

Eloque: the Joint Venture Between DoT and Xerox

October 2023

Independent assurance report to Parliament
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Eloque: the Joint Venture Between DoT and Xerox

Independent assurance report to Parliament

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October 2023

VAGO

Victorian Auditor-General's Office

The Hon Shaun Leane MLC
President
Legislative Council
Parliament House
Melbourne

The Hon Maree Edwards MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of the *Audit Act 1994*, I transmit my report *Eloque: the Joint Venture Between DoT and Xerox*.

Yours faithfully



Andrew Greaves
Auditor-General
18 October 2023

The Victorian Auditor-General's Office (VAGO) acknowledges the Traditional Custodians of the lands and waters throughout Victoria. We pay our respects to Aboriginal and Torres Strait Islander communities, their continuing culture, and to Elders past and present.

Contents

Review snapshot	1
What we found	2
Key finding 1: VicTrack's advice to government about setting up the joint venture was inaccurate and incomplete	2
Key finding 2: VicTrack, DoT and HoldCo did not effectively oversee the joint venture	4
1. Review context	7
Relevant stakeholders	8
FiBridge technology journey	8
Support from the Victorian government	9
Eloque journey	10
2. Advice to the government on setting up Eloque	13
VicTrack's advice to government was inaccurate and incomplete	13
Lack of transparency around the joint venture's operating agreement	15
DoT did not complete its own due diligence before purchasing FiBridge	17
3. Overseeing the government's investment in Eloque	18
VicTrack's CE held multiple positions in the joint venture at the same time	18
VicTrack's board did not effectively manage conflicts of interest	20
The interim Eloque CEO's conduct	22
HoldCo's board did not have effective oversight of Eloque	23
HoldCo, VicTrack and DoT did not provide timely updates to the government	24
DoT missed the opportunity to alert the government early to issues with FiBridge	25
Appendices	26

Review snapshot

What we examined

Was the decision of Victorian Rail Track Corporation (VicTrack) and the Department of Transport (DoT) to enter into a joint venture arrangement with Xerox transparent, evidence-based and free from bias?

Why this is important

The public expects government agencies to act with transparency and fairness. This is especially important when partnering with private sector businesses, which have a primary focus on profit over community benefit.

In 2021, DoT set up a joint venture arrangement with Xerox through a company called Eloque to commercialise FiBridge – a fibre-optic technology that aimed to remotely monitor the condition of bridges in real time. DoT also set up another company, known as HoldCo, to oversee the government's interest in Eloque. DoT did this because VicTrack, which had jointly developed FiBridge with Xerox, did not have the legal power to commercialise FiBridge outside of Victoria.

Following technical issues and disagreements between the joint venture partners, Eloque's board decided to wind up the company in August 2022.

What we concluded

VicTrack's advice to the government about commercialising FiBridge and setting up the joint venture was inaccurate and incomplete. It gave an over-optimistic view of FiBridge as market-ready, and did not transparently outline how the commercial aspects of the venture would work.

As Eloque's first customer, DoT did not conduct sufficient due diligence before investing. It also did not specify its requirements before Eloque started to install FiBridge on state-owned assets.

VicTrack and DoT structured the joint venture so that VicTrack's chief executive held multiple roles at the same time. This created a lack of transparency around his governance and management responsibilities and led to conflicts of interest.

VicTrack, DoT and HoldCo's board did not effectively oversee the joint venture. They were late to identify problems with FiBridge's performance and the interim CEO's conduct.

Key facts

Government committed **\$82.5 million**,
with the funds to come from:



\$50 million
from government

\$32.5 million
from VicTrack

Ownership in Eloque was:



Xerox 62.5%

HoldCo 37.5%



Eloque operated for
16 months



\$20.4 million
Total cost to Victorian
Government

Source: VAGO.

What we found

This section summarises our key findings. Our complete findings, including supporting evidence, are detailed in the report sections.

When reaching our conclusions, we consulted with and considered the views of the audited agencies. Our report names an individual who was involved with the Eloque venture. We also consulted and considered the input of that individual as part of our review. We showed the audited agencies and the named individual a draft version of this report, or relevant part/s of the report. We considered their comments, made changes, and incorporated their comments in the report where appropriate. The agencies' and the named party's full responses are in Appendix A.

What we reviewed

We reviewed:

- the quality and completeness of the evidence provided to the government to support the joint venture
- the governance, oversight, risk control and reporting mechanisms the government used to monitor and support the joint venture.

Our key findings

Our findings fall into 2 key areas:

- | | |
|---|---|
| 1 | VicTrack's advice to government about setting up the joint venture was inaccurate and incomplete. |
| 2 | VicTrack, the Department of Transport (DoT) and HoldCo did not effectively oversee the joint venture. |

Key finding 1: VicTrack's advice to government about setting up the joint venture was inaccurate and incomplete

What business cases must include

The Department of Treasury and Finance's (DTF) investment management standard and its *Investment Lifecycle and High Value High Risk Guidelines* require agencies to provide the government with a detailed business case. This must:

- accurately explore a problem
- offer an evidence-based solution
- suggest a proposed path to delivering a project.

VicTrack's advice to government did not provide accurate, comprehensive evidence to support the government's decision-making about the joint venture.

State of the FiBridge technology

VicTrack's submission to government described the FiBridge technology as proven and ready for commercial rollout. This was inaccurate, as VicTrack knew the technology required significant further development.

Overly optimistic outlook

VicTrack's submission to government was overly optimistic about the promised benefits of the joint venture.

The submission's base case scenario estimated that the venture would generate annual revenue of \$422 million after 10 years, at a 41 per cent return on investment. These projections were based on a fast-tracked report that VicTrack's consultant developed and with information that had not been subjected to independent testing or verification. The report stated that the financial projections were an estimate of potential results and should not be used as a basis for investment decisions. However, this disclaimer was not included in VicTrack's submission to the government.

Lack of clarity over commercial aspects of the joint venture

VicTrack did not accurately advise the government on how ownership in the joint venture would be split between the government and Xerox.

VicTrack's submission to the government showed the joint venture partners would contribute equally to the venture. However, Eloque was established with Xerox and the government holding 62.5 per cent and 37.5 per cent of equity, respectively. The VicTrack board and DoT told us that the VicTrack chief executive (CE), Mr Campbell Rose, as the government's representative, did not inform them or get their approval for this shareholding change in advance. The Head, Transport for Victoria (TfV) only established HoldCo after Mr Rose had had these equity discussions. This means that the HoldCo board did not have input into the equity arrangements.

In addition to \$7 million invested by each partner, the agreement set the value of the contributed intellectual property (IP) at \$10 million. Xerox and the government were allocated \$8 million and \$2 million of the IP, respectively. Equity shares in the joint venture were decided based on the assessed value of the IP that the 2 investors contributed to the venture.

We asked VicTrack, Xerox and Mr Rose for, but did not receive, any evidence on:

- how the IP was valued
 - who made the valuation
 - how the contribution proportions between the Xerox and government were agreed.
-

DoT did not validate the technology

As part of the 2020–21 State Budget, DoT received \$50 million to deploy Eloque's FiBridge technology on state-owned bridges. DoT did not undertake a due diligence assessment to validate the technical capabilities of FiBridge before becoming Eloque's first customer. This meant that its decision to invest was not based on independent evidence.

DoT also did not specify its technical customer requirements before the rollout of FiBridge started. It subsequently refused to approve further deployment of FiBridge on the bridges, as it found that the technology was not meeting its expectations. It should have set clear customer expectations and monitored these from the start.

Key finding 2: VicTrack, DoT and HoldCo did not effectively oversee the joint venture

Expectations of public sector recruitment and staff conduct

Public sector recruitment processes should be transparent, impartial and unbiased, to maintain the public's trust in government agencies.

Public sector employees must follow the *Code of Conduct for Victorian Public Sector Employees* (code of conduct) published by the Victorian Public Sector Commission (VPSC). At all times, they should demonstrate integrity, impartiality and accountability. Employees should strive to avoid any actual, potential or perceived conflicts of interest.

Appointment of the interim Eloque CEO

Eloque did not use a competitive process to appoint Mr Campbell Rose as its CEO.

In its correspondence to the Minister for Transport Infrastructure, VicTrack advised that it would second its CE, Mr Rose, to be Eloque's interim CEO. This was even though the VicTrack board had discussed a risk report that noted Eloque needed leadership with skills and experience different from those of the VicTrack executive.

As Eloque was a company partly owned by the Victorian Government, VicTrack and HoldCo should have ensured, as far as possible, that the CEO recruitment was transparent and impartial.

Mr Rose continued in both roles until he was placed on leave from VicTrack in February and from Eloque in March 2022. As VicTrack CE, Mr Rose was actively involved in the proposal for VicTrack to second him to Eloque.

Managing conflicts of interest

Although VicTrack appointed a deputy chief executive to perform the day-to-day functions of its CE, Mr Rose continued in his role as VicTrack CE while he was Eloque's interim CEO. This decision created perceived, potential and actual conflicts of interest.

