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6 November 2012

Attention:

Director – Infrastructure Projects  
Epping to Thornleigh Third Track Project –  
SSI 5132

Sam Haddad, Director General,  
Department of Planning and  
Infrastructure

Les Wielinga, Director General Transport for  
NSW

Rob Mason, Chief Executive, Rail  
Corporation NSW

Kerry Chant, Deputy Director General,  
Population Health & NSW Chief Health  
Officer

Chris Lock, Deputy Director General,  
Transport Projects, Transport for NSW

Richard Wood, General Manager, Rail and  
Intermodal Branch, Nation Building Program,  
Department of Infrastructure and Transport

Mark Gifford, A/Chief Environmental  
Regulator, EPA

For noting:

Her Excellency Professor Marie Bashir,  
Governor of the State of New South Wales in  
the Commonwealth of Australia

Her Excellency Ms Quentin Bryce,  
Governor-General of the Commonwealth  
of Australia

Dear Sirs:

ETTT EIS – NATION-BUILDING; COMMUNITY AND PUBLIC HEALTH DESTROYING

Thank you for the opportunity to comment on SSI5132. This letter is a formal submission to the NSW Department of Planning (**‘the Department’**). It is also a formal request for the re-housing of our family, which can be variously assessed, funded and validated by direct copy recipients.

We object to the proposal. We declare we do not have reportable political donations, including donations of \$1,000 or more, made in the previous two years.

We would appreciate a considered reply to this letter from all direct copy recipients.

We recommend that through your various powers and implied statutory duties you oblige the Proponent to protect our lives and our communities. We further recommend you censure the Proponent and the primary author, Parsons Brinkerhoff, for intentionally providing scant and at times specious analysis, and even less in the way of proposed management measures in the EIS, particular in relation to public health which the Department says are implicit in the DGRs.

So contrived is the EIS with flawed logic, and lacking in meaningful management measures, that we conclude that the Proponent is operating to a cynical, systematic tactic of trying to fatigue the Community and, ultimately, assist the Government in broadcasting the optics of a difficult but eventually successful EIS (sic).

RailCorp, NSW Health, EPA, Ministers and others are very much aware of the public health risks associated with the extant freight train pollution in the same location at ETTT. They are on record claiming to mitigate and abate serious freight train pollution. Given that the Proponent and Government agencies and Ministers acknowledge that there is a freight train pollution problem, how could they credibly and legally provide their non-objection to SSI-5132? And when Parliament passed relevant legislation and approved various regulatory instruments, did it in your view intend to permit such savage destruction of communities and damage to public health? We assert that it did not.

The public health risk to which we refer is not merely an uncrystallised, theoretical risk; it is a present-day public health problem. The NSW Chief Health Officer has stated this directly, unequivocally, to a number of you in April of this year.

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We put a simple proposition to you:

*Would it be acceptable to you if your children or your elderly mother were made ill because of the excruciating, screeching >110dB coming past your and their homes? Well, we have that today. And the Proponent is poised to increase the number of 'noise events' by at least 50%...*

We have examples of an elderly lady vomiting whilst gardening because she did not have her mitigation ear-muffs on whilst a freight train screeched past; we have toddlers awoken in tears in the middle of the night and during their daytime sleep because their bedrooms are shaken so violently; and, we have a material loss of amenity of our homes and gardens because you cannot – without getting heart palpitations – cope with the freight trains that are all day, every day and night.

*...surely not so why is it acceptable to do so by our homes, kindergartens, schools, places of worship and offices?*

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Before we contracted to purchase our home, our conveyancer performed the customary searches. This included RailCorp, which produced a nil return. This was despite the then Government having signed off ETTT project funding with the Federal Minister for Infrastructure. We would not have purchased the home had we been notified that a third freight track was poised to be built 30 meters from our home.

We request immediate information about the arrangements that are being made to re-house us elsewhere in the suburb. This is necessary to accommodate a number of health complaints within the family, which we would be happy to explain to appropriate medical personnel appointed by the Department.

ETTT could be put through a tunnel but – depending on which day of the week the Proponent is asked – it is either too expensive to construct or too difficult to rid a tunnel of diesel emissions. But a tunnel is a simple albeit more costly solution in the short-term.

It also does not:

- fit with the funds allocated so rather than the ‘right’ solution adopted, a solution is magically designed that is ‘feasible’, in the words of the Proponent; nor,
- overcome the inconvenient truth that electric trains would cost the haulage industry dearly, something which successive governments have countenanced out of fear of political retribution from the commodities/minerals industry.

Indeed, a tunnel is being deployed nearby for the North West Rail Link so the expensive equipment and talent could deliver synergies for the ETTT. A tunnel of considerable length also exists near Woy Woy so there is already nearby precedent in relation to the soluble challenge of getting rid of emissions.

A tunnel solution means the Proponent can send as many freight trains as it wishes beneath North West Sydney and remove all key pollutants. If it does not – and the Department approves this SSI-5132 more or less in its current form it is simply storing-up liability for the Government in the form of death (e.g. suicide<sup>1</sup>, cardiovascular disease<sup>2 3</sup>), auditory damage (including as a corollary

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<sup>1</sup> Stansfeld, S. A. (1992). Noise, noise sensitivity and psychiatric disorder: epidemiological and psychophysiological studies. Psychol Med Monogr Suppl 22, 1-44.

<sup>2</sup> Babisch, W. (2003). Stress hormones in the research on cardiovascular effects of noise. Noise Health 5, 1-11.

developmental retardation in children<sup>4</sup>), diabetes, and aggravation of pre-existing health complaints. Have we learnt nothing from the James Hardie debacle?

These are the acknowledged consequences of excessive noise levels, pitch levels, and noise events. This is acknowledged both within and outside NSW Government – in writing. They are not melodramatic statements; they are the realities with which we are already living.

