

Hon. Dr Denis Naphine MP
Premier
Minister for Regional Cities
Minister for Racing

Level 1, 1 Treasury Place
Melbourne 3002

Delivered by hand

11 September 2014

Dear Premier

I enclose legal advice obtained by the Victorian Labor Opposition which relates to the East West Link Project. This advice outlines the serious risks associated with signing contracts for the East West Link Project in light of a challenge that is currently underway in the Supreme Court of Victoria by two Victorian councils (SCI 2014 03695) against the Victorian Government's planning approval process.

The action before the Supreme Court is seeking a declaration that the Minister for Planning failed to comply with the *Major Transport Projects Facilitation Act 2009* (the MTPF Act) when making his approval decision for the East West Link Project. This court challenge is not due to be resolved until December 2014 at the earliest.

In his planning approval decision, made under section 77 of the MTPF Act, the Minister for Planning stated that he did not take into account the business case for the East West Link Project. Likewise, the Assessment Committee stated that, as a result of the business case remaining secret:

"...the Committee is not in a position to undertake an economic assessment of the Project, and could not inform itself through a triple bottom line assessment" (East West Link (Eastern Section) Project Assessment Committee Report pp. 19-20)

The enclosed legal advice has been prepared by eminent Queens Counsels Ray Finkelstein QC, Richard Niall QC, and barrister Siobhan Keating. Senior Counsel's opinion is that if the Minister for Planning's approval of the East West Link Project is found to be void, any contracts entered into will be invalid.

"In the event that the Supreme Court holds that the approval decision made by the Minister for Planning on 30 June 2014 is invalid, there is no power to enter into contracts for the Project and any contracts entered into will be beyond power and unenforceable." (paragraph 6)

"It follows that if the approval decision is invalid, any purported contract entered into pursuant to s 101 of the MTPF Act will be beyond power. In such case, no contract exists." (paragraph 47)

Labor does not believe that any contracts for the East West Link Project could be validly entered into while the matter before the Supreme Court remains unresolved, and there can be no certainty that any contracts for East West Link Project are legally binding. As Labor has repeatedly stated, if no legally binding contracts exist, any Labor government elected at the upcoming state election will not proceed with the East West Link Project.

If elected to form government, Victorian Labor's submission to any court proceedings that may be underway would be consistent with our long held opposition to the East West Link Project, and the circumstances surrounding the project's approval. A Labor government will not appeal any court findings against the East West Link Project, or act to remedy any deficiencies.

Additionally, in the absence of project specific enabling legislation, Senior Counsel have identified that uncertainty exists as to the State's ability to authorise the spending of funds on the East West Link Project. A Labor government will not introduce any project specific legislation relating to the East West Link to resolve any such uncertainty because we do not support secretive, rushed contracts purportedly signed just weeks before Victorians vote.

Labor believes that your government has no authority, no mandate and no right to sign the people of Victoria up to this tunnel just weeks before an election. Such a move is irresponsible, recklessly exposes the Victorian people to significant risk, and Labor will have no part of it. Victorians must be given a choice.

Labor has always said we will honour valid, legally binding contracts on any Victorian Government project and we remain committed to this position. However the advice of two of Australia's eminent commercial QCs supports the view that a contract signed just weeks before Victorians vote, and one which is currently under challenge in the Supreme Court, cannot be properly entered into.

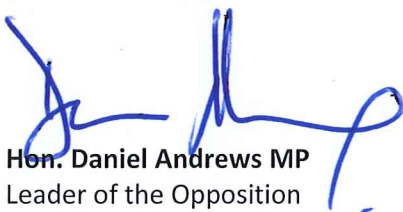
It is inconceivable that, after refusing to explain why – and having done nothing for four years – your government now arrogantly refuses to wait four weeks to give Victorians the chance to vote on a project costing up to \$8 billion.

If the Liberal and National Party are returned at the next election they will have a clear mandate to build this project.

If Labor is successful at the upcoming Victorian state election then the East West Link tunnel will have been rejected by the Victorian community in favour of investment in public transport, local roads and removing Melbourne's 50 most dangerous and congested level crossings.

Be aware that copies of this letter have also been sent to the parties comprising the East West Connect consortium and Inner Link Group consortium.

Yours sincerely



Hon. Daniel Andrews MP
Leader of the Opposition



Hon. Tim Pallas MP
Shadow Treasurer