

RECEIVED
10 MAR 2011



BY:.....

Ref CTS 00254/11

- 4 MAR 2011



E-MAILED

4/3/11

Department of
Environment and Resource
Management

Mr Phil Clarke
Queensland Ombudsman
GPO Box 3314
BRISBANE QLD 4001

Dear Mr Clarke

Phil

I refer to a letter dated 5 January 2011 from [REDACTED] Acting Ombudsman and your letter dated 28 January 2011 providing the Department of Environment and Resource Management (DERM) with an opportunity to comment on the Proposed Report entitled Brisbane Airport Link Report: An investigation into complaints about night time surface work (the Proposed Report).

Overview

My Department welcomes your investigation into complaints about night-time surface works from the Airport Link project. However, having now reviewed the Proposed Report, I am concerned that it incorrectly misrepresents DERM's administrative actions as being unreasonable. I would appreciate if you could please review and consider the feedback in the attached schedule of the department's responses to proposed opinions and recommendations.

In particular, I am concerned that the Proposed Report in its current form misstates some facts in respect to resourcing and monitoring actions by DERM. The information contained within the proposed report does not adequately reflect current DERM resource levels and this is addressed in more detail in the attached feedback.

The fundamental framework of conditioning applied to this project by the Coordinator-General (CG) in relation to monitoring of noise emissions, involves noise monitoring to be undertaken by the proponent. DERM, as the entity with jurisdiction for some key noise conditions, was provided a role of investigating and enforcing reported exceedances and investigating complaints in accord with the complaint management procedure developed by the CG.

In addition DERM has undertaken a significant amount of work within its regulatory jurisdiction, including but not limited to:

- Attending the project site to observe Thiess John Holland (TJH) employees while they were carrying out noise monitoring to ensure that TJH are monitoring noise in accordance with relevant standards and procedures;

Level 13
400 George Street Brisbane Qld 4000
GPO Box 2454 Brisbane
Queensland 4001 Australia
Telephone + 61 7 3330 6301
Facsimile + 61 7 3330 6306
Website www.derm.qld.gov.au
ABN 46 640 294 485

- Conducting meetings with noise experts from Heggies, City North Infrastructure (CNI), DERM and the Department of Transport and Main Roads to discuss technical issues with respect to noise monitoring and resourcing;
- Organising access to specific households to enable TJH to conduct in-house noise monitoring (to assess noise levels and underpin decisions about mitigation);
- Instructing TJH to carry out noise monitoring at a site where it reasonably thought that noise goals will be exceeded;
- Undertaking both impromptu and planned site inspections to assess compliance with the noise goals;
- Regularly meeting with TJH to discuss upcoming works and to assess the effectiveness of noise mitigation to be employed and subsequent risk of noise nuisance;
- Conducting targeted inspections of worksites where DERM was concerned that activities had the potential to produce excessive night-time noise;
- Initiating regular meetings with the Brisbane City Council (BCC) to discuss noise issues (for example, discussing the possibility of day-time road closures rather than night-time road closures to reduce the incidence of night time noise complaints);
- Conducting noise monitoring inside affected households in response to complaints;
- Accompanying BCC officers on night-time noise assessments to assess the work conducted by the Public Utility Providers;
- Negotiating changes to TJH work practices to reduce noise impacts, for example, ongoing changes to the site entry point at Bowen Hills to reflect the changing noise landscape of the construction site; and
- Conducting a "door-knocking" program to talk to residents in the Bowen Hills and Kedron areas about noise issues and other project impacts. The officers then reported back the concerns of the residents and as a result, DERM subsequently issued a section 451 notice to TJH. The notice was issued to ensure that appropriate mitigation was in place prior to the commencement of works at the Kedron Park Hotel car park site.

As is evidenced here, much of this work was proactive in nature and is typically focussed on achieving the desired environmental outcome for the community, while maintaining a regulatory presence at project work sites.