We predict that the EIS lodged by the Proponent is so ambit in its claims and intellectually feeble that it is expecting to receive revised DGRs and/or amendments from the Department. It is inconceivable that they would expect it to pass muster in its current guise. This exercise is therefore insulting and costly for all concerned, with both the community and the Department being gamed by the Proponent.

Finally, we wish to acknowledge the support of two barristers, one **Queen's Counsel**, several solicitors, the NSW EDO, and local and international technical experts that have generously donated their time and expertise to date.

Yours sincerely,

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<sup>3</sup> Charalampidis, A., Katsouyanni, K., Cadum, E., Pershagen, G., Babisch, W. & Jarup, L. (2008). Can exposure to noise affect the 24 hour blood pressure profile? Results from the Hyena project. Epidemiology 19, ISEE-858.

<sup>4</sup> Lercher, P., Evans, G. W. & Meis, M. (2003). Ambient noise and cognitive processes among primary schoolchildren. Environment and Behavior 35, 725-735.

Lercher, P., Evans, G. W., Meis, M. & Kofler, W. W. (2002). Ambient neighbourhood noise and children's mental health. Occup Environ Med 59, 380-6.

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## Executive summary

1. Lack of analytics – particularly in relation to the economic need for the ETTT, and the benefits that are asserted. We have asked for the cost-benefit-analysis ('CBA') methodology from the Proponent but this was declined, inviting us to wait until the EIS. The EIS does not contain any discussion about the CBA employed. This is particularly important if there is to be a genuine debate about the merits and demerits of the ETTT relative environmental impacts.
2. Partial and selective analytics - here are also critical shortcomings in the noise-relate analytics arise. These seek to underplay the impact by claiming that the increase in noise will be very low. Whilst this may be true, it ignores the critical fact that the number of 'noise events' will increase 50% - 100% between commencement and 2030. It is this massive increase in noise events that will crystallise the public health impacts.
3. Analytics – these are superficial and without being permitted access to the methodologies and assumptions employed, it is impossible for community stakeholders to arrange for these to be challenged even at a desktop level.
4. No public health impacts identified – this is particularly alarming given the public health impacts of extant freight train pollution have been well-documented, and are well-known to the Proponent.
5. Based on the information contained in the EIS and elsewhere, and the apparent lack of analysis both in depth and breadth, we oppose the ETTT for the specific reasons set out in section 2 below.

6. A material, undisclosed conflict of interest between the Proponent and the largest contractor, who prepared the EIS and who has numerous staff in key management positions working for the Proponent ahead of the Project being approved by the Minister.
7. Undisclosed political donations by major contractors (current and prospective) – apparent by the failure to disclose in the Proponent’s lodgements and those held by the NSW Election Funding Authority.
8. Different versions of the EIS between the copies held at the Department of Planning and those on Public Exhibition in the suburbs (see Technical Paper sets held at Bridge St versus those in the suburbs).
9. Failure to note, analyse, and address the public health impacts, having regard to the well-documented concerns of the community, Transport for NSW, Department of Environment & Heritage, and NSW Chief Health Officer. Many of these were submitted by community stakeholders to ETTT and none have been addressed in the EIS nor subsequently. Residents have been referred to the EPA for clarification yet the questions should be answerable by the Proponent (perhaps because we are being stonewalled by PR gatekeepers who do not know the answers). We also note that the Department claims that because NSW Health is “*not a regulatory body*”, it was not consulted in relation to scoping the DGRs – a curious oversight in the circumstances and one that needs to be addressed in the next EIS iteration.
10. Failure to meaningfully consult and engage with community stakeholders, having regard to the nature, scale and complexity of the Project; at worst, selective timing and dissemination of information to community stakeholders that has had the effect of undermining the statutory obligations of the Proponent in preparing the EIS and related matters.

11. This ETTT as currently conceived simply will not get up – despite Federal Minister for Infrastructure insisting, *“I’m not in to bullshitting people; the third line is going ahead”* – there is something of the *ultra vires* in this given that it is a NSW Project and that the statutory approval process has not concluded.



## Preamble

We all already know about the pollution created by freight trains in the ETTT location. And yet the Proponent seeks to increase the number of movements from 29 to 44 (a very conservative estimate, it must be said, given the number of trucks the EIS claims will be removed from the road as a consequence of the ETTT).

The PR machine at ETTT has been particularly nasty in rejecting information requests that seemingly ask too much. Withholding information without any explanation is a hallmark of its operations because those working on the Project consider their interests to lie with Parsons Brinkerhoff than with the people of this fine State. This should of course come as no surprise given that the PR office is populated by Parsons Brinckerhoff staffers past and, doubtless, future.

Please send us the reports and scope followed by the ETTT probity adviser. We have been refused access to this document despite the well-documented spate of probity malfeasance on government projects. Indeed, despite having it drawn to their attention, the PR officers on the Project would appear to have broken the law by not adhering to the presumption of disclosure of information contains in GIPAA.

## Director-General's Requirements

The Environmental Impact Statement (EIS) does not satisfactorily address the DGRs. We recommend the Department of Planning & Infrastructure ('the Department') oblige the Proponent to submit an amended EIS that meaningfully addresses the DGRs, particularly in relation to what management measures have been identified in order to address the public health risks that, according to the Department, are implied in the DGRs.

With regards to the key issue of heritage, there is no evidence of the discussion recommended by the Department between the Proponent and the Department and the Office of Environment and Heritage, for Aboriginal heritage, and the Heritage Council of NSW, for non-Aboriginal Heritage.

Given the EIS acknowledges its significant impact on matters relating to noise, vibration and air quality, it is surprising bordering on insulting that the Proponent is being so cavalier in not explaining what management measures will be adopted to abate and mitigate the noise. In particular, it is noted that alternatives to the ETTT, such as an underground tunnel, have been glossed over because this does not suit the Proponent's budget or its principal contractors that stand to benefit from the current design.

We note that an EPL will be required for this Project. However, we are concerned that the EPL regime under the POEO is a polluter's paradise, containing as it does myriad of exceptions, carve-outs and non-mandatory 'trigger' levels. Judging from the EPL12208 held by RailCorp – and its persistent non-compliance identified by EPA – we request that the Department ensure that the regulatory settings are real, not merely satisfied by reference to impotent instruments.

