as cabinet confidentiality and collective responsibility, no legal right to absolute secrecy is given to any group of men and women in government".*
- (3) *That this House further notes that in evaluating a disputed claim of privilege on documents returned to an order of the House in 2005, the Hon. Terrence Cole, AO, RFD, QC, stated that: "In assessing a claim for public interest immunity in relation to 'Cabinet documents', a distinction is to be drawn between: (a) true Cabinet documents, that is, those documents which disclose the actual deliberations of Cabinet; and (b) Cabinet documents, that is, reports or submissions prepared for the assistance of Cabinet. A claim for privilege for true Cabinet documents will always be upheld. ... When privilege is claimed for other Cabinet documents, a judgement process is required to weigh the competing public interests."*
- (4) *That this House further notes that in its October 2013 report entitled "The Mt Penny return to order", the Privileges Committee:*
  - (a) *stated that "... the Committee does not necessarily accept that Egan v Chadwick is the final word on this matter, and that the Council does not have the power to order cabinet documents. The three Justices in Egan v Chadwick, Spigelman, Meagher and Priestly, took significantly different approaches to this issue. The committee believes that the dissenting judgment of Justice Priestley is instructive"; and*
  - (b) *specifically rejected the definition of "cabinet information" in the Government Information (Public Access) Act 2009 as an appropriate definition of cabinet documents for the purposes of responding to orders for papers made by the Legislative Council under Standing Order 52.*
- (5) *That under Standing Order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents, not previously provided to the House, created since 1 April 2011, in the possession, custody or control of the Minister for Planning, the Department of Planning and Infrastructure, the Minister for Transport, Transport for NSW or NSW Treasury relating to the traffic and patronage modelling, the business case and cost-benefit analysis for the CBD and South East Light Rail Project:*
  - (a) *the final version of the business case prepared by Transport for NSW,*
  - (b) *the traffic and patronage modelling relied on in the business case for the CBD and South East Light Rail Project,*
  - (c) *the NSW Treasury and PricewaterhouseCoopers [PWC] cost-benefit analysis, and*
  - (d) *any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.*
- (6) *That in the event that any documents are not provided to the House in response to this order on the basis of a claim of cabinet confidentiality, the return identify how the provision of those documents to the House would breach the immunity attaching to cabinet documents as variously articulated in Egan v Chadwick.*
- (7) *That this House regards failure to comply fully with an order of this House for the production of*

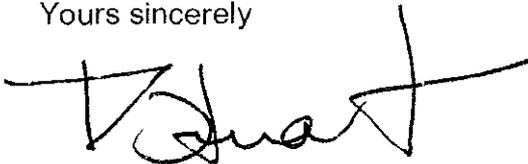
*documents as an unacceptable interference with the capacity of this House to fulfil its constitutional roles.*

On 3 June 2014, Transport for NSW produced documents in relation to the 8 May 2014 Standing Order 52 - Order for Papers - CBD and South East Light Rail Project. In considering the terms of that Order, Transport for NSW reviewed its relevant files for the purposes of determining whether it held any documents, other than Cabinet documents, that fell within the terms of the resolution of the Legislative Council. In doing so, Transport for NSW complied with the requirement that all agencies are obliged to protect the confidentiality of Cabinet documents and not produce or refer to any such documents in complying with a resolution.

In relation to the 19 November 2014 resolution, Transport for NSW has reviewed its relevant files for the purposes of determining whether it holds any documents, other than Cabinet documents, that fall within the terms of the resolution. I note that all agencies are obliged to protect the confidentiality of Cabinet documents and not produce or refer to any such documents in complying with the resolution.

I certify to the best of my knowledge that Transport for NSW does not hold any documents, not previously produced, that are covered by the terms of the resolution.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Dave Stewart', with a long horizontal stroke extending to the right.

**Dave Stewart**  
**Secretary**

- 1 DEC 2014

2 December 2014

Ms Karen Smith  
Deputy General Counsel  
Department of Premier and Cabinet  
Level 37, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Ms Smith

**Standing Order 52 – Order for Papers – CBD & South East Light Rail Project**

I refer to the Legislative Council's Standing Order 52 passed on 19 November 2014 calling for the tabling of documents, not already provided to the House, relating to planning in the CBD & South East Light Rail Project.

NSW Treasury confirms that it does not hold any relevant documents that have not already been produced relating to this order. I note that an agency is not permitted to produce or refer to Cabinet documents in response to the resolution.

I certify to the best of my knowledge that there are no relevant documents held by NSW Treasury and covered by the terms of the resolution.

Should you require any clarification or further assistance, please contact Mr. Sean Darragh, Information and Parliamentary Coordinator on (02) 9228 4611 or at [sean.darragh@treasury.nsw.gov.au](mailto:sean.darragh@treasury.nsw.gov.au).

Yours sincerely



Philip Gaetjens  
Secretary