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Legal threat to consultant as toll road traffic fails to materialise

Forecasting

Andrew Forster

Consultant AECOM could face legal action in Australia over inaccurate traffic forecasts for a toll road. Lawyers and litigation funders are trying to organise a class action on behalf of investors in RiverCity, which financed the Clem7 tunnel in Brisbane that opened last March. Actual traffic flows have been so far below the forecast that RiverCity went into administration this February.

Law firm Maurice Blackburn says AECOM (at the time Maunsell in Australia) predicted average daily traffic levels would be 90,676 vehicles within six months of opening but that actual flows are averaging less than 24,000 vehicles a day.

Maurice Blackburn believes investors in RiverCity may have rights to recover their losses from AECOM through Australia's Corporations Act 2001.

The law firm says that, in the product disclosure statement (PDS) for potential tunnel investors, AECOM failed to disclose that it had forecast traffic levels of just 57,000 vehicles a day in an environmental impact statement (EIS) for the tunnel prepared 18 months earlier.

"Serious questions arise as to whether the Clem7 tunnel project would have been viable with only 57,000 vehicles per day, still more than twice current actual numbers," said Andrew Watson, a principal with the law firm. "We think there is a strong case that AECOM should have revealed its earlier forecast in the product disclosure statement and thereby identified the real risk of a significant variance from the PDS forecast."

The law firm says losses could also be recovered on the grounds that the forecasts in the PDS were "misleading or deceptive".

"We will not be able to form a concluded view on this latter aspect of the case until we have scrutinised AECOM's traffic modelling underlying the PDS forecasts," said Watson. "At this stage we intend



Robert Bain, independent consultant and toll-road forecasting expert, reviewed the problems with the processes leading up to the traffic over-estimates with the Clem7 tunnel at Modelling World in 2010



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to make an application for preliminary discovery of documents to obtain AECOM's PDS traffic modelling."

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Litigation firm IMF (Australia) is offering to fund the action but there is no guarantee that the case will proceed.

Watson told LTT this week: "Packages containing funding and retainer agreements were sent out to investors in RiverCity and we are still in the process of receiving executed agreements back. In the meantime our investigation concerning the traffic modelling is continuing."

Bent Flyvbjerg, BT Professor and founding chair of major programme management at the University of Oxford, and an expert in major project forecasting, told LTT this was the first such legal case he was aware of. Speaking in general terms he said: "It is about time someone sues a traffic and revenue forecaster, given the very low quality of many traffic and revenue forecasts and the serious negative impacts flawed forecasts may have."

AECOM told LTT: "The PDS clearly described the project risks, assumptions and indemnities. Since our services were completed in 2005/06, there have been significant events that have affected the local economy, employment and the behaviour of commuters.

"The projects and traffic modelled in the EIS were different to those modelled and described in the PDS. This proposed claim lacks merit and any action taken against AECOM will be defended vigorously."

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