## Cumulative impacts

The proposal would occur at the same time as other major projects. For example, construction of the North West Rail Link, M2 Motorway Upgrade and other NSFC Program proposals.

Local cumulative impacts arise as a result of vegetation clearance, operational noise, land use changes and land acquisition, disruption to passenger/freight train operations, access to station facilities, community amenity and traffic congestion may occur at some locations. "Wherever possible" is invoked frequently within the EIS, which we take to mean as far as convenient, provided it does not interfere with KPIs and so on. This is totally unacceptable since the history of such projects is that the reality on the ground deviates significantly from the warm words contained in sterile narrative undertakings. An example is the flagrant disregard for neighbour safety by leaving gates to the tracks open by contractors; contractors swearing, smoking, and taking pictures of residents whilst conducting their recent scoping exercise (reported to and regret expressed by the Minister); and working beyond the hours promised by pamphlet drops.

## INTRODUCTION

Transport for NSW prepared an Environmental Impact Statement (EIS) for the Epping to Thornleigh Third Track (ETTT) proposal, which it claims has been prepared under the provisions of Part 5.1 of the Environmental Planning and Assessment Act 1979.

What is astonishing is the basic conflict between government policies that ETTT creates; on the one hand, **seeking to deliver the federal government's Nation Building Program**; on the other hand, trying to confront noise and other pollution emanating from freight trains already.

The EIS does not meet the standards intended by Parliament because it does not explain the effects of the construction and of the post-construction environment on so-called human receptors. Specifically, it does not describe the effect on health, property values, or amenity of private and community property.

Under Common Law, it has been held that if a statutory body has the power to avoid a nuisance it cannot invoke a statutory defence. Please also refer below to The Land and Environment **Court's** principles in relation to noise, and the limited exceptions and defences available to a Proponent. Given that the Government and its agencies cannot avoid the current nuisance in terms of freight train pollution it is manifestly incapable of doing so under the ETTT.

Furthermore, we now have evidence – contemporaneous as well as policy documents – that acknowledge that the ETTT was a foregone conclusion. We have the NSW Attorney- General (whose electorate includes the ETTT) and the Federal Infrastructure Minister both stating that the ETTT “**will**” be going ahead, both without the benefit of a statutory process having been concluded. We also have officials from the ETTT Project confirming in public that the decision-making process has been a foregone conclusion. This is contrary to administrative law, and a failure to adhere to administering their statutory responsibility that the Environmental Planning and Assessment Act charges them.

Transport for NSW has already failed to bring freight train pollution to within generally-accepted<sup>5</sup> safe levels. It is a pity that the community must be forced to hold the Government to account in

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<sup>5</sup> e.g. World Health Organisation – *Guidelines for Community Noise*; World Commission on Environment and Development (Brundtland Commission) – *Weighted Equivalent Continuous Perceived Noise Level*; US Noise Control Act of 1972 and US Quiet Communities Act of 1978; EU Environmental Noise Directive (2002/49/EC).

relation to relatively simple procedural obligations. Unless the EIS is withdrawn and confronts both **the spirit and letter of the law, and has regard to the Government's own acknowledgement** of the issues involved, we as a community will be forced to apply to ICAC for flagrant abuse of process; the NSW Supreme Court for injunctive relief in relation to the ETTT specifically; and, NSW AAT.

Finally, the Minister for Transport has told the community affected – both herself and through her officials – that the government wishes to address the freight train pollution in this and other areas of metropolitan Sydney. This project, of which she is the ministerial proponent, conflicts with this policy position, leading to the conclusion that the EIS must be withdrawn until its outcomes are reconciled with freight train pollution policy and broader statutory expectations held by various Courts.

## HEALTH RISKS

We are astonished and upset that the EIS omits health impact analysis.

We recommend the Proponent commission independent analysis of this, having regard to different types of community member impact. NSW Health (Environmental Branch) should be consulted given their extant concern about freight train pollution in this area.

This should be done in order to genuinely assess the environmental impact of the ETTT. Whilst, cynically, the interim construction guidelines obviate proponents from considering extant noise levels, it does not free them from their duty to consider the additive effects. To this end, the increase in number of freight train movements has been acknowledged in passing but the Proponent has neglected to describe nor, by extension, outline the proposed mitigation or abatement measures. The Proponent blithely asserts that the dB increase will only be approximately 1dB. Again, this misses the point and is a well-established public health variable – **the number of exposures ‘human receptors’ are subjected to; not the inherent public health risk posed by a single event.** Further, this location has for a decade well-documented public health risks associated with wheel squeal, flanging noise and diesel engine noise. Add to this, vibration of homes and non-road diesel particulates and you have a toxic threat to the public health of residents and workers in the vicinity of the ETTT.

We learn that the following are currently likely to exist due to the freight train noise levels and their number, or frequency:

- Conflict with internationally-accepted ‘exposure-response relationships’ that show railway noise causes annoyance influenced by (i) number of trains, (ii) the presence of ground borne vibrations, and (iii) building situational factors, such as orientation of balcony and bedroom window. Socio-acoustic field studies<sup>6</sup> show that both number of trains and presence of ground-borne vibrations, and not just the noise level per se, are of relevance for how annoying railway noise is perceived.
- Acoustic trauma (Injury to hearing by noise, especially loud noise (CMD 1997))

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<sup>6</sup> Gidlöf-Gunnarsson A, Ögren M, Jerson T, Öhrström E. Railway noise annoyance and the importance of number of trains, ground vibration, and building situational factors. Noise Health 2012;14:190-201

- No value function curves produced for disturbance in relation to alertness/concentration, which is necessary to determine hearing loss (permanent/temporary) across different cohorts (e.g. children<sup>7</sup>, elderly, etc.)

No evidence of a literature review and a proposed criterion for assessing effect, numerous models of which are readily available but seem to have been ignored.