VicTrack's board amended the CE's authorisations in an effort to avoid conflicts and to clarify his role at VicTrack while on secondment to Eloque. VicTrack also developed a conflict management framework for the CE. However, Mr Rose only signed the relevant declarations 4 months after commencing at Eloque. The delay in signing the plan should have raised concerns for VicTrack about whether or not Mr Rose understood and accepted the conditions of his secondment to Eloque. However, the VicTrack board told us that the management plan was in place as soon as it was issued to Mr Rose and did not require his signature to be valid.

Mr Rose concurrently held roles at VicTrack, HoldCo and Eloque. They were:

- CE, VicTrack
- interim CEO, Eloque
- company secretary and public officer, HoldCo
- corporate representative and proxy for the government shareholder – Head, TfV.

This structure created a lack of transparency around when Mr Rose was performing the distinct functions of each role and created inherent perceived conflicts of interest from the start.

Key decisions made by the interim CEO

Mr Rose, as interim Eloque CEO and VicTrack CE, made key decisions at both Eloque and VicTrack that went against the code of conduct, the requirements of his employment contract and the terms of his secondment to Eloque.

Mr Rose presented a proposed equity and employee benefit scheme to the Eloque board that would have benefited him and other Victorian public sector (VPS) employees who were working for Eloque. He did not declare this potential conflict of interest to VicTrack.

In the same presentation, he also proposed to the Eloque board that he should receive a salary from Eloque as well as from VicTrack, without informing VicTrack. This went against both the terms of his contract and the code of conduct.

Mr Rose advised us that the Victorian Government representatives on Eloque's board were aware of these discussions. Two government representatives, including a HoldCo board member, sat on the Eloque board. However, there is no documented evidence that Mr Rose or the other representatives communicated this information back to HoldCo, VicTrack and the Victorian Government.

While working at Eloque, Mr Rose also acted outside his reduced mandate as VicTrack CE by approving a pay rise for a VicTrack employee. The increase also exceeded the expected salary level range for that employee's level. This employee was seconded to Eloque and would also have benefited from the remuneration proposal Mr Rose submitted to the Eloque board.

Expectations of governance bodies

Government needs strong scrutiny of projects that are high value and high risk in nature. Project governance structures should actively inform, shape and monitor the delivery of the government's investments. However, its investment in the Eloque joint venture did not go through such elevated levels of scrutiny.

Reporting back to the government

The government's approval to set up the joint venture included a requirement that VicTrack and HoldCo report back 6 months after the approval. Neither HoldCo nor VicTrack reported back to the government as required.

The government also required DoT to report back to it by 1 July 2021 on the commitment to spend \$50 million on installing FiBridge technology on its infrastructure.

For the government to continue funding the deployment, DoT was supposed to report back to it on how Eloque performed using the first tranche of \$9 million. DoT has told us it did not report back, as it did not intend to ask the government for further funding until the technology was working as DoT needed.

**Mitigation of
key joint
venture risks**

DoT's primary governance mechanism over Eloque was the HoldCo board. Under the HoldCo constitution, the board represented the interests of the government. This should have included monitoring Eloque's operations and managing differences in priorities and focus between Xerox and the government.

In December 2020, the HoldCo board discussed 2 matters that were of significance to the government and Xerox. These were whether:

- Eloque would establish an employee share participation scheme. The board noted its representatives had agreed with Xerox to an employee share scheme capped at 20 per cent of the joint venture
- Xerox could require the joint venture to sell the business or to list it publicly in 3 years.

However, HoldCo did not address these issues or raise these matters with DoT or the minister. Members of the HoldCo and VicTrack boards told us that this was because they understood the share scheme as a future plan for permanent employees would not involve staff seconded from VicTrack.

HoldCo and Xerox did not discuss the share scheme again until 2022. In June 2022, the HoldCo board wrote to Xerox that it did not have the authority to discuss an equity incentive scheme and would 'seek the views of government on that issue as a matter of urgency'.

Xerox has told us that differences regarding the employee share scheme and future funding of the venture contributed significantly to the decision to shut down Eloque.

1.

Review context

VicTrack developed FiBridge technology jointly with Xerox and sought government support to commercialise it through the Eloque joint venture. Sixteen months after it started, Eloque's board decided to wind up the company, as the technology was not developing as intended and the partners disagreed over future funding obligations.

The journey of the Eloque joint venture was complex and involved several key stakeholders. Figure 1 shows a timeline of key events throughout the joint venture.

Figure 1: Joint venture key events timeline



Source: VAGO.

Relevant stakeholders

VicTrack Victorian Rail Track Corporation (VicTrack), established under the *Rail Corporation Act 1996*, and governed by the *Transport Integration Act 2010*, is a state-owned organisation that owns Victoria's transport-related land, assets and infrastructure.

**DoT and
Head, TfV**

DoT's role was to plan, build and operate Victoria's transport system. It provided support and advice to transport-sector ministers including the Minister for Transport Infrastructure. On 1 January 2023, DoT became the Department of Transport and Planning (DTP). DTP manages 2,500 rail bridges and 6,500 road structures.

Throughout the report we refer to DoT, as this was correct during the period the joint venture was active.

The Head, TfV is a statutory role established by section 64A of the *Transport Integration Act 2010*. The Head, TfV is responsible for coordinating, providing, operating and maintaining the public transport system, the freight rail network and the road system in Victoria. In practice, the role of Head, TfV was performed by the Secretary of DoT.

**Xerox and
PARC**

Palo Alto Research Center (PARC) is a research and development company that was wholly owned by the US company Xerox Holdings Corporation. In 2023, Xerox donated PARC to SRI International. We refer to PARC as Xerox-owned in this report as that was correct throughout the joint venture.

In 2017, Victoria entered into a strategic relationship memorandum of understanding with PARC to improve the state's innovation capabilities.

For simplicity, we use Xerox to refer to PARC throughout the report.

FiBridge technology journey

**FiBridge and
VicTrack's
innovation
agenda**

VicTrack advised us that, as a self-funded entity, it has both a statutory and commercial imperative to drive innovation and operational efficiencies, and to develop new revenue streams for generating returns that would support greater levels of investment in transport.

VicTrack's development of the FiBridge technology began as part of the strategic relationship between the state and Xerox that leveraged Xerox's global technology expertise and commercial capability during a 2-year trial. VicTrack told us that much of its interest focused on the potential of the technology to achieve a more efficient and cost-effective asset management regime and, in the longer term, an additional revenue stream. These would have assisted its business operations and supported greater levels of investment in transport.

The development of the technology was one of several innovation projects explored by VicTrack that were overseen by an innovation advisory group of external subject matter experts established to advise VicTrack and its board.

VicTrack also told us that during the 2-year trial period it attempted to engage with local research institutions. However, none were assessed as matching Xerox's capability towards the development of the technology, which relied heavily on its research capabilities.

Connection with Xerox

In December 2017, a 2-person VicTrack delegation, which included Mr Rose as VicTrack CE, visited Xerox. Xerox had proposed a joint trial to use fibre-optic sensing for continuous condition monitoring of bridges.

Around the same time, the government approved an application from VicTrack to the Public Sector Innovation Fund. It released \$500,000 to be used in VicTrack and Xerox's initial trials.

FiBridge concept

FiBridge is a fibre-optic sensor product that Eloque aimed to use for remotely measuring, in real time, load bearing and fatigue over civil infrastructure assets such as roads and rail bridges.

Unlike other asset-monitoring technologies, FiBridge proposed using multiple sensing points along each sensing fibre to collect more data. It also sought to fuse artificial intelligence and machine learning technology to provide data to asset owners on structural health. FiBridge aimed to reduce asset owners' reliance on physical, onsite infrastructure monitoring. This would make maintenance more efficient and less time-consuming.

FiBridge trials

In 2017, VicTrack and Xerox started a proof-of-concept FiBridge trial. The 2.5-month trial involved placing FiBridge sensors on VicRoads' Banksia Street bridge near Heidelberg. In a January 2019 technical report, they concluded that the initial trial was successful.

In December 2019, VicTrack and Xerox expanded the trial to another 3 bridges. They concluded that the sensors could be used to monitor the structural health of bridges in real time.

Support from the Victorian Government

FiBridge submission

In June 2020, the government approved in principle VicTrack's proposal for a corporate structure and plan to set up a joint venture that would support the commercialisation of FiBridge.

The government was also asked to acknowledge VicTrack's intention to invest \$32.5 million over 5 years out of its own budget to commercialise FiBridge. The advice to the government estimated that the venture would require \$65 million over 5 years to develop key features of the product and optimise hardware supply and engineering. It also estimated that after 10 years the venture would earn annual revenue of \$422 million.

State Budget commitment

As part of the 2020–21 State Budget, the government allocated \$50 million to DoT over 5 years for deployment of FiBridge technology. DoT would become a FiBridge customer and the funds would go towards installing the technology on state-owned bridges.

The government approved an initial \$9 million for FiBridge to be installed on up to 30 priority, state-owned bridges in 2020–21. Funding beyond 2020–21 was held in contingency, subject to the Minister for Transport Infrastructure reporting back to the government with an evaluation of the initial investment.

