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Department of Infrastructure and Regional Development

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**Major Project Alternative Financing** - s.22(1)(a)(ii)

s.22(1)(a)(ii)

**Purpose:**

s.22(1)(a)(ii)

s.22(1)(a)(ii)

. In assessing this proposal,

MIPO will draw on the experience from the due diligence work for the WestConnex Stage 2 concessional loan.

**Key Issues:**

s.22(1)(a)(ii)

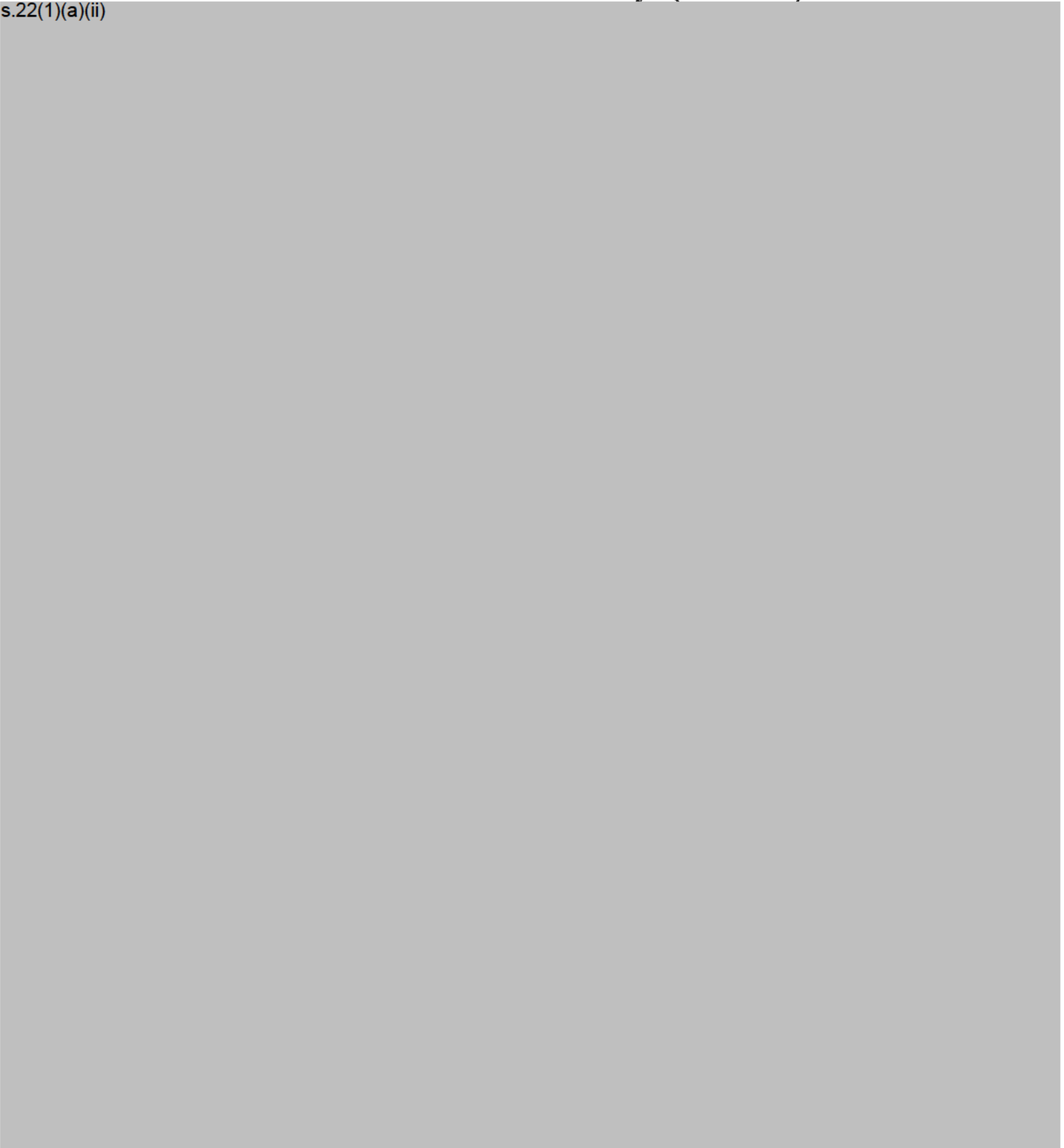
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s.22(1)(a)(ii)  
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s.22(1)(a)(ii)



*WestConnex Stage 2 Concessional Loan – Lessons Learned*

MIPO held a lessons learned workshop for the WestConnex Stage 2 concessional loan in early 2016. This innovative financing option significantly reduced the grant funding burden to the Australian Government and could be considered as a financing option for other major projects. The outcomes and recommendations from the workshop are relevant for the Department's current work on the s.22(1)(a)(ii) concessional loan.