Indeed, concerns expressly raised this year by the NSW Chief Health Officer have been dismissed and ultimately ignored by EPA and RailCorp. NSW CHO Chant wrote to the EPA and Railcorp CEOs in a bid to establish what these agencies are doing in relation to these noise levels, which he said were deleterious to public health, noting that they had known for many years about these issues and that their action and inaction had failed to deliver results.

Despite receiving thousands<sup>8</sup> of complaints throughout metropolitan Sydney, the Government has failed to attend to the experiential data.

Weinstein ND (1982) explained that in relation to community noise problems, there is compelling evidence against adaptation. We recommend therefore that a position paper on dose response relationships between freight train noise and annoyance in the ETTT area be conducted. Without this, it cannot be credibly claimed that the EIS is complete and therefore the Project validly lodged.

To assist the Project Proponents and the Government, we recommend the reading contained in Annex A. Further, we request disclosure of all variables used by SLR, the acoustic consultant. It is apparent from the mapping exercise that elevation has not been factored in, despite the manual from the software supplier stating, “elevations are a major factor in noise simulations” yet there is no evidence that the relative height of *both* receivers and track terrain elevation being factored in thus understating the impact of the noise.

Indeed, The Land and Environment Court of New South Wales has set down its general<sup>9</sup> planning principles in relation to noise, such that:

*“...where there is conflict between a noise source and a sensitive receptor preference should be given to the attenuation of any noise from the source rather than at the sensitive receptor. This is true whether the noise source generated by a proposal is a new noise and the receptor*

<sup>7</sup> Evans, G. W., Lercher, P., Meis, M., Ising, H. & Kofler, W. W. (2001). **Community noise exposure and stress in children.** J Acoust Soc Am 109, 1023-7.

<sup>8</sup> Horn noise petition 2007; freight train pollution petition 2012; start-stop petition; etc.

<sup>9</sup> Stockland Developments v Wollongong Council and others [2004] NSWLEC 470.

*exists or the noise generator exists and the receptor is a proposed use. In deciding whether the noise should be attenuated at the source, consideration should be given to the degree of conflict between the appropriate noise goals, the difficulty and cost associated with treating the noise at the source, the willingness of the noise generator to be treated and the potential amenity impacts associated with noise attenuation at the receptor. Depending on the circumstances of the case, the cost of attenuation measures may be borne by either party or shared between them, irrespective of the location.” (Emphasis added.)*

As to noise mitigation at source, the principle is as follows,

*“Before the commencement of the hearing, the applicant’s position was that acoustic treatment should occur on the site. The suggested method was a 2.4m high acoustic barrier and mechanical ventilation provided in rooms in which satisfactory noise levels could not be achieved with the windows open. However, during the hearing the three acoustic experts, Mr B Clarke, for the applicant, Mr A Jochelson, for the council, and Mr S Cooper, for the second respondent, agreed that treatment at the source, ie the Cookson site provided the best solution.*

*“Of the measures proposed for the Cookson site, the only visible one would be a wall between 30m and 100m, depending on the performance of the proposed noise attenuation for various pieces of plant. Based on the information submitted and the maximum length of 100m, we have considered the visual impact of such a wall to be acceptable. There are no other reasons against mitigation at the source, since mitigation is technically feasible and its cost is reasonable (see Exhibit N) in the context of an 18-dwelling integrated housing development. On the other hand, mitigation within the area of Stage 5A would require some future residents to keep their windows closed and receive unacceptable noise levels outdoors. In our view, this is an unacceptable amenity impact on the future occupants of a new residential development.*

*“Given that the expert consensus is consistent with the planning principle we have adopted, we find that the acoustic mitigation measures should be carried out at the Cookson site. The solicitors for Cookson Plibrico Pty Ltd have written to the applicant’s solicitors stating that they consent to mitigation works being carried out on their clients’ site.”*

In relation to intrusive noise goals,

*“...the appropriate criteria for intrusive noise levels...[the Court] considered 44dBA for night time, 46 dBA for evening and 49 dBA for day time, this being 5dBA above background as*

*suggested by the Industrial Noise Policy. The appropriate criterion for sleep arousal is thus 54dBA, ie 15dBA above background.”*

## PROPERTY VALUES AND AMENITY AND ENJOYMENT OF PRIVATE PROPERTY & COMMUNITY AREAS

If noise is to be accepted as an issue for debate – which the Proponent wishes it were not – then it is necessary to define what type of noise is being referred to. The EIS fails to do this, which is extraordinary given the significance of noise arising from and following Project construction.

A common description of noise is the LAeq,T (amount of acoustic energy averaged out over time (T) usually for rail, over 15 hr (7am to 10pm) & 9 hr (10pm to 7am).) In the EIS, the LAmax referred to is the "engine noise" of diesel-electric locomotives. The "bangs", the "clangs", the "squeaks", the shrill "squeals" are absent in the EIS. In other words, wheel squeal and flange noise – well-known and well-documented serious problems in this area seem to be out of scope.

Our first key objection – within the confines of the Interim Construction Noise Guideline – is that we will be disturbed eight times an hour rather than four times per hour. The health effects of this are not addressed.

Without controversy is that there will initially be an increased number of individual noise events of "noise disturbance".

We ask the Government – be that Transport for NSW, the Premier/DEH/EPA or DP&I – to recognise that Very Loud Noise events are a serious existing problem, and that increasing the number of occupancies will simply increase the number of times they occur per hour.

The EIS does not address brake noise or wheel squeal yet these give rise to our second key objection is loss of amenity and offensive noise, as defined in the Protection of the Environment Operations Act. Without measurement of those annoying & disturbing "squeals", the report is deficient and thus needs to be withdrawn until those deficiencies are addressed to the satisfaction of the Department.