DERM remains committed to continuous improvement and will welcome the opportunity to address legitimate issues identified in your report. Indeed, both CG and DERM have identified opportunities to improve the approach to noise conditioning during the course of this project. This is evidenced most notably by the outcomes achieved through the Woolloowin Change Report that resulted in an enhanced regulatory ability to efficaciously resolve night-time noise complaints.

Escalation of Compliance and Enforcement

DERM takes a comprehensive approach to environmental and natural resource regulation. Enforcement is one of the measures used by DERM to achieve the objectives of the legislation it administers, but it is not the only tool. If an alternative to enforcement action will be more effective in achieving the objectives of the Act being administered, then that alternative is considered. Sometimes a number of enforcement measures are used in combination. In order to determine whether enforcement action will be taken, DERM will investigate all significant breaches of the law and then exercise its discretion in a consistent and logical fashion.

The path of escalation in the enforcement response that has been adopted by DERM in relation to the Airport Link Project is consistent with its Enforcement Guidelines that consider the following approaches:

- *Encouraging Voluntary Compliance:* DERM has encouraged voluntary compliance through education and self regulation. DERM has attended monitoring being undertaken by TJH to ensure that it was being conducted in accordance with relevant

standards and procedures. DERM has also encouraged the CG (who is responsible for reporting related conditions) to improve the quality of reporting by TJH which underpins self regulation.

- *Education and warning notices:* DERM officers developed and delivered a training program to TJH site supervisors about their environmental/legislative obligations. DERM officers recognized that night-time work undertaken by Public Utility Providers (PUPs) was a major source of night-time noise complaints. TJH expressed concerns to DERM that it was unable to effectively regulate PUPs work. DERM then issued warning letters to the chief executive officers of major PUPs resulting in improved performance. DERM has issued numerous warnings to TJH regarding its environmental performance.
- *Administrative enforcement action:* DERM has issued s451 Notices requiring information on noise related matters and Penalty Infringement Notices (PINs) for a range of water related offences.
- *Enforcement orders:* DERM has issued an Environmental Protection Order in response to breaches of the *Environmental Protection Act 1994*.
- *Criminal prosecution.*

Where appropriate, DERM has also chosen to negotiate prompt and satisfactory environmental outcomes.

Proposed Opinions and Recommendations in relation to Proactive Monitoring

DERM recommends that the current wording of the report be reconsidered, insofar as it recommends a general extension of proactive monitoring by DERM which replicates the mandatory monitoring required of the Proponent under CG conditions. While it is important that the CG and DERM ensure effective compliance by proponents in relation to their monitoring obligations and notification of exceedances, DERM does not and indeed could not, routinely undertake direct monitoring of the environmental performance of all of the activities that it regulates. Development approvals for Environmentally Relevant Activities (ERA) include conditions which clearly limit the level of environmental harm that can be caused; detail monitoring to be undertaken; and require exceedances to be reported and complaints to be recorded. I note that in many instances where a complaint about noise is received, conditions require that the registered operator must conduct noise monitoring. If agencies were required to undertake duplicative proactive monitoring for all permits requiring monitoring by registered operators, there would be significant resourcing consequences without a commensurate improvement in environmental performance outcomes.

Given the thousands of industrial land uses that DERM regulates across the State, DERM's proactive compliance programs typically take the form of a strategic approach. Allocation of resources for proactive compliance efforts occur following consideration of equity and risk of environmental harm to communities that live in proximity to industrial land uses across the State.

I acknowledge that there is scope to increase proactive compliance efforts around Airport Link. However, it is also important that department resources can be prioritised to areas of greatest risk to the broader community based on its own experience regulating industrial land uses in a dynamic environment.

As requested in your correspondence dated 28 January 2011, DERM will respond in writing to proposed Recommendation 20 and, subject to your endorsement, we would seek to provide this response to you by 28 March 2011.

If it would assist, DERM would be happy to meet further in relation to these matters to ensure a common understanding, particularly in relation to systemic issues. Should you have any further enquiries, please do not hesitate to contact myself or [REDACTED] Regional Services Director, South East Region of the department on telephone [REDACTED]

Yours sincerely



John Bradley
Director-General

Att