Incorporation of HoldCo

In December 2020, the Head, TfV, established a holding company 'ACN 646 607 883 Pty Ltd' (known as HoldCo) to hold the state's interest in Eloque. VicTrack proposed that the Head, TfV establish HoldCo because its own powers under the *Transport Integration Act 2010* would not allow it to commercialise the technology outside Victoria.

HoldCo was part of the commercial structure the government endorsed in June 2020. The Head, TfV was the sole shareholder of HoldCo. HoldCo's purpose was to represent the government's interest in the joint venture company, Eloque LLC, with Xerox.

Ministerial expectations

In February 2021, VicTrack received a statement of expectations (SOE) from the Minister for Transport Infrastructure. This noted the government's support for VicTrack's innovation agenda, including the implementation of FiBridge following the government's approval of the commercialisation process. The SOE noted VicTrack's initial contribution of \$32.5 million to the investment.

Eloque journey

Eloque joint venture set-up

On 4 May 2021, Eloque LLC was incorporated in Delaware, USA. The equity arrangements in Eloque LLC (known as Eloque) were such that the Victorian Government owned 37.5 per cent via HoldCo and Xerox owned 62.5 per cent via a Xerox investment subsidiary.

In May 2021, agreements were signed to establish roles and responsibilities between:

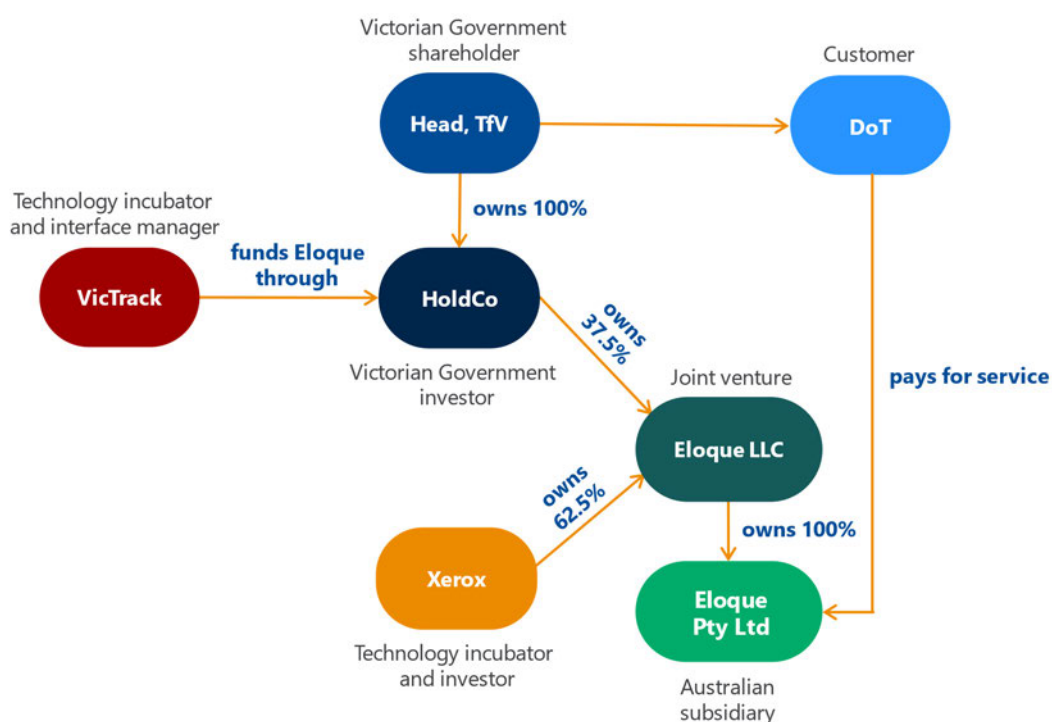
- HoldCo and Xerox
- VicTrack and DoT
- VicTrack and Eloque.

Eloque LLC then registered Eloque Pty Ltd, an Australian company, as one of its 3 subsidiaries.

For simplicity, we use Eloque to refer to Eloque LLC and Eloque Pty Ltd throughout the report.

Figure 2 shows the relationships between the stakeholders.

Figure 2: Joint venture stakeholder relationship



Source: VAGO.

Challenges in meeting customer expectations

The fibre-optic sensors that Eloque placed on 23 state-owned bridges did not provide consistent and reliable data needed to extract meaningful information about the bridges' condition. None of the sensors were fully commissioned or accepted by DoT. Eloque's rollout also ran behind schedule.

In June 2022, HoldCo expressed concern about Eloque's progress. It requested that Eloque create a roadmap to further the development of the FiBridge technology and reduce costs not related to this effort. Eloque then paused installation of FiBridge on DoT-managed assets to focus on technological development.

Eloque later decided the sensors would need to be replaced on the 23 initial bridges to enable higher-quality data to be produced. In July 2022, the Eloque board restructured the company in a bid to meet HoldCo's requests and reduce costs. Eloque's restructure resulted in 23 staff redundancies.

Eloque then revised its product roadmap and forecast that a minimum viable product would be available in the third quarter of 2023. However, according to the revised roadmap, the basic product would still not meet DoT's expectations to significantly reduce the cost of its asset management.

Impact of COVID-19

The COVID-19 pandemic caused major disruption to business via restrictions on movement (both locally and internationally), global supply chain issues and workforce supply challenges. The process of commercialising the FiBridge technology occurred against this backdrop.

VicTrack told us that aspects of the FiBridge project were impacted by COVID-19, including timing of reporting to government (for example, the State Budget was moved from May 2020 to November 2020), as well as its ability to oversee the actions of its CE, Mr Rose, particularly while he was overseas. VicTrack also advised us that the technology's commercialisation formed part of the Government's COVID-19 stimulus package, designed to boost economic recovery and job growth.

Challenges in managing costs

Installing FiBridge cost Eloque more than VicTrack had estimated. After pausing FiBridge deployment on the bridges in June 2022, Eloque identified that it would need additional funding of \$20 million to develop the technology into a commercially viable product.

DoT's withdrawal as FiBridge customer

In June 2022, DoT notified HoldCo that it was not prepared to ask DTF to release the next tranche of \$11 million until Eloque could demonstrate an improvement in the technology.

Xerox's withdrawal as FiBridge investor

In early 2022, Xerox proposed changes to the joint venture arrangement and operations. Xerox also reintroduced its 2020 proposal to set up an employee share scheme. Xerox proposed:

- changing shareholding arrangements from 37.5 and 62.5 per cent to 50:50 per cent holdings
- changing funding obligations for each partner.

In May and June 2022, the HoldCo board and Xerox discussed options to progress the Eloque venture. These discussions were unsuccessful. HoldCo and Xerox could not negotiate an outcome.

In February 2023, Xerox's annual report stated that it had taken action in the past year to reduce its research and development work. This included, among other things, exiting the Eloque joint venture and rationalising spending at PARC's research facilities.

Wind-up of Eloque

On 9 August 2022, Eloque LLC's board decided to wind up Eloque. On 11 August 2022, the HoldCo board accepted the decision.

Eloque made 29 staff redundant (including 15 people in Australia) and met all its employee and contractual obligations.

Eloque and DoT removed the sensors that had been installed on bridges. Eloque also sold some retrieved FiBridge assets. These sales raised over \$28,000, which Eloque paid to VicTrack.

HoldCo has written off the value of its investment in Eloque.

The joint venture cost the Victorian Government a total of \$20.4 million. As part of that, DoT and VicTrack paid \$9.3 million to Eloque to install FiBridge. VicTrack, on behalf of DoT, funded another \$8.125 million as the equity contribution by the Head, TfV in HoldCo. HoldCo in turn used those funds as its equity contribution for the set-up and wind-up of Eloque.

2.

Advice to the government on setting up Eloque

VicTrack did not give accurate or complete advice to the government to support the decision on whether to set up Eloque. DoT then became FiBridge's sole customer without completing its own due diligence.

Given that Eloque was a unique startup venture, VicTrack and DoT should have applied a higher level of scrutiny to ensure the government knew the risks of investing public money in this way.

VicTrack's advice to government was inaccurate and incomplete

Preparing investment advice for government

Agencies must give the government detailed, evidence-based information to support it in making decisions on investing public money. Agencies should conduct a similar process when deciding to invest self-generated funds to ensure they achieve value for money.

DTF's 2019 *Investment Lifecycle and High Value High Risk Guidelines* outline the process for agencies to propose and deliver projects requiring an investment of more than \$10 million.

VicTrack did not prepare a full business case defining a problem and considering options for addressing it when it was considering investing its own funds in Eloque and in its submission to government to approve a corporate structure and business plan for the joint venture.

DTF and the Department of Premier and Cabinet supported VicTrack's submission. In June 2020, the government's Crisis Council of Cabinet approved the submission, noting that it did not require a financial contribution from Treasury.

FiBridge was not a standard procurement or investment

VicTrack told us that its proposal to set up Eloque supported the government's efforts to stimulate the economy during the COVID-19 pandemic and was in line with the government's broader innovation agenda.

We did not find evidence that VicTrack sought or obtained approval from its board before proposing to government that it would commit \$32.5 million from its budget to commercialise FiBridge.