In its Guidelines<sup>10</sup>, NSW DEH states, *“Individuals can detect building vibration values that are well below those that can cause any risk of damage to the building or its contents. The level of vibration that*

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<sup>10</sup> Assessing vibration: a technical guideline, February 2006, DEC.



affects amenity is lower than that associated with building damage.” The EIS does not evidence consideration of this guideline, which suggests the “...the characteristics of vibration and associated effects that can cause community disturbance and concern to people, in particular, the occupants of buildings criteria defining values of vibration to protect amenity procedures for the measurement and evaluation of vibration values and other associated emissions.”

Sound Pressure Level in dB (A)	Effects	Noise environmental quality
100.00	Severe annoyance and Irritation	0.02
90.00	Annoyance Factor is high and certain physiological changes often occur	0.08
85.00	Vigorous community action	0.10
75.00	Still strong complaints can be expected	0.30
73.00	Strong appeals to local official to stop noise	0.40
66.00	Wide spread complaints or single threat of legal action	0.50
60.00	Sporadic complaints	0.70
55.00	Still annoys to sensitive people	0.90
40.00	Very acceptable to all	0.96
30.00	Introduces additional problem	0.90

Figure 1 - Table 2. Dose-response relationship of annoyance and irritation, Goral and Palk

## HISTORIC CULTURAL HERITAGE ASSESSMENT

We further object based on the faulty and deficient information reported in the EIS, and falsely presented to give an impression of minimal or negative impact on the heritage aspects Beecroft and Cheltenham Heritage Conservation Area (HCA).

### Background

The Corridor area was developed and subdivided along the rail corridor in the mid-1860s and as a result there are many heritage listed properties adjacent to the proposed ETT Project.

The heritage and associated bushland are inherent qualities that contribute to the unique character of Beecroft and Cheltenham, and form part of the community perception as a “village”. Loss of any of these vital elements would destroy the local esteem of the residents.

### Approach and Methodology of EIS

The EIS states that a study area of 50 metres on either side of the Main Northern Line (MNL) was assessed through documentary and desktop research.

This study area being restricted to such a small area does not allow for an accurate assessment of these suburbs. Instead, it seeks to rely on a poorly designed methodology and research in order to discount the negative effects, which are conspicuous by their omission.

### Relevant Legislation and Guidelines

The EIS claims to have followed NSW Heritage Manual (1986).

As Beecroft/Cheltenham is in a Heritage Conservation Area (HCA), it would seem that to be in accord with the heritage guidelines, some consultation with residents about their perceptions of the heritage value of the area and listed items should be addressed.

No such consultation appears to have been undertaken and the huge negative impacts that such a proposal would inflict on the established heritage elements have been dismissed unilaterally by the EIS.

### Existing Conditions

The EIS identifies 45 local heritage listed items but no State heritage items. Of these 45 items, the EIS selects only 13 heritage items that were considered to be potentially impacted, and then

dismissed that impact as minimal and tolerable – again without reference to how such a cost-benefit analysis was reached.

These items are limited to:

- Heritage Bushland Beecroft to Pennant Hills
- Beecroft Railway Station
- Gardens 44, 46, 48 The Crescent Cheltenham
- House and Gardens, 50, 52, 54, 56, The Crescent, Cheltenham
- Cheltenham Recreation Club Grounds
- Bushland at Beecroft Road between Carlingford Road and Kandy Ave
- Stone Causeway at Devlin's Creek (Epping)
- Bushland at Wongala Crescent Pennant Hills

The EIS isolates a few heritage items without fully addressing the total heritage aspect or village atmosphere of the local amenities or the significance of bushland to the area, or the importance of the heritage properties that contribute to the unique character of the locality.

Beecroft/Cheltenham early planners paid great attention to the area's natural features, and it was shaped by prominent people who were very aware of community and amenity and the aesthetics of the area. Many regulations on building styles and land sizes were enforced to maintain an overall appearance, and covenants were established to ensure that the suburb was of high quality standard.

The EIS fails to adequately address the unique heritage links in the community, and the significance of the characteristics of the area that would be permanently lost by this destructive proposal, and disregards community sentiment to this historic link. This is totally unacceptable.

The EIS acknowledges the aesthetic significance of the bushland from Beecroft to Pennant Hills but does not address the negative impact that the reduction of vegetation would have on the character of the area and suggests that by saving a thin line of trees, the aesthetics would not be lost. This is unacceptable.

The EIS acknowledges the historical architectural and aesthetic significance of Beecroft Railway station but dismisses the damage and negative impact of removing the heritage platform by suggesting that photographic archiving will ameliorate its removal. This is a disrespectful suggestion to a community that treasures its heritage.

The EIS has described the gardens of 44, 46 and 48 The Crescent, Cheltenham, as typical 1940/50s gardens and fences. This is totally wrong, as these properties were part of the Mt. Pleasant Estate which belonged to William Chorley, who paid for and built the original Cheltenham Station with his own funds. The gardens and fences were established at the turn of the century. In fact, the fences are made of sandstone quarried locally. They have tuckpointing, which was a decorative feature of federation era construction style.

If the EIS had investigated properly as claimed, and had researched with the owners of these properties, as required in the guidelines, it might not have got its dates wrong.

Even if the research was documentary as claimed in the EIS, photographs of these properties, taken in 1912 are illustrated in the Beecroft/Cheltenham History (Page 138).

The EIS also dismisses the negative impact on many of these items, by suggesting that shrubbery and vegetation in the gardens would reduce any visual impact.

Vegetation is a living thing and liable to die at any time.
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It is not the responsibility of heritage property owners to provide screening from a visually unacceptable construction. A number of other heritage listed properties along The Crescent were acknowledged as impacted. However, they have been selectively excluded in the EIS (because they were 20 metres outside the arbitrarily-drawn study area).

There are also a number of heritage listed houses in Sutherland Road but not assessed either.

- “Ashby” 96 The Crescent Cheltenham
- 24 A The Crescent, Cheltenham,
- “Red East” 1 Murray Road/The Crescent
- “Carmel” on the corner of Beecroft Road and The Crescent,

No consideration has been identified or management measures proposed in relation to the impact of drilling, excavation and vibration from heavy machinery and trucks during the construction phase; they are merely noted. This causes the community considerable anxiety as the Proponent fails to help residents understand what mitigation and abatement can be expected.

