

INFRASTRUCTURE TRENDS - #5: AWARENESS OF THE OPPORTUNITIES PRESENTED BY UNSOLICITED PROPOSALS

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Legal Briefings - By **Richard Wilkinson**

In this series of short articles we look at the [current trends affecting infrastructure investment in Australia](#). This article considers trend # 5 – awareness of the opportunities presented by unsolicited proposals.

While “unsolicited proposals” and “market-led proposals” are no longer buzz-words or phrases, investors are becoming increasingly aware of the opportunity that their existing asset base may hold in opening up single-sourced greenfield or redevelopment projects. In the age of asset recycling, governments have shown a willingness to consider unsolicited proposals that provide increased social amenity without significant upfront government funding or a significant value for money saving when compared to traditional public sector procurement.

Within New South Wales, Victoria, South Australia and Western Australia, a requirement of every unsolicited proposal is “uniqueness”. From the very outset, the private sector must convince the government that the relevant proposal cannot be delivered by any other party nor achieved through a competitive procurement process. In circumstances where a private sector participant owns substantial infrastructure assets, whether in the form of unexpired concessions, operations infrastructure or real estate which is central to the expansion of existing infrastructure, a basis for framing a “unique” proposal may be established. The most recent unsolicited proposals in the market illustrate the way existing assets can be used to provide unique greenfields opportunities.

1. **NorthConnex** – This project, which reached financial close on 31 January 2015, was the first road project to be delivered under the NSW Government’s unsolicited proposal

framework. The proposal comprised a AUD\$2.9billion project to design, build, operate and maintain the NorthConnex motorway, comprising 9km of twin-tunnels which link the M1 Pacific Highway at Wahroonga to the M2 Motorway at the Pennant Hills Interchange. The project sponsors Transurban, QIC and CPPIB also own the M7 toll road which provided the consortium with its uniqueness. Given that the tolls to be collected over the NorthConnex concession period would be insufficient to fully fund the AUD\$2.6billion NorthConnex construction costs, the consortium's "unique" proposal involved bridging the funding gap by requesting that the Government extend the concession period on the unrelated M7 toll road by an additional 11 years. This minimised the need for upfront funding from the Government. The project is an illustration where an investor's existing asset base can create a unique opportunity.

2. **Martin Place Metro** – In this project, Macquarie leveraged its freehold ownership of the heritage listed building at 50 Martin Place. They proposed a unique opportunity to the government to combine the new Martin Place Metro Station with the over station development and the existing Martin Place Rail Station. This will deliver a new and integrated transport, commercial, retail and dining precinct in the heart of Sydney's CBD. While it would have been possible to entertain a competitive procurement process in relation to the construction of the station, Macquarie's freehold ownership of land that is central to a whole-of-precinct approach put it in the unique position to integrate the precinct with the surrounding areas. Macquarie's proposal will benefit the entire community by facilitating a fully integrated transport hub, which will include airport check-in counters, transfers between the metro and existing networks and unrestricted access to neighbouring buildings.
3. **Moorebank Intermodal** – The Moorebank Terminal is a freight logistic precinct in South-West Sydney, which will handle import export (IMEX) and Interstate shipping containers and include warehousing for temporary on-site storage. It will provide access to Port Botany via the Southern Sydney Freight Line, which will connect the terminal to Port Botany. While this project did not commence as an unsolicited proposal or market-led initiative, the exclusive negotiation period immediately after EOI between the Commonwealth Government and one of the bidders was akin to this process. Qube and Aurizon were the only private sector bidders to progress from the EOI stage. The exclusive relationship with Qube and Aurizon was based on the fact that Qube and Aurizon owned a significant parcel of land adjacent to the proposed site, which allowed for the amalgamation of the site and for the project to continue under a sole sourced model.

Uniqueness and delivery of value for money will continue to be the key drivers of a successful market-led proposal in New South Wales and Victoria. However, developing a unique proposal is not necessarily easy, nor is it possible to provide a guaranteed formula for success. Given the confidential nature of market-led proposals the market rarely gets full visibility on why certain proposals succeed or fail.

Governments attempt to provide examples of uniqueness within their market-led proposal guidelines, but the situation will inevitably differ on a case by case basis and may also depend on the policy goals of the incumbent government. An example of this is the IFM and AustralianSuper acquisition of the lease of the Ausgrid electricity network business in NSW. That acquisition was initiated under the NSW market-led proposals guidelines after two foreign bidders for the asset were rejected by the Foreign Investment Review Board. The uniqueness in that instance was that IFM and AustralianSuper were Australian entities that did not require FIRB approval, yet could step in at short notice and still provide the State with full value, thus preserving the State's budget program.

The Queensland Government has recently responded to market submissions and varied its market-led proposals guidelines. The guidelines do not mention a requirement for uniqueness. Instead, a proposal must present a clear case for direct negotiation with government so that a competitive process would not be expected to result in a better outcome for the State. Time will tell whether there is any substantive difference.

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