

Department of Planning and Environment
Level 22, 320 Pitt Street
SYDNEY NSW 2000
Email: EIAproject@planning.nsw.gov.au

25 November 2016

Dear Sir/ Madam

Environmental Impact Assessment Improvement Project - Discussion Paper

Australian Rail Track Corporation Ltd (**ARTC**) welcomes the Department of Planning and Environment (**DP&E**) review of the Environmental Impact Assessment (**EIA**) process for state significant projects in New South Wales, and appreciates the opportunity to make a submission on the EIA Improvement Project Discussion Paper.

This submission provides some information about ARTC and its interest in improving the EIA and approval processes in NSW, and then provides comments on each of the initiatives set out in the Discussion Paper.

1. Summary

ARTC, as a proponent of many major rail infrastructure projects, supports in principle many of the comments and proposals in the Discussion Paper. However, those comments and proposals are expressed at a very high level so far, and the details of each proposal will be very important. Accordingly, ARTC's comments are preliminary and high level at this stage.

ARTC has some proposals for improving the efficiency and effectiveness of EIA, and would like to engage with DP&E in the next phase of the EIA Improvement Project.

Some key points from ARTC's submission include:

- There should be a strong focus on scoping of the EIA process early in that process, so that environmental issues are prioritised for each project. This should be reflected in project-specific Secretary's environmental assessment requirements (**SEARs**). SEARs should be developed through close consultation between proponents and regulatory and approval agencies, and sensible risk assessment.
- Consistency of approach in EIA and condition setting across projects should be encouraged, particularly for programmes of projects such as ARTC's Inland Rail programme. However, this should not compromise the focus on understanding each project and adapting EIA and conditions for that project, where appropriate.
- ARTC supports early engagement with stakeholders, especially local communities, but strongly believes that proponent-led engagement produces the best outcomes.
- A standard framework for conditioning projects must be flexible enough to accommodate the circumstances of specific projects. The proponent and the regulatory agencies should discuss desired or target outcomes of the EIA

process (such as an advance outline of potential conditions) early in the EIA process - not to pre-determine outcomes, but to help structure an efficient and effective EIA.

- Key suggestions for improving approval conditions include:
 - eliminate conditions which require the project to be carried out by reference to the whole of the EIA documents (eg. "generally in accordance with the EIS");
 - include a condition which incorporates only those discrete parts of the EIA documents which set out:
 - the project description; and
 - a separate set of environmental management measures; and
 - provide DP&E benchmark post-approval time frames (ie, for approval of matters for which the project approval conditions themselves require further approval).
- ARTC strongly supports the proposal for greater certainty on EIA time frames, particularly relating to the steps for regulatory or approval agencies.
- ARTC supports the proposal for a code of practice for environmental professionals who prepare major projects EIA documents, but has reservations about the suggestion that EIA documents should be peer reviewed.
- ARTC has some important comments and suggestions in relation to monitoring, auditing and reporting of compliance with approvals, and project changes post-approval. ARTC believes its suggestions will improve efficiencies and protect a proponent's and a regulatory agency's ability to address issues effectively, without compromising compliance and transparency in the EIA process.

2. About ARTC

ARTC is the national freight rail manager, providing a one stop shop for freight rail transport across Australia.

In this role, ARTC delivers a wide range of rail infrastructure projects and manages the operation of rail infrastructure. ARTC has responsibility for the management of over 8,500km of standard gauge track in NSW, Queensland, Victoria, South Australia and Western Australia. In NSW, this includes the Hunter Valley rail network and various Sydney metropolitan freight lines.

Additionally, ARTC has been tasked with delivering the Inland Rail Programme, a 1,700km freight line connection from Melbourne to Brisbane through regional NSW which will complete the backbone of Australia's freight rail network. This transformational programme comprises a series of projects which will utilise the existing interstate rail line through Victoria and southern NSW, upgrade approximately 400km of existing track mainly in NSW and provide approximately 600km of new track mainly through northern NSW and south-east Queensland.