- On the fragile brickwork, and mortar of these heritage items, in spite of very close proximity (No consideration is given to the increased vibration from heavily loaded freight trains, after completion of work

- Antique fine glassed leadlight windows, approximately (1mm-2mm) already suffer from considerable shaking and loosening of the panes when heavily loaded freight trains pass. The thin glass also allows considerable noise and fumes to enter the houses.
- It is totally unacceptable for a heritage conservation area to suffer from the vibration that is inevitable during construction and operation.
- Old heritage houses, many of which are made of fragile bricks, also have poor foundations and delicate mortar, which can easily be dislodged, thereby leading to collapse of the buildings. Already, vibration can be felt throughout these houses, from the heavily loaded freight trains.
- No amount of vegetation or garden shrubbery can protect these houses from the impact contemplated in the EIS.
- No mention is made in the EIS about the effect of pollution on the fabric of heritage items from construction work, and later on, the additional freight movements.
- The pollution from diesel and coal dust, could easily break down the fabric of the buildings with acid chemicals eating away at the fragile mortar and old bricks.
- Lintels on these old houses were made of ash and cement, and are extremely vulnerable to vibration with resultant cracking and crumbling.
- No mention is made in the EIS on building reports before and after construction, to protect owners from this inevitable damage.

The EIS recognises the rarity and significance of the Stone Causeway over Devlin's Creek, but does not adequately address the issue of damage to it during construction.

### **Cheltenham Recreation Club Grounds**

The EIS dismisses any impact on Cheltenham Recreation Club Grounds as minimal and acceptable.

It is totally unacceptable that a heritage item such as the Recreation Club, which will be celebrating its centenary in 2013, was not assessed for its unique community value. Cheltenham Recreation Club was gifted by the Harris (Tea) family who owned the adjoining land, and its links with the history of the area are strong and noteworthy.

The impact of having a car park relocated to the area opposite the club, and the impact of losing a view across greenery to cars and trains is not minor, as suggested by the EIS.

## Potential detrimental impact on heritage significance

1. Vibration at locations in close proximity to items
2. Loss of trees would be remedied by replanting where possible
3. Impact on views would not affect heritage or aesthetics of houses, landmarks or streetscapes
4. Loss of three elements of Beecroft Station would have minor impact
5. **Devlin's Creek convict built causeway to be protected during construction work**
6. Construction of new station at Cheltenham and removal of street trees would have only a minor impact on properties 44-56 The Crescent
7. It is totally unacceptable to allow any vibration to heritage properties.
8. Loss of trees could never be remedied as the trees are rare, old forest remnants and historically significant.
9. Impacts on views would be devastating to the heritage and aesthetics of houses and landmarks and streetscapes, as this is a Heritage Conservation Area, with a long history of respecting visual appearance.
10. Loss of three elements of Beecroft Station would have immeasurable impact on the overall heritage value and amenity to the community. This is totally unacceptable, especially the removal of the historic platform and the Beecroft Railway Gardens.
11. **Protecting Devlin's Creek convict built causeway would still leave the archaeological item** vulnerable to damage, because of the activity associated with construction.
12. Construction of a standard glass and steel, high rise modern building at Cheltenham Station would be a totally out of character building in a heritage conservation area.
13. **'Easy Access' is not necessary at Cheltenham Station** as it is already easy access and is frequently used by disabled passengers because the platform is at street level already.
14. Removal of trees at Cheltenham Station would have a devastating impact on the overall look of the station and for heritage properties opposite, and for the community in general. The shrubs in their gardens is not sufficient to screen out the incongruous architecture of the proposed new station building.

## Management and Mitigation measures

Archival recording of items to be removed is totally unacceptable in a Heritage Conservation Area. The Community wants to maintain and keep original artefacts, not photos of what was. Further,

1. Clearing trees in the area is totally unacceptable and replanting where appropriate is misleading and inexcusable. Where is an appropriate site? The last time Rail Infrastructure

removed fifty trees or so from The Crescent, they were replaced at a site in Castle Howard Drive, a long way away. The replacement vegetation in The Crescent (She Oaks and Gynea lilies), is not local to the area.

2. Screening vegetation retained or replanted where possible at Cheltenham station is not believable or acceptable.
3. Any discovery of relics notified to NSW Heritage Council, is not acceptable after the damage and devastation has occurred.

## Overall heritage

The EIS claims that although the proposed work and rail passes through heritage conservation areas, the site is confined almost entirely to the rail corridor and therefore would not have a significant impact on the heritage values and it therefore acceptable.

It is totally unacceptable that the EIS conveniently leaves many heritage houses in the area well out of their study area, by confining any impact to the existing corridor and limiting the study to only 13 items. The impact would go well beyond such a limited area and would be permanent and momentous.

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- Vibration at locations in close proximity to items
- Loss of trees would be remedied by replanting where possible
- Impact on views would not affect heritage or aesthetics of houses, landmarks or streetscapes
- Loss of three elements of Beecroft Station would have minor impact
- Devlin's Creek convict built causeway to be protected during construction work
- Construction of new station at Cheltenham and removal of street trees would have only a minor impact on properties 44-56 The Crescent

It is therefore unacceptable to allow heavy construction-related vibration to heritage properties.

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- Impacts on views would be devastating to the heritage and aesthetics of houses and landmarks and streetscapes, as this is a Heritage Conservation Area, with a long history of respecting visual appearance.

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Screening vegetation retained or replanted where possible at Cheltenham station is not believable or acceptable. Any discovery of relics notified to NSW Heritage Council is not acceptable once damage and devastation has occurred.

## Operation

No management and mitigation measure proposed during operation. WHY NOT? We are advised by the acting director of infrastructure at the NSW Department of Planning that this is an implicit expectation of the DGRs.