While VicTrack's June 2020 submission asked government to note its decision to invest \$32.5 million of its own funds, the VicTrack board only committed to contributing the funding in February 2021, following receipt of the minister's SOE. Although VicTrack commissioned consultants to advise on commercialising FiBridge, it did not develop an internal business case to assess the benefits and risks to its own business.

VicTrack's submission to the government presented Eloque as a unique opportunity for the government to partner with the private sector in a startup, rather than as a standard procurement project.

A government agency creating and running a startup as a joint venture with a private sector partner is an unusual approach, which may never have happened before. This meant it was especially important for VicTrack to conduct a thorough investment analysis and advise the government how it planned to manage the risks of this 'unique' approach.

The state of the FiBridge technology

VicTrack's submission to the government portrayed the FiBridge technology as proven and ready to roll out to the market. This was inaccurate. At the time, VicTrack and Xerox had only undertaken limited testing and knew the technology required further development.

VicTrack's submission to the government stated that ...	In fact, ...
the FiBridge technology was proven and 'the product is now ready for commercial rollout'.	the technology was still in development and not ready for commercial installation. In August 2022, Eloque forecast that it would have a minimal viable product in the second half of 2023, 2.5 years after the establishment of Eloque.
FiBridge was a solution with advanced analytics for informed, proactive asset management.	VicTrack and Xerox were yet to develop the majority of the key features FiBridge needed for analytics and reporting.
DoT had been involved in FiBridge trials as a member of the core advisory/technical team to demonstrate the technology.	DoT has told us it was not a technical partner and had not been involved in assessing or validating the data.

The VicTrack board told us that they only received a short presentation on the commercialisation opportunities for the FiBridge technology before VicTrack management made its submission to cabinet.

Focus on proposed benefits

VicTrack's submission to the government was overly optimistic and focused on the promised benefits and profits over the risks. Although an attachment to the submission notes that the FiBridge product would continue to evolve and develop, the main submission focused on:

- a base case scenario that predicted estimated annual revenues of \$422 million after 10 years, at a 41 per cent rate of return
- how FiBridge would reduce bridge monitoring and maintenance costs by enabling real-time, remote monitoring
- creation of local job opportunities through advanced manufacturing in Melbourne.

The submission did not show that the revenue projections were developed on an accelerated basis and had not been independently validated or tested. It also did not show that the consultant's report VicTrack relied on emphasised that the numbers were an estimate of potential results and should not be used for investment decisions.

Exploration of risks

VicTrack's submission did not highlight the risks that can arise from the government partnering with an overseas-based, private sector organisation in a startup. While the submission had a high-level risk overview, it focused more on how VicTrack and DoT could legally enter into the joint venture and what an appropriate corporate structure would be. It should have looked more at whether the benefits would outweigh the risks.

VicTrack did not advise the government how it planned to manage any future disagreements between the joint venture partners, given that government agencies and private sector organisations have different obligations and attitudes towards profit and risk.

Lack of transparency around the joint venture's operating agreement

How ownership in Eloque was decided

VicTrack did not advise government how the commercial aspects of the joint venture were decided. This included the percentage shareholding Xerox and the government – via HoldCo – would have in Eloque.

VicTrack documents from December 2019 about the joint venture noted that HoldCo and Xerox would have equal ownership of the joint venture. In May 2020, VicTrack also briefed the Minister for Transport Infrastructure that the State and Xerox would be 50:50 joint venture investors. However, in May 2021, Eloque was established with Xerox and HoldCo owning 62.5 and 37.5 per cent, respectively.

The VicTrack board and DoT told us that Mr Rose, as the government's representative, did not inform them or get their approval for this shareholding change prior to it happening. The Head, TfV only established HoldCo after Mr Rose had undertaken these equity discussions. This means that the HoldCo board did not have input into the equity arrangements.

How the joint venture IP was valued and allocated

HoldCo and Xerox each contributed \$7 million cash to set up Eloque. The joint venture's operating agreement states that Xerox brought \$8 million in IP to the venture and HoldCo \$2 million. This allocation decided the percentage shareholdings in the venture, favouring Xerox. This was even though VicTrack's submission to government had said Xerox and the government each owned 50 per cent of the FiBridge intellectual property.

Capital contribution	Xerox	HoldCo
Cash (AUD)	\$7 million	\$7 million
Deemed IP contribution	\$8 million	\$2 million
Total contribution	\$15 million	\$9 million
Ownership in joint venture	62.5 per cent	37.5 per cent

DTF's *Intellectual Property Guidelines for the Victorian Public Service* encourage government agencies to assess and record valuations of their significant IP. However, we have not found any documented evidence of how the contributed IP was valued or how it was allocated to the joint venture partners. This means the public cannot know whether HoldCo had a fair shareholding in Eloque.

Funding obligations of joint venture partners

VicTrack's submission to the government stated that Eloque would require \$65 million in funding over 5 years. It noted that the government and Xerox would each provide half. However, the joint venture's operating agreement only specified that each partner had an obligation to pay the initial capital investment: \$7 million in cash, and in-kind contributions of \$10 million in IP between them.

The agreement between HoldCo and Xerox did not specify that commercialising FiBridge would eventually require \$65 million of funding, and did not state where this funding would come from. By failing to specify each partner's financial obligations upfront, VicTrack and HoldCo were not being transparent about the future costs involved in setting up Eloque. Under the joint venture's operating agreement, HoldCo and Xerox were not obliged to pay more than the initial \$7 million investment. VicTrack did not inform the government of this.

This lack of clarity around funding obligations became an issue in June 2022 when HoldCo and Xerox did not agree on how to continue funding Eloque. This was one of the factors that led to the decision to wind up Eloque. VicTrack told us that future funding was to be determined between the parties and that not being contractually committed to specific funding in the future enabled each joint venture partner to consider the other's assessment of Eloque's future prospects.

DoT did not complete its own due diligence before purchasing FiBridge

DoT's process to purchase FiBridge

As part of the 2020–21 State Budget, the government allocated \$50 million to DoT over 5 years for deployment of FiBridge technology on state-owned bridges.

Government agencies must follow the Victorian Government Purchasing Board's procurement guidelines when buying goods and services. The guidelines require that, where possible, agencies conduct open, competitive tenders to ensure they achieve best value for the public.

DoT told us that its \$50 million funding to purchase FiBridge was not a standard procurement. DoT told us that it was part of a broader COVID-19 stimulus package where agencies made submissions to government identifying opportunities for economic recovery. DoT told us it completed its funding case using a shortened business case template provided by DTF.

Although DoT's submission highlighted that funding FiBridge may have a positive economic impact post-pandemic, it did not fully consider whether FiBridge would meet its needs and achieve value for money. Instead, DoT's submission focused on how installing FiBridge would support VicTrack's work.

Validation of FiBridge data before purchase

DoT told us it understood the FiBridge technology was still in development when it agreed to support it. However, it did not complete its own technical review of the technology or of the data produced by FiBridge sensors. While DoT did get a presentation of potential benefits from VicTrack, it did not see the system actually working.

DoT was interested in the potential of the system as described to it and focused on the expected benefits, such as:

- real-time monitoring of infrastructure
- cost savings from improvements in DoT's inspection regime
- use of advanced analytics to gain greater insights into bridges' health
- extension of the life of bridges that are underworked due to unused capacity.

In contrast, in January 2021 Queensland's Department of Transport and Main Roads (TMR) considered purchasing FiBridge technology and did a due diligence review of its technical capability and viability. This concluded FiBridge was still in its infancy and required further development. It noted there was potential in the system being developed but recommended that TMR revisit FiBridge's value proposition after a few years when the system was fully developed and further data was available.

In August 2021, TMR rejected Eloque's tender to provide bridge monitoring data collection services.

Technical requirements for Eloque

Following the Cabinet's approval of its submission and allocation of \$50 million to FiBridge deployment, DoT paid \$9 million to Eloque via VicTrack in December 2021.

DoT did not specify any technical requirements for Eloque. DoT advised us that it would normally develop technical requirements lists at the same time as a funding submission or procurement. DoT only finalised its customer requirements document in March 2022. This was 10 months after Eloque started installing FiBridge on state-owned bridges.

As discussed in section 3, Eloque paused the installation of FiBridge in June 2022, as it was not meeting DoT's expectations. DoT could have been aware of issues earlier if it had set up clear technical requirements and monitored these from the start.

3.

Overseeing the government's investment in Eloque

VicTrack and HoldCo's board did not manage the conflicts of interest and lack of transparency that arose from VicTrack and Eloque's chief executive holding key management and governance positions at the same time.

VicTrack, DoT and HoldCo did not effectively oversee the joint venture. This meant they were not always aware when the Eloque interim CEO made decisions against the public interest.