Most of ARTC's activities are covered by *State Infrastructure Planning Policy (Infrastructure)* 2007, and are governed by the EIA scheme in Part 5 of the *Environmental Planning and Assessment Act 1979 (Planning Act)*. In addition, some of ARTC's projects

are State Significant Infrastructure (**SSI**) infrastructure, and so ARTC carries out assessments of those projects under Part 5.1 of the Planning Act.

Given ARTC's extensive experience in delivering major rail infrastructure projects in NSW, and its current focus on the Inland Rail programme, ARTC has a strong desire to help deliver improvements in the EIA and approval process in NSW.

3. **Initiative 1: Develop a consistent framework for scoping within the EIA process**

ARTC agrees that there should be a strong focus on scoping of the EIA process at an early stage in that process, so that environmental issues are prioritised according to their importance for each project, and the nature and extent of assessment of issues reflects that prioritisation.

ARTC's experience is that sometimes considerable time and cost is diverted to matters which have relatively low importance in an EIA process, and this disadvantages both the proponent and the NSW Government agencies involved.

ARTC understands that other proponents of major projects have had similar experiences.

In order for the EIA process to work efficiently, it is essential that there is appropriate engagement between the proponent and all relevant Government agencies early in the EIA process, and particularly before SEARs are prepared.

As DP&E might appreciate, the SEARs for a project can have a significant impact on the time taken to prepare an EIA for the project, the cost involved, the complexity of the EIA and also the complexity and cost of delivering the project post-approval. It is imperative that draft SEARs be considered carefully and discussed with the project proponent before they are finalised.

ARTC generally supports the "potential improvements" noted in the Discussion Paper for Initiative 1. In particular, ARTC agrees that the prioritisation of EIA issues should be guided by a risk assessment of key issues, so that there is a reasonable, analytical basis for setting priorities.

The proponent must be closely involved in this preliminary process, as the proponent has the best understanding of the project and has access to the best available information to guide decisions about EIA scoping.

ARTC has developed good relationships with DP&E, the EPA and other agencies in recent years, and we would welcome the opportunity to discuss with DP&E some more detailed suggestions on how this initiative could be delivered effectively.

ARTC is a strong supporter of consistency within and between projects, where possible and appropriate. This does not mean that consistency should override other sensible project-specific considerations, but it is a very valuable guiding principle.

Given the transformational and multi-jurisdictional nature of the Inland Rail programme, and its strong backing by the Federal Government and the State Governments, ARTC is keen to discuss with DP&E some initiatives to deliver consistency in EIA approaches and goals across jurisdictions, particularly NSW and Queensland where most of the major works will be carried out. This would include proposals for consistency in SEARs for NSW projects and Terms of Reference (ToRs) for Queensland projects across the Inland Rail programme.

4. Initiative 2: Earlier and better community engagement

ARTC supports earlier and more effective engagement with communities and appropriate stakeholders early in the EIA process. ARTC has adopted this approach for some sections of Inland Rail, and has been developing some guidance materials for social engagement.

One of the difficulties which ARTC and other proponents are currently experiencing with EIA processes for major projects is that there are no official social impact assessment guidelines for NSW EIA. This means that the social impact assessment and community engagement requirements vary from one project to another, and there is no benchmark to which proponents can refer in order to give comfort to stakeholders with whom they are engaging.

ARTC understands that DP&E is working on some draft social impact assessment guidelines, but it is not clear at this stage when they will be available. ARTC would like to discuss with DP&E the development of some guiding principles for social impact assessment, including guidance for the development of social impact management plans. We have commented below on the "potential improvements" noted in the Discussion Paper for Initiative 2:

