

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

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Department of Transport and Planning

GPO Box 2392
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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
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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
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**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