VicTrack's CE held multiple positions in the joint venture at the same time

VPS values

The code of conduct sets out the expected standards of behaviour for VPS employees. Among the values contained in the *Public Administration Act 2004*, the code references integrity, accountability and impartiality:

To demonstrate the VPS value of ...	A VPS employee must ...
integrity	<ul style="list-style-type: none">• be honest, open and transparent in their dealings• use their powers responsibly• report improper conduct• avoid any real or apparent conflicts of interest• strive to earn and sustain public trust of a high level.
accountability	<ul style="list-style-type: none">• work to clear objectives in a transparent manner• seek to achieve best use of resources.
impartiality	<ul style="list-style-type: none">• make decisions and provide advice on merit and without bias, caprice, favouritism or self-interest• act fairly by objectively considering all relevant facts and fair criteria• implement government policies and programs equitably.

Multiple management and governance roles

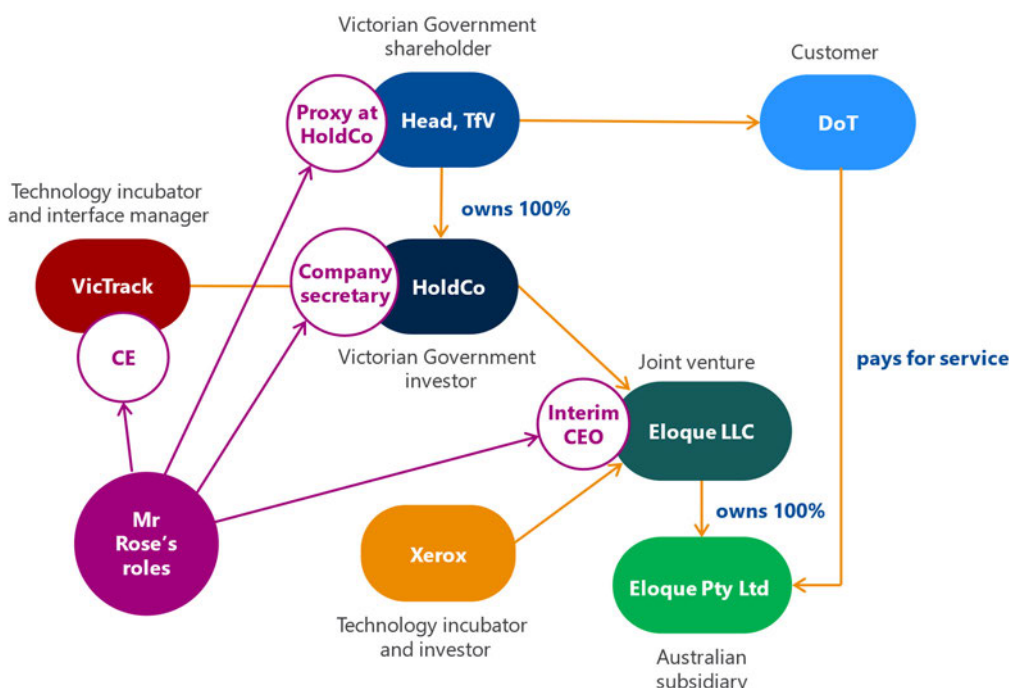
The VPSC's guidance on public sector governance highlights the distinction between the role of a board in providing oversight, and the management role of a CEO. While boards set an entity's direction, monitor its performance and ensure it fulfills its purpose; its CEO and other executives manage its day-to-day work.

Figure 3 shows that Mr Rose held the following roles in the joint venture at the same time:

- CE, VicTrack
- interim CEO, Eloque
- company secretary and public officer, HoldCo
- corporate representative and proxy for the government shareholder – Head, TfV.

In addition to these roles, Mr Rose was the government's main representative in dealings with Xerox prior to the set-up of HoldCo and Eloque.

Figure 3: Mr Rose's roles at the key entities



Note: Mr Rose held the roles at HoldCo between December 2020 and March 2022 and the role at Eloque LLC between May 2021 and March 2022.
Source: VAGO.

While all the entities had an interest in commercialising FiBridge, VicTrack and HoldCo, as public sector bodies, had a responsibility first and foremost to the government and the community. This contrasts with Eloque's commercial focus on profit.

Mr Rose holding multiple roles at once meant there was little separation between his:

- management responsibilities as chief executive of VicTrack and Eloque
- administrative function as HoldCo company secretary
- oversight role as the proxy and corporate representative of the shareholder at HoldCo.

This blurring of responsibilities may have reduced transparency around decision-making and weakened the independence of HoldCo's board.

For example, Mr Rose formally attended HoldCo board meetings in his role as company secretary. However, it is not clear how Mr Rose and the board members could clearly separate when Mr Rose was acting in the interests of HoldCo or whether he was fulfilling his role as Eloque's interim CEO when discussing key decisions about the joint venture.

Appointment of the interim Eloque CEO

We found no documented evidence that Eloque conducted a transparent, open recruitment process to appoint Mr Rose as interim CEO.

We also found no evidence that Eloque sought to conduct a recruitment process for a permanent CEO.

Although Eloque was not a public entity, it did receive public funding through VicTrack and HoldCo, and they should have ensured that, to the extent they had influence, the process was conducted openly.

Alternative CE arrangements for VicTrack

The VicTrack board did discuss and obtain advice on legal, financial and governance arrangements to support Mr Rose in performing his new role as interim Eloque CEO while remaining VicTrack CE. It also engaged a consultant to do a probity review of the governance arrangements it was proposing. However, the board focused on implementing the arrangement rather than considering the risk of the dual-CEO structure.

In August 2020 and January 2021, VicTrack briefed the minister that Mr Rose would act as 'inaugural, interim CEO of Eloque' while remaining VicTrack CE. Mr Rose signed off on these briefs. We found no evidence that VicTrack's and HoldCo's boards were aware of this proposal until April 2021. This was when VicTrack management recommended it to the VicTrack board as a way of meeting the minister's SOE.

The VicTrack board told us that the minister endorsed Mr Rose's dual role as chief executive of both Eloque and VicTrack in her 2021 SOE to VicTrack. Although the SOE directs VicTrack to focus on key projects, including FiBridge, it does not direct Mr Rose's appointment as interim Eloque CEO or his continuation as CE of VicTrack.

DoT was not involved in Mr Rose's appointment as interim Eloque CEO. DoT told us that it considered the Head TfV's role as that of a passive investor. It also told us that it believed the appointment of Mr Rose to multiple roles was the subject of agreements entered into between VicTrack and Mr Rose.

A February 2021 brief from DoT to the minister and the Treasurer described the CEO proposal as settled. It also noted that HoldCo had endorsed key administrative arrangements at its inaugural meeting in December 2020. However, we found no evidence the HoldCo board had any input in appointing the interim Eloque CEO.

VicTrack's board did not effectively manage conflicts of interest

VicTrack's conflict management plan

VicTrack did not adequately oversee the arrangements it put in place for Mr Rose to avoid any real or perceived conflicts of interest.

In April 2021, VicTrack issued a conflict management framework to Mr Rose, ahead of him commencing as the interim Eloque CEO. However, Mr Rose only signed and returned the document in August 2021. He had then been working at both Eloque and VicTrack for 4 months.

Ongoing conflicts of interest

VicTrack recognised that Mr Rose's roles at VicTrack, HoldCo and Eloque would create ongoing conflicts. It made efforts to mitigate these, including:

- creating the role of deputy chief executive and delegating the majority of the substantive functions and authorisations of the CE to that role for the duration of Mr Rose's secondment to Eloque
- specifying in Mr Rose's VicTrack employment contract that he must avoid any actual, perceived or potential conflicts of interest and should notify VicTrack at the earliest opportunity of any potential conflicts
- entering into a services deed with Eloque specifying that VicTrack employees on secondment to Eloque were not eligible to receive remuneration or any other employee benefits, such as sick pay, from Eloque.

The VPSC's code of conduct recognises that some conflicts cannot be avoided, in which case they must be managed in line with the relevant organisation's policies and procedures. However, given that Mr Rose's conflicts relate to the fact he held multiple roles simultaneously, VicTrack could have avoided these inherent issues had it considered alternative staffing arrangements prior to establishing the joint venture.

VicTrack's conflict management framework for Mr Rose was meant to:

- manage identified actual conflicts
- reduce the likelihood that further conflicts would emerge
- establish a pathway to identify, report and avoid any other potential or perceived conflicts.

It stipulated that he must declare any material change in his role with Eloque and must not participate in the negotiation of contracts between VicTrack and Eloque.

The conflict management plan also noted that potential conflicts of interest could arise due to Mr Rose's position at HoldCo. It made further specifications to avoid and manage those conflicts.

However, there was little or no independent oversight of Mr Rose across his multiple roles. This meant the onus was on him to exercise the mitigation measures.

VicTrack told us it was difficult to oversee its officers, including when Mr Rose was overseas during the COVID-19 pandemic, and that it believes the onus is on the individual to manage their conflicts and act appropriately.

Executive authority and accountability at VicTrack

Although VicTrack created the position of Deputy Chief Executive, its board decided that, for the period of his secondment, Mr Rose would remain VicTrack's accountable officer. This meant he retained ultimate executive authority and accountability.

Under the *Financial Management Act 1994*, the accountable officer of a public body is generally the CEO or equivalent, although the minister can determine otherwise. Because Mr Rose remained the accountable officer, he was obliged to oversee and be accountable for any powers and responsibilities that he delegated – in this case to the Deputy CE.

