

**Submission
No 227**

INQUIRY INTO IMPACT OF THE WESTCONNEX PROJECT

Name: Ms Lynda Riley

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Recommendations for consideration

- That the NSW government offer just terms compensation for the indirect expropriation of residential property that is within the vicinity of a major transport infrastructure project but does not need to be acquired since it is not within the construction footprint.
This could be achieved by-
 - amendments to *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), or
 - implementing new RMS compensation guidelines for residential property within the vicinity of major transport infrastructure projects like WestConnex.
- That the NSW government allocate compensation funds as part of the project(s) budget, so the disproportionate burden of these few residents can be shared by the many that the project(s) is intended to benefit.
- That the Minister refuse to approve any further major transport infrastructure project development in residential areas until these matters are appropriately addressed.

Dear Public Accountability Committee,

I am a member of the public in Sydney, NSW; one of the “many” who are the intended beneficiaries of massive transport infrastructure projects in Sydney like WestConnex. I have seen the online footage and read heartbreaking accounts from the “few” whose lives have been turned inside out because the RMS decided to build its transport infrastructure near their homes.

Clearly, the wisdom of ever considering the construction of such major transport infrastructure in residential areas needs to be thoroughly addressed. I am hoping that this inquiry will focus on the **human cost** of WestConnex.

This submission focuses on the damage that has been done and is ongoing, to the people whose homes have been devalued because of their proximity to the project(s). The devaluation of their homes restricts their ability to leave and reestablish homes elsewhere. Shamefully, there is currently no “just terms” compensation available to these few, who must now bear the burden for the many.

The residents near these projects must endure-

- Exposure to continuing adverse impacts of construction and permanent major infrastructure, including dust, noise, fumes, vibration, dangerous emissions, and disruption of their lives. This has a continuing and long-term impact on their physical and mental health, and unavoidably diminishes the quality of life they previously enjoyed.

- Continuing interference with their property rights and devaluation of their property because their homes are near major high-volume traffic infrastructure, and the continuing adverse impacts this generates; and
- The overwhelming emotional stress, effort, and time required to constantly have to deal with administrative bureaucracies, offering “*mitigation controls*” and “*support services*” for situations the residents should never have had to endure in the first place. There is also the devastation of being abandoned by the government and the public at large. In addition, there is a heart-wrenching form of guilt that involuntarily creeps in when tragic accidents occur. Here, despite being blamelessness, the residents start to doubt themselves, and agonise that perhaps they could have done something differently to protect their homes and their families.

In any other scenario these residents would have rights to equitable relief and common law damages for this continuing nuisance and tortious conduct.

If they lived in the state of Victoria, New Zealand, Europe, Canada, the US, or any other part of the world that recognises the international human right to peaceful enjoyment of property, this interference with their vested property rights would not be permitted without reasonable compensation.

Their damage and emotional distress are real and predictable. The residents need the option of compensation upfront, so they can take charge of their lives and avoid a living hell.

These residents’ homes were not required for the footprint of the project, so they were not offered compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW). Their only other hope of compensation is the RMS Exceptional Hardship Land Purchase Guideline. However, as explained below,ⁱ RMS requirements for “Exceptional hardship” compensation ignore the reality that-

- there are no acceptable levels of hardship in these circumstances, and
- there are no “mitigating measures” to prevent the interferences with these residents’ property rights; interferences that cause inevitable and irreparable damage.

Instead of just terms compensation, the RMS currently offers these residents –

- promises of “*mitigation measures*,” “*support services*,” and “*project mitigation controls identified through the environmental assessment process*;”
- undertakings to “*minimise the impact*;” and
- assurance that “*In almost all cases, impacts on properties are temporary, or can be appropriately managed through mitigation measures in the design or as part of the conditions of approval of a project. These measures may include improvements such as noise insulation of homes (for example installing double glazing windows, or noise walls) and landscaping for visual screening.*”

Evidence of the WestConnex experience from the affected residents has demonstrated that these promises, undertakings, and assurances are mere platitudes, that serve only to obfuscate.

Evidence of the WestConnex experience proves that there are no acceptable levels of adverse impact.

The lives and rights of these small groups of residents to enjoy their homes (like every other Australian homeowner can) are unavoidably and irreparably impacted. This unfair interference with property rights, without compensation, cannot, in all good conscience, be justified by the NSW government, or the public.

Compensation for the adverse impacts on these residents should be an inbuilt cost of the project(s); a cost the NSW Government and the public should be contributing to. If projects are not viable with this extra cost, then alternatives need to be considered; a human cost is not acceptable.

Thank you for considering my submission and recommendations. Your written response would be greatly appreciated.

ⁱ **The current [RMS Exceptional Hardship Land Purchase Guideline](#) is inadequate to address compensation for residents near major transport infrastructure projects**

The multiple reasons why the current Guideline is inadequate include the following-

- The current frame of reference for determining the proportionality of hardship is the experience of *“most other owners in the vicinity of the project.”*
 - Since all residents near projects as massive as this will suffer unavoidable and irreparable hardship, it is manifestly unfair to increase the hardship threshold even further.
- There should be a right to compensation, not a discretion, and compensation should not be dependent upon the existence of “appropriate funding;” the funding should be budgeted.
- The assumption that in “most cases” mitigation measures can provide a solution, has been proven to be false by the WestConnex experience for projects this large.
- *“project mitigation controls identified through the environmental assessment process”* have also been proved by the WestConnex experience to be insufficient to address impacts.
 - Accordingly, perceptions or concerns about possible future impacts, are no longer hypothetical, they are real. The evidence demonstrates that perceptions and concerns about adverse future health and safety impacts are substantiated.
- Provisions allowing for rejection of premature applications and for waiting for environmental assessments and development of the project are unfair.
 - Residents should not need to wait until damage is done. They should be afforded the opportunity to move on with their lives as quickly as possible.