- *pre-lodgement meeting to discuss community engagement that is to occur during scoping* - ARTC suggests this be included in the discussion with other agencies on the proposed SEARs for a project, so that community engagement is co-ordinated with the EIA scoping and prioritisation exercise.
- *proponent led engagement during scoping based on engagement objectives that inform a strategy* - ARTC supports this and, as noted above, is already doing this on some Inland Rail projects.
- *proponents and decision makers being required to inform community members how their views have been taken into account, or if not why not* - This proposal should be approached with care. All views should be taken into account to the extent it is lawful to do so, but, obviously, not all views will be adopted. It is not practicable or helpful to respond specifically to each view expressed in relation to a major project. In ARTC's experience, many good quality submissions reports which proponents prepare already address submissions in an appropriate way having regard to the nature and volume of the issues raised. ARTC would suggest that some guiding principles for submissions reports be prepared, drawing on good existing practices.
- *options for DP&E led engagement on key issues* - ARTC does not support the suggestion that regulatory or approval agencies would lead engagement for a project. ARTC's experience is that engagement for a project is far more effective when it is led by the project proponent. The proponent has a much better and more up-to-date knowledge and understanding of the project and is much better placed to respond to issues raised. It is also important for stakeholders to see that the proponent is leading engagement instead of being a less active participant. In addition, there is a substantial risk that engagement by others would lead stakeholders in a direction which is not feasible for a project or represents an important change to a project, and this can convey wrong messages to stakeholders.
- *identification of options to make EIA documentation publicly available at all stages of the process* - It is not clear to ARTC what this proposal means. This proposal should be approached with caution, if it involves more than what is already made publicly available. A significant amount of material is already made publicly available, and ARTC supports this. However, some applications of this proposal could lead to confusion among stakeholders about what is proposed for a project or what various EIA findings are, and it could be counter-productive for all stakeholders.

5. Initiative 3: Improve the consistency and quality of EIA documents

In ARTC's view:

- the quality of an EIA and, to some extent, the quality of the determination for a major project (including conditions) will depend on the quality of the EIA documents; and
- the quality of the EIA documents, in turn, is heavily influenced by the quality of the SEARs.

Accordingly, ARTC believes that a successful outcome on Initiative 1 will be very important in delivering a successful outcome on Initiative 3.

ARTC generally supports the "potential improvements" noted in the Discussion Paper for Initiative 3.

There is considerable potential for the adoption of strategic approaches to EIA for some issues on some classes of project, which would result in high levels of consistency and efficiency in the EIA process across projects and could produce strategic environmental management measures. The opportunity for this kind of strategic outcome is best taken at the start of an EIA process.

ARTC would like to discuss with DP&E opportunities for strategic approaches to assessment and management of environmental issues for its Inland Rail projects.

6. Initiative 4: Set a standard framework for conditioning projects

A standard framework for conditioning projects can be very valuable, but it must also be flexible enough to accommodate the circumstances of specific projects.

ARTC agrees with the "potential improvement" noted in the Discussion Paper that approval conditions should involve a mix of outcome or performance-based conditions, prescriptive conditions and management based conditions. However, ARTC does not agree that priority should be given to outcome-based conditions over conditions based on management plans.

ARTC has found that management plans can be a very effective tool for dealing with a range of environmental issues. They can be adapted more readily over time than specific conditions, and their terms reflect a consultation process which is more helpful for major projects than setting out hard requirements in a condition.

Some guiding principles would help in deciding on the use of a condition type in specific situations.

In addition, ARTC believes that the proponent and the regulatory agencies should discuss desired or target outcomes of the EIA process (such as an advance outline of potential conditions) early in the EIA process. Of course, decisions on whether a project should be approved or refused, and - if approved - what conditions of approval which should be imposed, should be made in response to the EIA process. However, if desired or target outcomes are discussed early, this can help focus the EIA appropriately.

Three specific improvements which ARTC believes are very important are set out below:

- (a) *Eliminate conditions which require the project to be carried out by reference to the whole of the EIA documents (eg. "generally in accordance with the EIS")*

Given the scale of the EIA documents for major projects, this requirement introduces a lot of uncertainty for all stakeholders in terms of what is approved and how the approved project will be delivered, and adds enormous compliance cost.

- (b) *Include a condition which incorporates only those discrete parts of the EIA documents which set out:*

- *the project description; and*
- *a separate set of environmental management measures*

This reflects the first "potential improvement" noted in the Discussion Paper for Initiative 3. It also provides a far more acceptable way of responding to the EIA documents than the kind of condition described in (a) above.

- (c) *Provide DP&E benchmark post-approval time frames (ie, for approval of matters for which the project approval conditions themselves require further approval)*

Project uncertainty and costs increase substantially when project teams do not have sufficient certainty about when they will receive decisions on matters for which they need an agency's approval under a planning approval condition. Examples include approvals for management plans, for the appointment of environmental representatives, for offset packages and for implementation or mitigation reports.