The workshop was held with internal staff and sought feedback from major advisers involved in the process (legal, commercial and traffic patronage). Its purpose was primarily to reflect on the due diligence process, identify what worked well, what could have been done better or differently, and document any 'lessons' that may be a useful

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reference for future work in this space. The workshop identified three key recommendations applicable to the early establishment phase of a concessional loan.

- The Australian Government should only make an ‘in-principle’ commitment to a concessional loan, with approval to follow due diligence outcomes.
- The Australian Government should avoid constraining its negotiating position (on the terms of the loan) through any early agreements with project proponents.
- The Australian Government should ensure the proponent is sufficiently ready for due diligence activities to be undertaken.

A detailed summary of these findings is at **Attachment C**.

Implementation of these recommendations will reduce the risk exposure of the Australian Government, protect its negotiating position, and ensure the Department’s resources are allocated efficiently. Notwithstanding these recommendations, the workshop concluded that the process to signing the loan was a major success for the Department and the Australian Government.



General Manager  
Major Infrastructure Projects Office  
18 July 2016

s.22(1)(a)(ii)



**Attachment C – Key Recommendations for Future Concessional Loans**

**Recommended Action:**

s.22(1)(a)(ii)	
2. <b>Note:</b> the lessons learned from the WestConnex concessional loan, and implications for the <sup>s.22(1)(a)(ii)</sup> concessional loan or any other future concessional loan.	2. <u>Noted</u> / <del>Discuss</del>
s.22(1)(a)(ii)	
	 Mike Mrdak      27 / 7 / 2016

**1. The Australian Government should only make an ‘in-principle’ commitment to a concessional loan, with approval to follow due diligence outcomes.**

In many instances, an early confirmation of an Australian Government commitment is necessary to provide financial surety to a major infrastructure project. However, when providing a financing mechanism that seeks repayment or a return, the Australian Government should seek to provide an ‘in-principle’ commitment subject to due diligence activities and outcomes. This will serve to protect both the reputation and the negotiating position of the Australian Government.

In the case of the WestConnex concessional loan, the early announcement of the \$2 billion figure, prior to the due diligence work being undertaken, exposed the Government to a risk of having to backtrack on its commitment. Given the uncertainty over the inclusion of the M5 West re-concession in the deal, there was a real risk that the project would not have been able to repay the Australian Government. It was only later, through the due diligence process that the Department was able to verify the credit worthiness of the project and build in additional protection clauses.

The early public announcement of the \$2 billion concessional loan for WestConnex also created a political commitment that weakened the negotiating position of the Australian Government, creating issues around the timely receipt of information from the Sydney Motorway Corporation (SMC), and affecting the lender-borrower dynamic.

The maximum amount the Australian Government commits to lending should be informed by the due diligence activities of the Department – rather than the due diligence activities seeking to justify any commitments of Government. That is, the due diligence work will identify the largest concessional loan that can reasonably be expected to be repaid from project revenues under the agreed term sheet conditions and subject to the risk appetite of the Government.

s.22(1)(a)(ii)

**2. The Department should take a revised approach to the creation of the Concessional Loan Term Sheet.**

In the early stages of the WestConnex loan process, a Term Sheet was drafted to detail the broad conditions upon which the loan documents would later be drafted and to guide negotiations between the Australian Government and SMC.

A Memorandum of Understanding (MOU), with the early Term Sheet attached, was signed between the Australian and New South Wales governments in May 2014. Whilst not a legally binding document, the signing of the MOU froze the term sheet (which is generally a live document, amended as negotiations progress) at a particular point in time, well in advance of financial close. This reduced the flexibility and negotiating power of the Department through the due diligence process.

For any future financing deals, the need for an MOU should be carefully examined, with consideration given to any negative implications it may have on negotiations.

**3. The Australian Government should ensure the proponent is sufficiently ready for due diligence activities to be undertaken.**

Ideally, in-principal commitment from the Australian Government to make a loan would not be made until the borrower is in a position to document with a reasonable level of detail how and when it will make repayment.

In dealing with SMC, there was often a disconnect between when the Australian Government was informed that it would receive required due diligence documents and when these key documents were received. Further, the version provided was often not final requiring it to be updated and resent quite quickly after the document had been received.

These issues created complications in relation to the timing of the Department engaging advisers to review the information and with the overall duration of the due diligence process. It became apparent that at the time of the MOU and loan announcement, SMC were not yet, and would not be for many months, in a position to have the Department undertake its required due diligence.

Whilst the due diligence process was not compromised, this complicated the process of the Department reaching sign-off on the loan, prolonged the Australian Government’s due diligence process and made it difficult for the Department to effectively manage the required staffing resources.