

PUBLIC ACCOUNTABILITY COMMITTEE

INQUIRY INTO THE IMPACT OF THE CBD AND SOUTH EAST LIGHT RAIL PROJECT

Supplementary questions: NSW Environment Protection Authority (EPA)

1. Under the Planning Act for projects such as the light rail which have been declared 'critical state significant infrastructure' the EPA is unable to issue any Environment Protection Notices to enforce the Environment Protection Licence. What is the impact of this on the EPA's ability to enforce the license conditions?

The *Environmental Planning and Assessment Act 1979* (EP&A Act) prevents Environment Protection Notices (such as a Prevention Notice or Clean up Notice) being issued where they will prevent or interfere with the carrying out of approved critical state significant infrastructure. The EP&A does not interfere with the EPA's ability to enforce the conditions of the environment protection licence under the *Protection of the Environment Operations Act 1997*.

2. Can anyone issue a stop work order if there is a serious environmental breach or if they are operating outside of conditions of Environment Protection Licence?

The EPA does not have a 'stop-work' notice as part of its regulatory toolkit.

3. We have heard that Acciona's EPL requires audits but that the responsibility for conducting these audits rests with Acciona. We have also heard that Transport for NSW has no powers to conduct audits under the PPP. Does the EPA have any powers to independently audit compliance with the EPL?

Yes. The EPA can and does audit Acciona's compliance with its environment protection licence through site inspections, review of responses to complaints and Annual Returns.

4. Under the EPL under 'Other reporting conditions' it states that "The licensee must submit, by 2PM each business day, a report to the EPA that provides details of all complaints received in relation to construction activities regulated by the licence on the telephone complaints line or over email".

a. Has this been happening?

Yes.

b. Can you table all of these reports for the committee?

A summary of all environmental complaints received by Acciona is provided at Attachment A.

5. According to Acciona's EPL informal noise audits are to be undertaken on a monthly basis. Who undertakes these noise audits?

There is no requirement within the environment protection licence for Acciona to undertake monthly noise audits.

6. Under Acciona's EPL, Noise and Vibration Reports R4.2: (a) When directed by an authorised officer of the EPA, the licensee must provide a Preliminary Noise Investigation Report prepared in accordance with Condition R4.2(b) and R4.2(c) within 48 hours of receiving that direction.

a. How many times has this happened? None.

b. Can the EPA table all Preliminary Noise Investigation Reports it has asked Acciona to submit? The EPA directed the licensee to undertake noise monitoring under Condition M4.1 but did not direct the licensee to prepare any reports under R4.2.

7. Has the EPA ever had to ask Acciona to submit a Follow-up Noise Investigation Report to the EPA within 5 working days of receiving the direction to prepare the Preliminary Noise Investigation Report under Condition R4.2(a)?

No.

8. What powers does the EPA have when ALTRAC's Light Rail Construction Noise and Vibration Management Plan is breached?

The Construction Noise and Vibration Management Plan is a requirement of the infrastructure approval. Compliance with this Plan is a matter for the Department of Planning and Environment.

9. Does the EPA receive the data from air quality monitoring on the site?

No.

10. How many noise complaints have you received as a result of this project?

The EPA has received eighty three (83) complaints relating to noise and vibration since construction commenced on the project up until 8 November 2018.

a. What date were these received? Complaints were received between February 2014 and October 2018.

b. What location did they related to? Haymarket, Sydney City, Kensington, Randwick, Surry Hills, Kingsford, and Moore Park.

c. What action did the EPA take?

- The EPA would investigate the complaint by first seeking information from the licensee.
- Four (4) inspections were undertaken after complaints were received about noise.
 - 13 December 2016 – Site inspection focussing on noise impacts on Devonshire Street.
 - 31 January 2018 – EPA undertook noise monitoring at 2 am.
 - 18 February 2018 – Unannounced site inspection at Olivia Gardens to inspect dust suppression and monitor noise levels.
 - 28 March 2018 – EPA and DPE undertook noise monitoring from 21:00 until 23:59
- Three (3) regulatory actions were undertaken against Acciona: one (1) formal warning letter, one (1) official caution and (1) show cause letter.
 - 14 February 2017 – Formal Warning Letter –Failure to notify community of approved out of hours works and EPA of temporary premise boundary change.
 - 19 May 2017 – Official Caution – Working outside permitted hours without notification to the community.
 - 09 June 2017 – Show Cause Letter – Failure to carry out activities in a competent manner.

As a result of EPA's regulation, Acciona undertook a range of actions including:

- Toolbox talks- to crew and subcontractors;
- Better implementation and maintenance of environmental site controls;
- Better engagement with complainants.

11. How many complaints regarding dust have you received?

Eight (8) complaints relating to dust have been received since construction commenced on the light rail, until the 8 November 2018.

a. What date were these received? Complaints were received between March 2017 and February 2018.

b. What location did they related to? Sydney City, Randwick, and Surry Hills.

c. What action did the EPA take?

- The EPA would investigate the complaint by first seeking information from the licensee.
- Two (2) inspections have been conducted as a direct result of dust complaints.
 - 02 November 2018 – Unannounced site inspection of dust management measures along Devonshire St and Olivia Gardens.
 - 09 February 2018 – Unannounced site inspection of dust management measures at Olivia Gardens.

As a result of EPA's regulation, Acciona undertook a range of actions including:

- Toolbox talks- to crew and subcontractors;
- Better implementation and maintenance of environmental site controls;
- Better engagement with complainants.

12. How many complaints regarding air quality have you received?

Four (4) complaints have been received that relate to air quality.

a. What date were these received?

Complaints were received between July 2016 and June 2017.

b. What location did they related to?

- Kensington, Sydney City – George St, and Surry Hills – Devonshire St.

c. What action did the EPA take?

- The EPA would investigate the complaint by first seeking information from the licensee.
- One (1) 'Show Cause' Letter - 09 June 2017 – Failure to carry out activities in a competent

manner. No further escalation of this regulatory action was considered necessary.

As a result of EPA's regulation, Acciona undertook a range of actions including:

- Toolbox talks- to crew and subcontractors;
- Better implementation and maintenance of environmental site controls;
- Better engagement with complainants

13. Who is the independent environmental representative for the project?

- a. What is their biography?**
- b. How were they appointed?**
- c. What criteria was used to select them?**
- d. How many applications were received for the role?**
- e. How much are they paid?**
- f. Who pays them?**

The Independent Environmental Representative is appointed by the Department of Planning and Environment (DPE). Accordingly, this is a matter for DPE.