This meant that despite VicTrack's efforts to avoid conflicts by delegating the majority of his authorisations to another role, Mr Rose had to retain a broad level of oversight at VicTrack during his secondment to Eloque.

The interim Eloque CEO's conduct

Remuneration and equity proposal

Mr Rose acted outside the terms of his secondment arrangement to Eloque by overseeing plans to implement a remuneration and equity scheme from which he would have benefited.

In July 2021, Mr Rose and another seconded VicTrack employee presented a proposed remuneration plan for Eloque's executive management that included themselves by name. The proposed scheme suggested that Mr Rose receive a grant of 3 per cent of the issued shares in Eloque – referred to as the 'founder's equity award' – and sign-on bonuses for executive staff.

Mr Rose advised us that the Victorian Government representatives on Eloque's board were aware of equity discussions. Two government representatives, including a HoldCo board member, sat on the Eloque board. However, there is no documented evidence that Mr Rose or the other representatives communicated this information back to HoldCo, VicTrack and the Victorian Government.

The scheme he presented to the Eloque board also noted that under VPS restrictions, he and his colleague would not be able to receive any remuneration from Eloque while employed by VicTrack. It proposed that Mr Rose and his colleague accrue back pay from Eloque until they would be able to transition from VicTrack to Eloque employment. The proposal also stated that the founder's equity award and sign-on bonus should be held in escrow until the employees moved to Eloque.

For every VicTrack employee seconded to Eloque apart from Mr Rose, the scheme proposed salaries that significantly exceeded independently developed benchmarks obtained by Eloque.

The Eloque board discussed the remuneration proposal on multiple occasions and ultimately did not accept or implement the majority of the proposal.

CE decisions at VicTrack

Mr Rose made decisions at VicTrack, while seconded to Eloque, that he was not authorised to make under VicTrack's updated authorisations register.

In August 2021, VicTrack offered a new contract to one of its employees who was at the time seconded to Eloque with Mr Rose. Mr Rose offered the employee an executive-level salary, which was above the role's expected band, as well as 3 months of backdated pay at the higher rate. Mr Rose approved the new contract despite an independent assessment finding that the salary was too high for the position according to government requirements.

As Mr Rose was seconded to Eloque at the time and VicTrack had delegated some of his responsibilities to the deputy CE, he did not have the authority to approve VicTrack employment or remuneration decisions.

HoldCo's board did not have effective oversight of Eloque

Signing over authority to VicTrack

As part of the agency agreement between the Head, TfV and VicTrack, the VicTrack CE became the Head, TfV's proxy and corporate representative. He was also HoldCo's company secretary.

Role of the HoldCo board

HoldCo was a wholly government-owned company. Its main role was to act in the public interest by overseeing the government's shareholding in Eloque.

HoldCo's board had 5 members:

- 2 VicTrack representatives
- the DoT Secretary
- a representative from Investment Victoria
- an independent chairperson.

Mr Rose also attended HoldCo's board meetings as its company secretary.

HoldCo board's oversight of key decisions

Under the HoldCo constitution, the board was to meet a minimum of once a year and any further meetings would be on an as-needs basis.

The board did not meet for 8 months from December 2020 to August 2021.

During this time, the following key events happened:

- HoldCo and VicTrack signed an agency deed with Head, TfV, making Mr Rose, as VicTrack CE, proxy and representative of the Victorian Government.
- Mr Rose signed the joint venture's operating agreement with Xerox.
- HoldCo and Xerox established Eloque and began operations.
- VicTrack entered multiple services agreements with Eloque, HoldCo and DoT.

While HoldCo authorised the finalisation of these key issues, Mr Rose negotiated elements of the joint venture with Xerox – such as per-cent shareholdings, the allocation of IP value and royalty payments – before HoldCo was set up and without informing VicTrack and DoT in advance of the agreements.

HoldCo board's monitoring of Eloque performance

The HoldCo board did not request detailed financial and performance reporting for Eloque until December 2021, 6 months after its set-up. This was despite the joint venture's operating agreement allowing for HoldCo to receive regular financial reports as an investor.

In March 2022, the HoldCo board decided to start having quarterly meetings and developed a governance charter to define the board members' roles and responsibilities. This shift occurred after Mr Rose was placed on leave from his roles at VicTrack and Eloque. At this time HoldCo also replaced him in his role as company secretary.

HoldCo board's management of risks

The HoldCo board did not take early action to address emerging risks facing the joint venture.

As early as December 2020, the HoldCo board discussed issues that were of significance to Xerox and the government. The board discussed how Xerox:

- wanted to establish an employee share participation scheme to attract and retain staff
- could require the joint venture to sell the business or to list publicly after 3 years.

The HoldCo board further noted its representatives had agreed with Xerox to an employee share scheme capped at 20 per cent of the joint venture.

However, HoldCo did not address these risks or escalate these matters to DoT or the minister. Members of the HoldCo and VicTrack boards told us that this was because they understood the share scheme as a future plan for permanent employees that was not available to staff seconded from VicTrack.

In June 2022, when Xerox sought to implement the share scheme, the HoldCo board wrote to Xerox that it did not have the authority to discuss an equity incentive scheme and would 'seek the views of government on that issue as a matter of urgency'.

The government had also approved the joint venture under an understanding Xerox would provide half of the venture's ongoing funding.

However, it was not until August 2022 that the HoldCo board briefed the Minister for Transport Infrastructure on these issues. By that stage, they had become key obstacles to the joint venture's future.

HoldCo, VicTrack and DoT did not provide timely updates to the government

Reporting back to government on the joint venture

Agencies, when requested, must report back to the government on how they are delivering their projects, to ensure they are meeting the government's expectations.

When the government approved the joint venture in June 2020, it required DoT and VicTrack to report back to it in 6 months. Neither VicTrack nor DoT reported back to the government on the commercialisation and rollout progress of FiBridge.

DoT missed the opportunity to alert the government early to issues with FiBridge

DoT's obligation to report back to the government

DoT was supposed to report back to the government by 1 July 2021 under the government's \$50 million commitment to support FiBridge. Under the project implementation plan, the government expected Eloque to have fitted the first tranche of bridges with FiBridge technology at this point. However, Eloque's technology was still underdeveloped and not delivering expected results.

In May 2022, Eloque, DoT and VicTrack established a project steering committee to govern and facilitate FiBridge delivery onto the state-owned bridges. The committee members were from VicTrack, Eloque, DoT and DTF.

DoT advised HoldCo in June 2022 that it would not go ahead with fitting FiBridge sensors on the second tranche of bridges until Eloque did further work to validate the technology. DoT told us it did not report back to the government because it did not intend to ask for the remaining funds until the technology was working.

DoT acted responsibly by pausing the investment. However, by not reporting back, it missed the chance to give the government early information about how its investment was progressing and the risk that the intended benefits would not be achieved.

DoT's project assurance review

In August 2022, DoT engaged consultants to conduct a project assurance review of its FiBridge installation under DTF's investment assurance framework.

The review found there was a clear gap between DoT's expectations of the FiBridge system and what Eloque was currently able to deliver. The review expressed a low level of confidence that FiBridge could deliver all the benefits claimed in the funding submission. It also found the FiBridge system did not appear unique, as there were other bridge-monitoring systems and other technologies under development.

Although DoT requesting a project assurance review was a positive risk management move, it only did so after the Eloque board had decided to cease operations. An upfront due diligence and earlier project review would have allowed DoT to alert the government to the risks to its investment.

Appendices

[Appendix A: Submissions and comments](#)

[Appendix B: Abbreviations, acronyms and glossary](#)

[Appendix C: Review scope and method](#)

APPENDIX A

Submissions and comments

We have consulted with DTP (formerly DoT), HoldCo, VicTrack and Xerox and we considered their views when reaching our review conclusions. As required by the *Audit Act 1994*, we gave a draft copy of this report, or relevant extracts, to those entities and asked for their submissions and comments.

Our report names Mr Campbell Rose, who was involved with the Eloque venture. We also consulted and considered his input as part of our review and incorporated his comments in the report, where appropriate.

The submissions and comments provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head or the person making the comments.

We consulted with Eloque as part of the review. However, we could not get a submission from it as it had ceased operation by the time we finalised the review.

Responses received

Agency	Page
Department of Transport and Planning	A-2
HoldCo	A-3
Mr Campbell Rose	A-5
VicTrack	A-6



Department of Transport and Planning

GPO Box 2392
Melbourne, Victoria 3001 Australia

Ref: BSEC-1-23-3105

Mr Andrew Greaves
Auditor-General of Victoria
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE VIC 3000

Dear Mr Greaves

Victorian Auditor-General's Office - Eloque: the joint venture between DoT and Xerox - proposed report

Thank you for your letter of 28 August 2023 and for providing the Department of Transport and Planning (**Department**) with an opportunity to review and respond to the proposed report (**Report**) for the *Eloque: the joint venture between DoT and Xerox* limited assurance review.

The Department notes the findings of the Report. The role of the Department in the development of the FiBridge technology (**Technology**) was to facilitate the government's consideration of the Technology and act as the first customer while it was trialed.

