

**Submission
No 55**

**INQUIRY INTO ACQUISITION OF LAND IN RELATION TO
MAJOR TRANSPORT PROJECTS**

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Submission to the NSW Parliamentary Inquiry into Acquisition of Land in Relation to Major Transport Projects

This submission relates to the compulsory acquisition of landholders' sub-strata for the Westconnex M4-M5 Link Rozelle Interchange tunnels.

Introduction

We are the owner-occupiers of Emma St, Leichhardt. Our situation is typical of many residents in the inner west. We are critical of the Westconnex Project and its consultants as well as TfNSW.

We have been following the progress of Westconnex (WCX) since 2013/14 when the upgrade of Parramatta Road was the major focus.

Since then, the Project has had various route changes, difficult for residents to follow with some communities believing themselves to be unaffected by the tunnels, only to find the route had changed practically overnight and they were now in its path.

We find ourselves in the path of the Stage 3B link tunnels to the Rozelle Interchange. The tunnels are particularly shallow. According to the Westconnex Interactive Tunnel Tool they are 24m below our property. Other sections of Emma St are affected by the M4-M5 Stage 3A tunnels to Haberfield with depths as shallow as 12m. Both 3A and 3B tunnels under Emma St are well above the 35m 'average' depth stated by Westconnex as the limit for potential damage.

Under s62 of the Land Acquisition (Just Terms Compensation) Act 1991 (the Act), governments can compulsorily acquire the sub-strata of properties without compensation if they are in the path of major projects. We believe this is an inequitable and unjust burden for landholders and that the Act needs to be amended to allow landholders in such circumstances to be compensated.

Our submission relates to the following Terms of Reference:

b) The conduct of agencies in acquiring land for (i) land for the Westconnex Project

Inequitable power base. Currently, the onus is on landholders to prove damage done to their residence is caused by tunnelling. The experience of other landholders has demonstrated that proving causation is almost insurmountable and at huge cost to the landholder, e.g., lawyers, experts, court costs. WCX and/or their contractors routinely deny responsibility and claim the damage and cracking is caused by actions of landholders, even to the extent of claiming a dripping tap caused subsidence.

Inadequate prior communication and consultation. The first indication we had that the sub-strata of our property was to be compulsorily acquired was via other residents and locating the WCX Interactive Tunnel Tool approx. 3 years ago. Initially the proposed tunnel depths under our property varied but appear to have finally stabilised at 24m below our property. We finally received official notifications confirming the acquisition in 2020.

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Sub-division of land without landowners' prior knowledge or consent. Last year we were notified that TfNSW had subdivided our land into Lots of their own creation without our prior knowledge or consent. Furthermore, we note that the **whole** sub-stratum of our property has been acquired although only the south corner of our property is tunnel-affected.

Title deeds. Approximately 4 years ago, to our dismay, we discovered, again via other residents, that it was intended that title deeds of affected properties were to be updated to reflect the existence of tunnelling. This was confirmed last year when we were informed that our title deeds will note the existence of a tunnel under our property, this will inevitably have a negative effect on the value and saleability of our property. No prior discussion, no consultation, no say. We believe it is only fair that landholders should be compensated for loss of property value, as with many residents our home is our sole investment.

WCX 'information' sessions. At various stages during the Project residents have been informed they would be 'consulted' about potential impacts. Consultation implies taking into consideration another party's views or opinions. Instead, 'Information' sessions have been superficial, typically comprising poster displays. At these sessions our legitimate concerns about shallow tunnel depths, noise, vibration, disruption and house damage were brushed aside or were unable to be answered. Significantly, contractors were not present at these sessions. It was clear residents' fears and concerns were to be ignored.

No access to technical information. It is impossible for residents to communicate directly with Project technicians or engineers regarding technical issues. The only telephone access point is through the public face of WCX, the Community Engagement team, who are unable to answer our questions and refer them to the tunnel teams. Responses are then relayed to us by the Engagement team (not necessarily on the same day) and are inevitably inadequate with limited means of clarification or meaningful, informative dialogue.

d) How government agencies conduct direct negotiations with landholders in relation to purchasing land/properties prior to, or in parallel with, the compulsory acquisition process, and the extent to which such process is fair, unbiased and equitable

As stated above, whilst s62 of the Act allows for the compulsory acquisition of landholders' sub-strata without compensation we believe this is grossly unfair and that the Act should be amended to allow landholders in such circumstances to be compensated.

The NSW Government is acquiring our sub-stratum with the aim of selling it off for the monetary benefit of private company/ies without any compensation to the landholder. It is in effect the privatisation of the sub-stratum of our property for the ultimate profit of toll companies. It is neither fair or unbiased, and it is certainly not equitable.

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f) Any other related matter

Impact on residents' health. We ask the Inquiry to seriously consider and not underestimate the human impact of the Project.

The human toll of this Project has been and continues to be immense. The noise and vibration of stop-start tunnelling over many weeks and months has caused suffering and despair among residents. The mental health impact on individuals has been and continues to be severe and the treatment of residents has at times been cruel, all of which could be ameliorated by fair and just compensation measures.

Public confidence under-mined. The recently released NSW Auditor General's Report on WCX found a lack of transparency and under-reporting of the Project's costs by the NSW Government ([Westconnex: Changes since 2014, 17 June 2021](#)). This comes as no surprise to residents, the Project's Business Case and stated benefits are questionable and have been challenged on the public record many times.

The WCX Project demonstrates the inequity arising from public- private partnerships whereby public money is used for the ultimate benefit of private companies. As residents the only conclusion we can draw from this is that the Project is for the benefit of Transurban at the expense of the community.

In summary

- Communication and information have and continue to be inadequate and superficial
- Arbitrary decisions are made without consultation, e.g., changes to title deeds, subdivision of properties
- Legitimate concerns about subsidence, damage to houses, disruption, loss of property value not addressed.
- Use of substrata for development in New South Wales and elsewhere is increasing, the demand for fair and just compensation will not disappear.

We recommend that the Act and any other related legislation be amended to give landholders whose sub-strata has been compulsory acquired in circumstances outlined above the right to compensation.

Rosemarie Gates and Sean Ferns

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