

From: [Cambell Taylor](#)
To: [McDonald, Susan \(Senator\)](#)
Cc:
Subject: ARTC: Emanate Clients
Date: Wednesday, 31 August 2022 12:19:27 PM

Attention: Senator Susan McDonald

**Australian Rail Track Corporation (ARTC)
Transport for New South Wales (TfNSW)**

Relevant Matter

ARTC: Emanate Landowners

Background

Emanate is retained on behalf of eighteen (18) Landowners (LO) along the *North Star to Border* and *Narrowmine to Narrabri* projects, two (2) of the thirteen (13) projects which make up the total ARTC: Inland Rail Project.

Each of (18) LO have been delivered "Opening Letters" over different dates ranging from November 2021 to February 2022 which state an Offer will be delivered within the terms of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (Act).

To date:

1. No Offer in terms of Act has been delivered;
2. No clarity of a way forward has been delivered;
3. No substantive indication / timing of when LO may expect to receive an Offer has been delivered;
4. No expert reports which identify any impacts of rail on Land as prepared by Inland Rail experts, which consider detailed, final design of the railway or rail crossings so as LO is aware of their interface with the railway line, or how LO will have to rearrange, redesign, and redevelop their businesses after construction of rail, to be able to continue to operate around a newly constructed railway system including crossings, have been delivered;
5. LO experts' have provided Emanate with details as to the documentation and materials which each require to enable them to properly predict / consider and detail the impacts of the construction of the railway line and its associated infrastructure on Lands;
6. We have requested the reports in our emails, however, ARTC, as agent for TfNSW, have failed to deliver any updated or current information / expert reports which relate to LO lands;
7. We have requested actual expert Flood Modelling, used by ARTC and TfNSW in their assessment of the flood impacts upon the land, in excess of ten (10) occasions as detailed hereafter at item ten (10) to item twenty (20);
8. ARTC and TfNSW refuse to deliver expert flood model, so as to enable LO retained hydrology expert to complete his duties to the required standard, so as LO have an accurate idea of the flood impacts which will definitely impact on their land as a direct and natural consequence of the construction of the railway line, which is their right as a disposed Landowner;
9. ARTC have not delivered any agreement / confirmation of payment of LO legal, valuation, hydrology and or other expert reports required to assist in assessing impacts on Land in accord with Act.

Requests for Information

Emanate has written to ARTC and TfNSW through both their internal legal department, and solicitors: Clayton Utz requesting delivery of expert reports / documents / material to the assessment of impacts of Inland Rail project will have on LO lands, on the following dates:

10. Friday, 11 February 2022;
11. Tuesday 22 February 2022;

12. Wednesday 2 March 2022;
13. Thursday 3 March 2022;
14. Friday 19 March 2022;
15. Wednesday 13 April 2022;
16. Wednesday 20 April 2022;
17. Monday 16 May 2022;
18. Wednesday 8 June 2022;
19. Thursday 21 July 2022; and
20. Thursday 4 August 2022;

which detail, the following, which is required for LO retained experts to complete their duties as retained:

21. ARTC Map identifying ARTC Rail updated construction batter locations on Land;
22. actual digital flood model prepared by ARTC engineers which has been used and relied upon by ARTC and their consultants to predict flood behaviour or impacts of overland flow water, as it impacts Land;
23. details of the ARTC detailed design for ARTC project area;
24. Specific reference to updated ARTC concept design for ARTC project in EIS; and
25. Specific PDF set of updated ARTC engineering drawings detailing and presenting the current updated state of the rail track and batter design.

Despite our repeated requests for information, and despite Emanates best efforts, ARTC and TfNSW continue to refuse access to updated, most recent and relevant documentation, directing us to either the Inland Rail website, or provided expert reports /documentation which are not current or up to date.

Further Issues

Further, ARTC have not in any way delivered to LO any clarity or information with regard to their interface with the railway in the future, and in most instances, are denying LO crossings or access to the land which they now freely traverse to run their businesses, this being despite *Rail Safety National Law (NSW) No 82a* section 108 [\[5\]](#) which states parties must negotiate interface.

Inland Rail, have instead, decided where they will place crossings and the like, without any consultation with the LO, and without any regard to how they run their businesses.

It follows, many of the LO which have retained Emanate have lost all faith in ARTC and TfNSW, their continued lack of clarity, is ultimately, leading to an untenable position between all LO and ARTC / TfNSW.

Summary

It is unacceptable, for a federal government owned corporation (ARTC) not to deliver expert reports as they impact lands, or any information which relates to LO interface with the railway, to LO, whose lives and businesses relate to relate Land, which is being taken, by a project which has delivered no clarity as to if it will even be completed.

Going Forward

Would you please assist / investigate and or arrange conferences with the ARTC decision makers to determine / agree a way forward.

We are available to confer / meet to enable discussions to proceed ASAP.

Future Action

Should you wish to discuss the foregoing please do not hesitate to contact Barry Taylor

Kind Regards,

¹ *Rail Safety National Law (NSW) No 82a* 108 Interface coordination—rail infrastructure and private roads

) A rail infrastructure manager must—

- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of a private road; and
- (b) consider the extent to which those risks are managed by any prescribed protocols; and
- (c) consider whether it is necessary to manage those risks in conjunction with the road manager of that road and—
 - (i) if the rail infrastructure manager is of the opinion that it is necessary that those risks be managed in conjunction with the road manager—give written notice of that opinion to the road manager and determine measures to manage, so far as is reasonably practicable, those risks; or
 - (ii) if the rail infrastructure manager is of the opinion that the management of those risks does not need to be carried out in conjunction with the road manager—keep a written record of that opinion; and
- (d) unless paragraph (c)(ii) applies—for the purpose of managing those risks, seek to enter into an interface agreement with the road manager.

Maximum penalty—

- (a) in the case of an individual—\$50 000;
- (b) in the case of a body corporate—\$500 000.

If a rail infrastructure manager gives a road manager of a private road a written notice under subsection (1)(c)(i), the road manager must—

- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of, or partly because of, railway operations; and
- (b) determine measures to manage, so far as is reasonably practicable, those risks; and
- (c) for the purpose of managing those risks—seek to enter into an interface agreement with the rail infrastructure manager.

Maximum penalty—

- (a) in the case of an individual—\$50 000;
- (b) in the case of a body corporate—\$500 000.

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