The Department is dedicated to working on behalf of the Victorian community to provide safe and accessible transport infrastructure, and is confident in its processes, policies and governance.

Yours sincerely


Paul Younis
Secretary
Department of Transport and Planning

1 September 2023



5 September 2023

Mr Andrew Greaves
Victorian Auditor-General
Level 31
35 Collins Street
Melbourne, Victoria, 3000

**HOLDCO RESPONSE TO VAGO LIMITED ASSURANCE REVIEW ON
“ELOQUE: THE JOINT VENTURE BETWEEN DOT AND XEROX”**

Dear Mr Greaves

ACN 646 607 883 Pty Ltd (known as **HoldCo**) welcomes the opportunity to respond to the limited assurance review report from VAGO on ‘Eloque; The Joint Venture between DOT (Department of Transport) and Xerox.’ (**Report**) received by us on 29 August 2023.

Representatives of HoldCo have provided feedback to your officers through the assurance review process and I reiterate the position as follows.

Conflict management

Until March 2022, Mr Campbell Rose was Company Secretary and proxy/corporate representative of the Shareholder. The HoldCo Board (**Board**) had sought and acted upon advice in relation to any actual or perceived conflicts of interest arising from these roles.

Mr Rose’s formal attendance at Board meetings was limited to the administrative nature of the Company Secretary role, and he did not attend in any decision-making capacity.

Given these factors, we do not believe this weakened the independence of the Board.

Oversight of Eloque

The Company’s Constitution requires the Board to meet at least annually. The Board met eight months after incorporation. During that period there were no decisions requiring Board approval.

While Mr Rose signed various agreements in line with a Board approved delegation, the Board were provided with updated versions of those documents along with a summary of key changes before their execution.

The Board, however, became concerned by Mr Rose’s ability to appropriately fulfil his multiple accountabilities and in December 2021 resolved to seek alternative Company Secretarial services. Mr Rose, who was present at that meeting, did not act on the December 2021 resolutions, causing the Board itself to take action, with alternative Company Secretarial services put in place in March 2022.

The other matters raised in the report relating to Mr Rose’s conduct were not known to the Board.

Joint venture negotiations

Following its incorporation in December 2020, the Board was informed that:

- (a) Eloque could potentially implement an employee equity participation scheme, capped at 20%, however no specifics of the operation of any such scheme were provided; and
- (b) HoldCo would hold a 37.5% equity interest in Eloque.

In early 2022, Xerox approached HoldCo with a proposal to:

1. implement an employee equity participation scheme, which would require amendments to the Operating Agreement to include further details on the operation of the scheme. Those changes meant that government employees working with Eloque could benefit from that scheme; and
2. at the same time equalise the respective shareholdings of Xerox and HoldCo in Eloque with consequential impacts on funding obligations to HoldCo.

Extensive discussions were held with Xerox on its proposal.

HoldCo expressed to Xerox that it was not contemplated at any time by the Board that government employees would benefit from that scheme, only permanent employees of Eloque.

Considering the challenges Eloque confronted in the initial deployment of FiBridge technology on the 23 state-owned bridges, HoldCo also expressed to Xerox that Eloque should:

- (a) focus on the development of the product to meet the requirements of DOT, as Eloque's sole customer, and do no further marketing or business development;
- (b) develop a revised product roadmap and provide it to HoldCo and Xerox, against which progress could be measured; and
- (c) adopt financial measures to minimise costs and focus on product development.

However, to protect HoldCo's investment, HoldCo, with VicTrack support, offered to contribute more funds in instalments in line with existing equity weightings, subject to the achievement of product development milestones. This proposal was rejected by Xerox. In July 2022, Xerox advised HoldCo of its desire to seek a speedy dissolution of the partnership and the joint venture. HoldCo was subsequently advised that the Eloque Board of Managers had decided to wind up Eloque.

Xerox's decision to wind up Eloque is consistent with its changed priorities to reduce its exposure to innovation projects as referenced in its Annual Report.

Permanent Chief Executive appointment

HoldCo had no role in, and was not involved in, Eloque's search for a permanent Chief Executive of Eloque.

Yours faithfully



Deborah Beale

Chair

Subject: Statement of Mr Campbell Rose AM
Date: September 2023
To: The Auditor General

In my view, a number on the findings in the Report are objectively wrong and it is fundamentally flawed.

As a person directly affected by findings in the Report, I was provided with an opportunity to provide comment on the findings. I submitted a detailed response of 11 pages but was informed by VAGO that it could not be published because believes it contained “factual inaccuracies”.

The key reason for the VAGO’s position this is that VAGO investigation was unable to locate various documents that I referred to them to investigate. I am at a significant disadvantage in this process because I no longer have access to the relevant material or any opportunity to comment on the information that has been provided to the VAGO.

I know from my direct involvement with the relevant events that the documents exist (or at least did in the period between February and December 2022), support the position in my submission to VAGO and directly contradict certain findings in its Report.

It is concerning that the investigation has failed to identify or obtain relevant documents that exist. The fact remains that the VAGO is making findings on the basis of incomplete materials. As a person who was directly involved in the relevant events, I know from direct knowledge that this is the case. It is not factually inaccurate for me to say so, even if the VAGO disagrees because it has been unable to locate this information.

The findings in the report do not reflect an accurate understanding of what was decided (which was to develop a product with commercial partners in the field from proof of concept over a 4 year period), by whom it was decided, or the risks that were taken into account in making each decision.

Further, the VAGO has also demonstrated that it is wholly unfamiliar with concepts of commercialisation and lacked the knowledge and experience to assess the proposals that were put to Cabinet or what it meant. Its characterisations of events are simplistic and inaccurate. For example, the suggestion that Ministers did not understand that there were risks involved in the Eloque initiative because, while they were briefed on risks and mitigation strategies, they were not expressly told in terms that “most start-ups fail” squarely demonstrates the naivety of its analysis.

Finally, the findings that concern me specifically are directly inconsistent with independent legal and probity advice provided to VicTrack and Eloque by multiple pre-eminent sources. It is also directly inconsistent with the findings of an independent investigation by senior counsel with specialist expertise, who had access to all the relevant materials (which VAGO did not), and who found on exactly the same matters that are contained in the Report that I engaged in no wrongdoing.

The report fails to explain how it has considered those matters or how it reached different conclusions.

This is manifestly unfair and wrong.

Campbell A. Rose AM

25th September 2023

2 October 2023

Mr Andrew Greaves
Victorian Auditor-General
Level 31
35 Collins Street
Melbourne, Victoria, 3000

**VICTRACK RESPONSE TO VAGO LIMITED ASSURANCE REVIEW ON
"ELOQUE: THE JOINT VENTURE BETWEEN DOT AND XEROX"**

Dear Mr Greaves,

Thank you for the opportunity to comment on the proposed audit report on the limited assurance review on 'Eloque: the joint venture between DOT (Department of Transport) and Xerox.

Response to review - The evolution of Eloque was a complicated process. As VicTrack did not have the requisite powers under its enabling legislation to implement the project, the commercialisation of the FiBridge technology (**Technology**) was facilitated via the establishment of Eloque LLC, being a joint venture entity formed between Xerox and the State, through DOT, with the State's interest held in a holding company, known as HoldCo. VicTrack followed appropriate policy and governance processes in the evolution of the Technology. This included the establishment of advice and oversight forums and the extensive engagement with Government departments and agencies as well as technical experts and consultants in the proof-of-concept testing and development of the Technology, costings and estimated returns, consideration of the subsequent commercial and regulatory structure and preparation of the business case that formed the Cabinet submission.

The FiBridge project was regularly and transparently documented at all times including in VicTrack annual reports from 2017-18 onwards and extensively reported on to relevant stakeholders.

Findings and conclusions, but without recommendations - Your review examined whether *"the decision of VicTrack and DOT to enter into the joint venture arrangement with Xerox was transparent, evidence-based and free from bias"*.

VicTrack is satisfied that its role in the recommendation to Government to enter the arrangement with Xerox was in fact transparent, evidence-based, and free from bias. Significantly, your report does not discuss or make findings as to bias. The report also makes no recommendations in response to its stated purpose, or the findings and conclusions made and fails to distinguish in relevant parts between VicTrack management and the VicTrack Board.

The findings and conclusions made in the report focus on VicTrack's role in the advice provided to Government and Government's oversight of the venture, rather than on VicTrack's own decision-making processes. That focus creates a disconnect between the review's objectives and its findings and conclusions.

Cabinet Submission - Your report makes findings and conclusions in relation to VicTrack's submission to Cabinet. As a self-funded entity VicTrack provided the investment capital for the commercialisation of the Technology. For clarity, VicTrack's submission to Cabinet did not seek Cabinet's approval to an investment proposal but rather sought in-principle approval for the commercialisation of the Technology.

VicTrack rejects VAGO's finding that it provided inaccurate and incomplete information to the Government about the state of the development of the Technology when it sought Government's in-principle support for the commercial structure. While the advice following the trials was that the Technology was ready to move from trial to commercialisation, VicTrack was clear in its communications that further investment would be required to enable the refinement of key user features of the product. Other relevant agencies and departments were involved throughout the development of the Technology and supported the commercialisation proposal that formed the Cabinet submission.