The residents demand that all the houses, and especially the heritage listed properties, within 150 metres of the proposed construction work be assessed for building reports before and after any work is undertaken.

Residents demand sympathetic consideration to the impact on our unique heritage conservation area.

## ABUSE OF PROCESS

There is no particular public interest articulated in the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulation 2000, only a narrow sketch. As a result, the Proponent seeks to idly conclude that the only feasible solution to the underlying problem of freight capacity is the one that happens to have funding approval from the Commonwealth. Accordingly, it is concluded that undue favouritism has arisen, based on the ICAC definition and supported by the evidence below.

ICAC's *Corruption Risks in NSW Government Procurement* also sets out best practice recommendations in relation to construction projects, and NSW Government Guidelines for construction projects does so specifically. The Department is urged to have regard to ICAC's best practice recommendations as the conflicts of interest and deliberate misinformation (by forwarding counterfactual information and by omitting key, selective briefings to those in the community versus the contractor briefings which we note have been expansive, early and advanced).

The Australian Government's \$42 billion Nation Building Economic Stimulus Plan is "*designed to ensure rapid delivery of economic stimulus measures to support employment and growth during depressed global economic conditions.*"<sup>11</sup> It is therefore difficult to see the justification for facilitating the haulage of coal, industrial chemicals, and the construction industry as beckoning from depressed industries based on ABS data on growth from various sectors and various States. No methodology provided in EIS as to how noise and vibration studies were conducted yet still able to recommend the Project to the Minister. Attempts by the community to access information from the Proponent have been met with outright refusal and selective answers.

## Justification and conclusion

No econometric evidence is provided to support the claim that the ETTT is "vital" to maintain productivity. Indeed, since productivity is so low perhaps alternatives should be given greater attention that rejected so readily by the Proponent.

*"As part of the NSFC Program, the ETTT proposal would increase the freight capacity of the Main North Line, which is vital to maintain productivity and is a significant contributor to both the State and National economies."*

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<sup>11</sup> <http://www.planning.nsw.gov.au/national-building-economic-stimulus-plan>

The following statement is simply not sustainable without independent econometric analysis. We call for that to be provided.

*“Not undertaking the proposal (and other NSFC Program proposals) would result in the forecast interstate container freight capacity of the Main North Line between Strathfield and Broadmeadow being reached by 2015 and consequently, a substantial increase in freight carried by heavy vehicles on key arterial roads.” If this statement is true, where is the analysis supporting it, and assessed against alternatives?*

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*“The EIS confirms that the ETTT proposal is justified based on the significant economic and environmental benefits it would provide.”*

These “benefits” have not been enumerated in any detailed fashion; merely asserted, and are very much open to conjecture among experts the community has engaged. Further, the claim that Australian and NSW economies require the ETTT is spurious given GDP projections for each are derived from industries unrelated to those heavily reliant upon freight haulage (i.e. Professional, scientific and technical services; financial services; education and gas). To the extent coal is being transported through Sydney by rail, this is merely a function of historic and recent poor planning choices in relation to port capacity at Port of Newcastle and variously in Queensland. This should not lead to community amenity and public health bearing the brunt of such choices. Indeed, the ABS states in the National Accounts notes the following:

*“At a national level, the main industries contributing to the 2010-11 GVA growth of 2.3% were Construction (6.9%), Professional, scientific and technical services (6.9%) and Agriculture, forestry and fishing (9.1%). Other services (-3.7%) and Rental, hiring and real estate services (-1.9%) were the main detractors to growth.*

*From a state perspective, there are differing industry impacts in GVA growth. In 2010-11, the largest contributor(s) to results in each state was/were:*

- *NSW - Agriculture, forestry and fishing;*
- *VIC - Professional, scientific and technical services;*
- *QLD - Construction & Mining (detractor to growth);*

- SA - Agriculture, forestry and fishing;
- WA - Mining;
- TAS - Construction & Manufacturing (detractor to growth);
- NT - Public administration and safety;
- ACT - Public administration and safety.”

It is therefore concluded here that the only compelling justification for this Project is to prop up construction-related employment, which is hardly a sustainable, necessary or appropriate allocation of taxpayers’ money. They would prefer investment in training and employing police officers, health workers, teachers, and other public servants.

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*“However, some adverse impacts would also be sustained due to the nature of the proposal. Noise and vibration, visual and ecological impacts would result from construction of the proposal.”*

This ignores other adverse impacts such as the air quality, which is already poor due to non-road diesel engines operating through the Corridor, and which based on internal EPA and RailCorp data breach their own standards, which of course have high thresholds to try to accommodate ancient diesel locomotives. Again, all a function of poor planning and poor investment. The pleadings of the freight haulage industry that their industry is so competitive that they cannot afford to introduce electric trains is risible were the reality not so serious. There is no other industry that creates such massive negative externalities that is permitted to carry on without some kind of remediation strategy in place. It is ironic, too, that the Federal Government is so committed to Green House gas reduction – which we support – and yet so disinterested in the micro-level consequences of its actions.

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*“Operational impacts would generally be associated with noise from freight trains operating closer to nearby receivers and at increased frequency.”*

This ignores the vibration of homes, that we experience at present, and which will worsen due to the increase in events, ageing of the fleet, and increasing lengths of freight locomotives (currently 1.5km).

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*“The mitigation measures in the EIS would help to reduce or avoid the impacts identified from construction and operation of the ETTT proposal. There would also be ongoing opportunities for community involvement in the project and pro-active communication with the community and other key stakeholders during subsequent project development stages.”*

Community consultation to-date has been shocking. Feedback sought is not reflected in the EIS so we have no confidence in the Proponent’s ability to do so going forward. The engagement with the community has taken the form of:

- Selective, glossy PR brochures that seek to extoll the virtues of the Project whilst ignoring altogether the impacts and their abatement and mitigation
- PR staff on the Project stonewalling community enquiries
- Other staff during public exhibition unable to answer questions in relation to noise levels, public health impacts, and appropriate mitigation and abatement

The dishonesty perpetrated by the Project is outrageous. We are told that a tunnel is not a feasible option – despite no data being presented – on the grounds that it is too expensive to construct and also will be impossible to remove diesel exhaust fumes. To describe them as ‘no feasible’ is again disingenuous; the only reason they are described as such is because the Proponent is beholden to the operators of the freight trains, who despite years of environmental complaints and ineffectual EPLs, resist calls to move to electric trains. It should be noted too that modern electric trains are capable of climbing the infamous ‘Beecroft Bank’ without as much noise – and certainly no emissions near nearby ‘receptors’ (human beings).