ARTC suggests that DP&E publicise benchmark approval time frames for matters of these kinds, so that proponents and their contractors can factor in those time frames for their project delivery schedules and pricing.

7. Initiative 5: Improve the accountability of EIA professionals

ARTC supports the proposal for a code of practice for environmental professionals who prepare EIA documents for major projects.

However, ARTC has reservations about the suggestion that EIA documents should be peer reviewed. This would significantly increase the cost and time associated with EIA. In some cases, limited peer review might be appropriate, but this should be the exception rather than the norm.

8. Initiative 6: Provide greater certainty on EIA timeframes

ARTC strongly supports the proposal for greater certainty on EIA time frames, especially through the two "potential improvements" noted in the Discussion Paper for Initiative 6:

- setting time frames for regulatory or approval agencies in each stage of the EIA process, including the post-approval phase; and

- better co-ordination and communication between Government agencies, proponents and the community.

Several of the other initiatives in the Discussion Paper, and ARTC's additional proposals in this submission, are consistent with these "potential improvements" and will help to deliver on this Initiative.

ARTC suggests that the EIA time frames for regulatory or approval agency functions are published on DP&E's website, and that they also be recognised as maximum time frames, unless the relevant agency and the proponent agree otherwise. In some situations, it should be possible, and highly desirable for various stakeholders, for specified EIA steps to be completed in less than the published time frames. In such situations, DP&E and the project proponent could agree shorter time frames up front.

9. **Initiative 7: Strengthen the monitoring, auditing and reporting of compliance**

As ARTC has already indicated in this submission, post approval processes can and should be improved.

ARTC supports the "potential improvements" noted in the Discussion Paper for Initiative 7:

- development of an overall framework for the post-approval stage of projects (here, ARTC would suggest something similar to its proposal for time frames in relation to Initiative 6);
- development of a common system for monitoring, auditing and reporting compliance;
- greater accountability by improving public access to post-approval documents, but only where those documents have been reviewed and discussed and final versions have been approved - ARTC proposes that the practical challenges with this initiative be discussed further; and
- clarification of the roles, obligations and rights of everyone involved in compliance.

10. **Initiative 8 Project change processes following approval**

ARTC's observations on post-approval modification are that:

- many are administrative or minor in nature, which is inefficient, and these could be eliminated with a more flexible approach to conditions such as removing requirements to comply with an entire EIA document;
- given the very broad range of kinds of modification, it is important not to have a prescriptive modification process - ARTC thinks the current approach to SSI modifications, which requires the Secretary of DP&E to specify modification EIA requirements, is appropriate, if that function is exercised in consultation with the proponent; and
- ARTC would support an appropriate process to capture and consolidate project changes, approval conditions and compliance obligations.

11. Additional comments

As this submission indicates, ARTC supports in principle many (but not all) of the comments and proposals in the Discussion Paper. However, those comments and proposals are expressed at a very high level so far, and the details of each proposal will be very important. Accordingly, ARTC's comments should be taken as preliminary and high level at this stage.

ARTC would like to engage closely with DP&E in the next phase of the EIA Improvement Project.

As this submission indicates, ARTC is keen to explore opportunities for consistency across jurisdictions. This is especially important for the Inland Rail programme, but it will also benefit all project proponents who operate in more than one jurisdiction and it will enable States to share the benefits of each other's approach to EIA.

Three recurring themes in the Discussion Paper and this submission are the benefits of:

- consistency in information requirements and approaches to EIA issues;
- having a good understanding of the project being assessed; and
- efficient approaches to EIA.

The delivery of these benefits depends a lot on the level of understanding and engagement of the Government agency assessment teams involved in the EIA process. ARTC has some suggestions as to how these benefits can be harnessed by these teams and would like to discuss these suggestions with DP&E.

ARTC also thinks it is important to note that any proposal for public availability of information must be balanced with a need to maintain the confidentiality of some information, such as commercially or otherwise sensitive information.

ARTC would appreciate an opportunity to discuss its submission with DP&E. Would you please let us know what time would suit DP&E for a discussion.