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VicTrack

Conflict of interest management - Your report makes findings and conclusions regarding the multiple roles held by Mr Rose and real and perceived conflicts of interest involved with those roles. To enable the start-up of Eloque, and in VicTrack's view, consistent with the Government's expectations, VicTrack established appropriate conflict of interest protocols to enable Mr Rose's services to be provided as the interim CEO of Eloque. VicTrack sought extensive external advice, including on several alternative structures and risk mitigation strategies, and with external advisors developed a comprehensive conflict management plan for Mr Rose in his role of interim CEO of Eloque. That plan was well understood by all parties and became effective from the point that Mr Rose accepted the Eloque interim CEO position. Mr Rose was aware of that fact.

To further support managing any conflicts that might arise with Mr Rose assuming that interim role, his day-to-day delegated authorities within VicTrack were largely removed.

VicTrack also notes that at no time was Mr Rose a director of VicTrack or HoldCo and was not on the Board of Managers of Eloque LLC. The subsequent recruitment of a permanent Eloque CEO was a matter for the Eloque Board of Managers.

Oversight of Eloque -Your report makes findings and conclusions that VicTrack did not effectively oversee the Eloque joint venture or identify problems in a timely manner. Oversight of the Government's investment in Eloque was conducted by HoldCo. As such, VicTrack had no direct role in the Eloque venture, other than to provide corporate support services to Eloque, fund the Government's investment into the venture, and to receive any future royalty payments from intellectual property it contributed to the venture.

Eloque commenced operations in mid-2021. By December 2021, Eloque's focus on international sales rather than further enhancement of the product and its application to Victorian assets had been identified as an issue. This, along with DOT's experience with the Technology and Xerox's equity realignment proposal were catalysts for a revaluation of Eloque's prospects. Other than contributing to wind-up costs, no payments were made to Eloque beyond the initial capital injection on its formation and the first tranche payment in relation to the application of the Technology on DOT's bridges.

Conduct of VicTrack CE / Eloque interim CEO - VicTrack notes your finding that Mr Rose, as Eloque interim CEO and VicTrack Chief Executive, made key decisions at both Eloque and VicTrack which went against the code of conduct, the requirements of his employment contract and the terms of his secondment to Eloque. Unfortunately, it is now apparent that the trust VicTrack placed in Mr Rose to develop the commercialisation of the FiBridge innovation on behalf of the Government was misplaced, and that Mr Rose oversaw plans to implement a remuneration and equity scheme, which had not been disclosed, from which he would have benefited. The conduct of the former Chief Executive of VicTrack noted in the report was unacceptable.

For reasons largely outside the scope of your report, in February 2022 the VicTrack Board acted promptly when alerted to certain issues and placed Mr Rose on leave. This was well ahead of the conclusion of his employment in February 2023. Further, a significant matter in relation to Mr Rose's conduct was not known to VicTrack until receipt of your report.

Conclusion - By its very nature, start-up innovation technology is not 'business as usual'. There is no guarantee of success, and this fact was clearly set out in the many briefings and consultant reports provided to the Government. VicTrack maintains that whilst the venture was unsuccessful the pursuit of the Technology to support cost efficiency in the long-term asset management of Victoria's 2,500 rail bridges and 6,500 road structures, and a potentially significant worldwide commercial opportunity, was warranted.

Decisions were made in good faith with the appropriate consultation, expert advice, background documentation and governance arrangements put in place to support those decisions and their transparent implementation.

Yours sincerely



Geraldine Gray
Chair

VicTrack

APPENDIX B

Abbreviations, acronyms and glossary

Abbreviations We use the following abbreviations in this report:

Abbreviation	Full spelling
code of conduct	<i>Code of Conduct for Victorian Public Sector Employees</i>
HoldCo	Holding Company. In this report it refers to ACN 646 607 883 Pty Ltd
Xerox	Xerox Holdings Corporation

Acronyms We use the following acronyms in this report:

Acronym	Full spelling
CE	chief executive
DoT	Department of Transport
DTF	Department of Treasury and Finance
DTP	Department of Transport and Planning
IP	intellectual property
PARC	Palo Alto Research Center
SOE	statement of expectations
TfV	Transport for Victoria
TMR	Queensland Department of Transport and Main Roads
VAGO	Victorian Auditor-General's Office
VPS	Victorian public sector
VPSC	Victorian Public Sector Commission

Glossary

This glossary includes an explanation of the types of engagements we perform:

Term	Explanation
Reasonable assurance	We achieve reasonable assurance by obtaining and verifying direct evidence from a variety of internal and external sources about an agency's performance. This enables us to express an opinion or draw a conclusion against an audit objective with a high level of assurance. We call these audit engagements.
Limited assurance	We obtain less assurance when we rely primarily on an agency's representations and other evidence generated by that agency. However, we aim to have enough confidence in our conclusion for it to be meaningful. We call these types of engagements assurance reviews and typically express our opinions in negative terms. For example, that nothing has come to our attention to indicate there is a problem. See our assurance services fact sheet for more information.

APPENDIX C

Review scope and method

Scope of this review

Who we examined

We examined the following agencies:

Agency	Their key responsibilities
VicTrack	<p>VicTrack co-developed the FiBridge concept with Xerox and invested out of its own budget to commercialise FiBridge. VicTrack continued to manage the FiBridge project after Eloque was set up.</p> <p>VicTrack's broader role is the owner of Victoria's rail transport land, assets and infrastructure.</p>
DoT	<p>DoT was a customer for FiBridge. It paid Eloque (through VicTrack) to have FiBridge installed on priority state-owned bridges it managed. It also provided engineering and other related support to Eloque during the rollout of the FiBridge project.</p> <p>The Secretary of DoT performed the role of Head, TfV, under whose power the holding company HoldCo was set up.</p> <p>The role of DoT (now DTP) is to plan, build and operate Victoria's transport system. It provides support and advice to transport sector ministers including the Minister for Transport Infrastructure.</p>
Eloque	<p>Eloque was responsible for commercialising FiBridge and for executing its contracts with its stakeholders. It was also responsible for its own operations as a company.</p>
HoldCo	<p>HoldCo is a wholly government-owned holding company. It was responsible for representing the Victorian Government's interest in the Eloque joint venture with Xerox. Its board was responsible for overseeing the government's shareholding in Eloque.</p>

Our review objective

To determine whether VicTrack and DoT's decision to enter into a joint venture arrangement with Xerox was transparent, evidence-based and free from bias.

What we examined

We examined:

- the quality and completeness of the evidence provided to government to support the joint venture
- the governance, oversight, risk control and reporting mechanisms the government used to monitor and support the joint venture.

Conducting this review

Assessing performance To form our conclusion against our objective we used the following lines of inquiry and associated evaluation criteria:

Line of inquiry	Criteria
1. The process of awarding the joint venture was conducted objectively, supported by evidence and in line with procurement policies and principles.	1.1 The process of awarding the joint venture was conducted objectively, supported by evidence and in line with procurement policies and principles.
	1.2 During the joint venture contract, information about the technology was transparent and proper risk controls were in place.
	1.3 What was the overall cost to the Victorian Government and what was the outcome of the IP development and its availability for future use?
2. The recruitment process for the Eloque CEO position and key decisions made by the Eloque CEO were impartial and unbiased.	2.1 The recruitment process for the Eloque CEO position was impartial and unbiased.
	2.2 Key decisions made by the Eloque CEO were impartial and unbiased.

Our methods As part of the review we:

- analysed VicTrack’s FiBridge project and investment documentation
- reviewed DoT, HoldCo and Eloque documentation
- interviewed key staff and stakeholders, including Mr Rose
- obtained written attestations from stakeholders.

Compliance We conducted our review in accordance with the *Audit Act 1994* and *ASAE 3500 Performance Engagements* to obtain limited assurance to provide a basis for our conclusion.

We complied with the independence and other relevant ethical requirements related to assurance engagements.

We also provided a copy of the report to the Department of Premier and Cabinet and the Department of Treasury and Finance.

Unless otherwise indicated, any individuals named in this report are not the subject of adverse comment or opinion.

Cost and time The full cost of the review and preparation of this report was \$610,000.

The duration of the review was 13 months from initiation to tabling.

Auditor-General's reports tabled during 2023–24

Report title	Tabled
<i>Cybersecurity: Cloud Computing Products</i> (2023–24: 1)	August 2023
<i>Responses to Performance Engagement Recommendations: Annual Status Update 2023</i> (2023–24: 2)	August 2023
<i>Eloque: the Joint Venture Between DoT and Xerox</i> (2023–24: 3)	October 2023

All reports are available for download in PDF and HTML format on our website at <https://www.audit.vic.gov.au>

Our role and contact details

The Auditor-General's role

For information about the Auditor-General's role and VAGO's work, please see our online fact sheet [About VAGO](#).

Our assurance services

Our online fact sheet [Our assurance services](#) details the nature and levels of assurance that we provide to Parliament and public sector agencies through our work program.

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