The following statement is archetypical of the platitudes tossed about in the EIS but where is the evidence that the impacts are considered manageable and in what way are they proposed to be managed?

*“Provided the measures and commitments specified in this EIS are applied and effectively implemented during the design, construction and operational phases, the identified environmental impacts are considered to be manageable.”*

## Conflicts of interest and anti-corruption probity

We note with considerable concern that, for a Project of this monetary value and environmental impact, the Probity Adviser when asked by a resident for the probity scope it did not respond. Instead, the PR department acknowledged the request but subsequently ignored it. We continue to seek the scope and reports produced to date by the Proponent, despite pointing out to the Proponent that it has a statutory duty under GIPA to a presumption of disclosure.

## False basis/premise

The EIS perpetuates a falsehood made by the Minister for Roads & Ports, who in Parliament said:

*“To make New South Wales number one again we need to get moving again. A key part of this includes enhancing interstate freight.”<sup>12</sup>*

Only a small minority of the freight concerned originates and terminates in NSW; most of it travelling through the State to other States and to ports bound for export. It does not therefore contribute in the significant way claimed by the Proponent, and is therefore based on a misleading premise.

## Community ‘consultation’

This has been a public relations disgrace, predicated on a bad project that could only muster containment of community stakeholders given the hostile reaction from the community to this Project. But this, still, is no excuse for stonewalling; referring residents to the EIS instead of answering their questions; and, worse, simply having not thought through the impact and appeasement of residents.

Finally, it is not just the EIS itself that is so deeply flawed. The Department ought to also question the basis of, and premises advanced for, justification of the ETTT at first instance. Engineering and logistics experts – who we will gladly refer to the Department – consider the justification spurious in the extreme, and not capable of delivering the outcomes asserted.

The community consultation, if anything, has simply aggravated the situation and heightened residents’ already high state of anxiety by leaving them in a state of uncertainty. This is ironic given the construction industry’s perpetual demands for certainty from government and others when

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<sup>12</sup> Hansard, Legislative Council, 23 February 2012

seeking to meet its own timetables and agendas. A cynic might say that this again has been a deliberate ploy to await the revisions required by the Department. However, this is a deeply unprofessional and unethical way to engage with the community.

## Environment Protection Licence

With regards to the *Protection of the Environment Operations Act 1997*, the Department of Planning and Infrastructure has consulted with the Environment Protection Authority, and confirms the project is a scheduled activity under Section 48 of this Act and requires an Environment Protection Licence ('EPL'). Accordingly, freight related noise will be subject to regulation under the Environment Protection License yet no acknowledgement, outline or consultation is invited on the scope and policy settings that ought to apply under the EPL. Of course, the EPL will be as ineffectual as EPL12208 that RailCorp holds, exempting the current fleet of old diesel engines and ignoring altogether the wagons judging from the enforcement activities of EPA.

## Lack of oversight

Numerous documents tendered in the EIS that have not received appropriate oversight. For instance, the SLR noise and vibration report has been prepared, reviewed and signed-off by the same individual. This theme recurs throughout the EIS, making a mockery out of the purpose of separate sign-off authorities. Is the construction industry really so behind with the times that it cannot abide by what are now very well-established corporate governance practices? Or is it due to more sinister reasons?

## Annex A – references

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## Annex B Outstanding questions

1. What compensation is contemplated for residents that will be impacted by pollution during construction and operation? When will this be announced? What will be the methodology to determine compensation and mitigation and abatement? Also, what constitutional basis is there for depriving home owners of their common law rights without restitution?

The Proponent says “*Details on the management and mitigation measures for noise associated with the proposal is detailed in Chapter 9 of the EIS and technical paper 2.*”

This is fallacious in the extreme. There is no detail of management measures whatsoever; only an acknowledgement of the number of noise events, which is indeed a very material point. The EIS blithely attempts to suggest that the dB levels will be  $\pm 1$ dB and therefore it is defensible.

2. What are the health impacts to residents from the increase in noise, non-road diesel particulates and vibration? What will you be doing about protecting the community? Why have you not consulted medical experts, such as NSW Health?

The EPA – which residents have been invited to contact – does not have the answers so we are go around in circles, further adding to anxiety and aggravating health complaints in relation to the extant pollution.

3. What compulsory acquisition of properties is contemplated? Will the Just Terms legislation currently under review be complied with or will there be another carve-out for ETTT?

The Proponent claims that no privately-owned land would need to be acquired in order to construct and operate the ETTT proposal. Whilst correct in a narrow sense it misses the point – and fails to answer the question – which is how will residents faced with 44 or more freight trains per day at 110dB be expected to remain living in their homes? They will need to be purchased by the Proponent. What advice has the Proponent received in relation to this matter?

4. How much would a tunnel cost?

This information is not available in the EIS but it is rejected in the EIS so why not set out on what grounds, financial and other it is being rejected?

5. Why can't electric freight trains be used on this track?

The answer from the Proponent that “*Australia does not have electric freight trains*” is a pathetic answer and symptomatic of its community engagement. The answer does not directly address the question. Please oblige the Proponent to do so. (The reason, we suspect, is that new freight trains in NSW would be subject to the POEO Railway Activities Schedule 33 (an already offensive Schedule designed to facilitate pollution.) The reasons are pretty self-evident but the Proponent should not insult our intelligence or dignity by pretending otherwise with such a pathetic response.)