October 2018

SA LIBERAL TRANSPORT MINISTER STEPHAN KNOLL ACKNOWLEDGES GWA LEASE - BUT DOES NOT WANT TO DO ANYTHING ABOUT HOLDING GWA TO ACCOUNT FOR ITS FAILURES.

The South Australian Rural Rail Alliance (SARRA) has been pursuing SA governments to acknowledge their responsibilities to regional and rural South Australians regarding the refurbishment and rejuvenation of rail passenger and freight services to regional SA, as a matter of priority.

The current SA Minister of Transport (Stephan Knoll) has corresponded with one of our supporters on this matter - a copy of that correspondence is provided below, as is our response to the detail it contains. But first, let us remind you of the background to this issue:

BACKGROUND

SA’s regional rail lines are in the hands of Genesee Wyoming Australia (GWA), which acquired a Ground Lease over the lines in 1997, for $1. The rail corridors - the land on which the track and other rail infrastructure sits - remain the property of the State. There were - and remain - conditions which GWA must meet as the Lessee of the State’s rural rail lines -- the details of which can be viewed on SARRA’S Website - www.saregionaltrainscampaign.com

SARRA supporters and others who have been following our efforts to bring back rural rail to SA will know that SARRA has been relentless in its efforts to bring this issue to public attention - AND to the attention of South Australian politicians, whose responsibility it is to address this issue on behalf of the broader SA electorate.

Governments of both political persuasions - controlled, as evidence confirms, are and have been in the hands of its public servants under the Department for Public Transport and Infrastructure (DPTI), which flatly has and continues to entertain the return of regional rail to SA.

This, despite the indisputable fact that GWA is in flagrant breach of its Lease agreement with the State. ANY examination of the GWA Lease clearly exposes GWA’s breaches.

SARRA can only assume that the State is scared (for whatever reason) to bring GWA to account.

If this is the case, as we suspect, there is need to urgently examine the ‘hold’ GWA has over the State, and as a result, the maladministration and malfeasance of DPTI to enforce and openly advise (successive) Transport Ministers of the need of Executive Government to investigate the GWA Lease.
Letter to our supporter

Despite SARRA’s correspondence to the current Minister of Transport, we have received no response.

BUT a supporter who took the basis of our ministrations to the Minister has received a response! Stephan Knoll’s letter to our supporter is published below.

Note that we have ‘truncated’ the letter (it includes other transport matters which we will address separately), but for this response we have shortened the letter to show the Minister’s signature, and have removed our supporter’s name and identifying details, on our supporter’s request. Nevertheless, SARRA has a full and unabridged copy of the letter which we we will provide to the State’s investigative bodies (ICAC, The Ombudsman), a course of action we are currently pursuing.

Dear Mr,

Thank you for your letter regarding the condition of regional rail lines in and the lease agreement with Genesee & Wyoming Australia (GWA).

As you would be aware, GWA acquired the rail infrastructure in the corridor you have mentioned from the Australian Government as part of the sale of Australian National. There is a Ground Lease between the Minister for Transport, Infrastructure and Local Government and GWA, which commenced in 1997 and expires in 2047.

GWA, as the Lessee, must:
- keep the land in good condition and free of fire hazards and vermin;
- keep the Lessee’s Property clean and in good repair and condition;
- remove refuse regularly;
- keep buildings on the land clean and in good condition; and
- as soon as practicable, repair any damage to the Lessee’s property or the buildings on the land.

If the Lessee is not using a line, it must be maintained in Dormant Condition which requires:
- track infrastructure is maintained only to a level in which it is reasonably practicable to reopen the line for rail traffic of a similar volume and nature as was operated on the line before it was closed to rail traffic, within a period of 2 weeks.

It is also important to note that I am unable to forcibly terminate the Lease if GWA is maintaining the track infrastructure in accordance with the Lease. Should the lease be terminated, this would result in the State Government becoming responsible for corridor maintenance costs.

I am nevertheless seeking further more detailed information from DPTI in regards to the specific issues you have raised, and will consider the need for any form of audit based upon that advice.

Yours sincerely,

HON STEPHAN KNOll MP
MINISTER FOR TRANSPORT, INFRASTRUCTURE AND LOCAL GOVERNMENT
MINISTER FOR PLANNING

September 2018
PLEASE TAKE THE TIME TO VIEW SARRA’S ANALYSIS OF KNOLL’S LETTER (below) - AND EVIDENCE OF THE BLATANT FAILURE OF GWA TO MEET THE CONDITIONS OF ITS LEASE ALONG WITH ITS FAILURE TO MEET THE NEEDS OF REGIONAL AND RURAL SOUTH AUSTRALIANS.

SARRA’S ANALYSIS OF THE LETTER AND EXAMPLES OF THE BLATANT FAILURE OF GWA TO MEET THE CONDITIONS OF ITS LEASE, AND ITS FAILURE TO MEET THE NEEDS OF REGIONAL AND RURAL SOUTH AUSTRALIANS

(Stephan Knoll’s response in the above letter are highlighted in blue. The photos which show the blatant failure of GWA’s responsibilities have been taken by SARRA in the past six months. SARRA’s comments to the letter are highlighted in red).  WE INVITE YOU TO DETERMINE STATE GOVERNMENT RESPONSIBILITY!

‘As you would be aware, GWA acquired the rail infrastructure in the corridors you have mentioned from the Australian Government as part of the sale of Australian National. There is a Ground Lease between the Minister for Transport, Infrastructure and Local Government and GWA, which commenced in 1997 and expires in 2047.’

What is a GROUND LEASE?

When governments recognise they are not property developers, (this) is a structure to achieve development of some significant public sector property assets without development risk for government [which retains] control of the properties.

Ground leases have been typically used by governments to encourage development of land for specific land uses ..... [these leases] grant the Lessee a form of ownership (ie. leasehold interest) and allows the government to retain ownership of the land (ie. freehold interest).

-- HillPDA, specialist property consulting firm, Sydney
‘GWA, as Lessee, must:

*keep the land in good condition and free of fire hazards and vermin;*

*keep the Lessee’s Property clean and in good repair and condition;*

*remove refuse regularly;*

*keep building[s] on the land clean and in good condition; and*

*as soon as practicable, repair any damage to the Lessee’s property, or the buildings on the land.’
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track infrastructure is maintained only to a level in which it is reasonably practicable to reopen the line for rail traffic of a similar volume and nature as was operated on the line before it was closed to rail traffic, within a period of two weeks.’
'It is also important to note that I am unable to forcibly terminate the lease if GWA is maintaining the track infrastructure in accordance with the Lease. Should the lease be terminated, this would result in the State Government becoming responsible for corridor maintenance costs.'
COMMENT:

Clearly, GWA is NOT ‘...maintaining the track infrastructure in accordance with the Lease..’!!

THE EVIDENCE ABOVE IS CLEAR. GWA IS NOT MEETING ITS LEASE OBLIGATIONS!

AND YES... terminating the Lease WOULD result in the State Government becoming responsible for corridor maintenance costs.

If for fire hazard and vermin control alone, the State MUST take back control over the corridors, and infrastructure, which are STATE ASSETS!

AND BY resuming control over the State’s rural rail assets, the Government should seek Expressions of Interest to renew SA Regional Rail (and sue GWA for not meeting its Lease obligations).

LET’S DO IT, MR KNOLL!!