

Submission
No 123

**INQUIRY INTO PERFORMANCE OF THE NSW
ENVIRONMENT PROTECTION AUTHORITY**

Name: Name suppressed
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Partially Confidential

**NSW LEGISLATIVE COUNCIL
GENERAL PURPOSE STANDING COMMITTEE NO 5**

**SUBMISSION TO INQUIRY INTO THE PERFORMANCE OF
THE NSW ENVIRONMENT PROTECTION AUTHORITY (EPA)**

This submission refers to the EPA's failure to meet its objectives pursuant to Section 6 (1) (b) of the *Protection of the Environment Administration Act 1991*, particularly in relation to a failure to:

- promote pollution prevention
- advise the Government to prescribe more stringent standards where appropriate than those prescribed by Commonwealth and State legislation

by reference to case (v) of the Inquiry Terms of Reference - the regulation of cruise passenger ships at the White Bay Cruise Ship Terminal at Balmain.

Balmain Resident

28 August 2014

BACKGROUND:

- My family has lived in Balmain, close to White Bay, since the mid 1990s. This includes part of the forty five years since the site where the White Bay Cruise Ship Terminal (WBCST) is located was first converted from housing and open paddocks to a container ship facility, with associated infrastructure to transport, load and unload bulky cargoes.
- The current level of pollution is like nothing ever experienced before in this area, and coincides with the arrival of cruise ships which are fundamentally different in bulk, weight and use from any other ship on the water.
- Until the last 12 months and the advent of the cruise ships in White Bay, we had never been aware of any unpleasant odours or illnesses which could be related to the activities of the port. The health issues now evident in the local community have been well documented in other submissions to the Inquiry. I support those submissions.
- The illness and the diesel smell which are now experienced in a broad area adjacent to White Bay are attributable to the noxious and toxic fumes which the cruise ships emit while docking and while berthed at the WBCST. These facts are not disputed by the NSW government health and environment officials who meet with Balmain residents as part of a consultation process instigated by Dr Leena Gupta, Director Public Health, Sydney South West Area Health Service.
- In 2014 it is considered unsafe for cruise ships to burn fuel with a sulphur content above 0.1% within 200 nautical miles of the North American coast where Emissions Control Areas operate (moving to 0.01% in 2015). The same conditions apply in many European ports and while ships are in transit in EU waters. Australian laws, however, allow the burning of the lowest grade, dirtiest and most toxic Residual Fuel Oil, with sulphur content up to 35 times greater, within 50 metres of residences in one of Sydney's most densely populated residential areas. Such fuel also contains a range of other pollutants, some with no safe level of exposure for humans.

I find this quite shocking.

- It is even more shocking when it is known that more than four years ago, the then NSW Government's key environmental agency was aware of international developments in relation to reducing the sulphur content in cruise ships' fuel, and the significant benefits to air quality of shore based power. **The EPA failed, totally, to have these issues properly investigated or considered in relation to the approval of the WBCST.**
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EPA'S ROLE IN ENVIRONMENTAL ASSESSMENT OF THE DEVELOPMENT APPLICATION FOR WBCST:

- In 2010, when the Environmental Assessment processes of the proposed WBCST were conducted, the EPA made a number of submissions in relation to those Assessments. These are publicly available as follows:
 1. EPA's comments on the CPT draft Director General's Environment Assessment Requirements
 2. EPA's comments on the CPT draft Environmental Assessment
 3. EPA's reviewed comments of the CPT draft Environmental Assessment
 4. EPA's comments on the CPT exhibited Environmental Assessment
 5. White Bay Cruise Passenger Terminal Response to Submissions Report, JBA Planning, December 2010
- An analysis of these documents indicates that the EPA requested, *inter alia*, that the following be undertaken in relation to the WBCST Environmental Assessment:
 - 1) a comparative analysis of pollutants from cruise ship emissions arising from the "hotelling" of cruise vessels at berth, using shipboard generated power versus shore based power...
 - 2) a detailed analysis of the reasonableness and feasibility of using shore based power to reduce air quality impacts of "hotelling" cruise vessels at berth, taking into account a detailed analysis of current and emerging industry practice in relation to the use of shore based power for cruise ship operations in Europe and North America...
 - 3) a comparative analysis of the proximity of the White Bay terminal to residential premises and the proximity of those European and North American cruise ship terminals (where shore-based power has been introduced) to surrounding residential premises...

Further, when the proponent, Sydney Ports Authority, advised it would instead provide a space for shore power to be installed at the proposed WBCST in future, the EPA responded that it *“...considered the provision of space to install shore based power in the future to be an inadequate response, in the absence of any analysis to identify current industry practice and ship design”*.

- **None of the above analysis was ever undertaken. As a result of a meeting on 21 September 2010 with Sydney Ports Corporation and the Barangaroo Delivery Authority, the EPA significantly modified its requirements regarding the Environmental Assessment of the Development Application for WBCST.** After this meeting, the EPA requested some minor additional air quality modelling, and dropped its request for detailed analysis of the benefits of shore power and identification of industry best practice. No explanation is given in the publicly available documents for this change of heart by the EPA.
- These changes meant that the project was subsequently approved with the minimal pollution prevention standards that currently apply at the WBCST. The development was approved in February 2011 by the Hon Tony Kelly, MP Minister for Planning. The then Minister for Ports was the Hon Eric Roozendaal, MLC. The Minister for the Environment was the Hon Frank Sartor, MP.
- I consider our (Balmain) community was very badly let down by the 21 September, 2010 decision by the EPA.
- There is no question that the pollution and the significant health impacts being experienced by residents today are a direct result of the decision by the EPA to not require a detailed analysis of the benefits of shore power, nor to look at the trends in cruise ship industry practice.
- The analysis originally proposed would have shown the real benefits of combining shore power and ultra light fuel for cruise ships. Overseas evidence demonstrates such actions dramatically reduce toxic emissions with resultant health benefits calculated in the billions of dollars.

- Such an analysis is likely to have highlighted the potential for significant adverse health impacts resulting from cruise ships pollution on the population surrounding the WBCST. The topography of the Balmain area is such that the ships' funnels are almost directly in line with adjacent houses so that there is no buffer zone to allow the emissions to disperse. Given that in 2010, NSW Health was not asked to provide advice, or indeed comment in any way, on the potential impacts of the pollution from the WBCST, the studies originally requested by the EPA would have provided a way for this information to come to light.
- Such an analysis would have exposed the lack of rigour in the Sydney Ports Corporation 2010 development application, and the false assertions that no ships which would use WBCST had the capacity to use shore power, and that few, if any, ports around the world were using shore power for cruise ships. Such false statements continued to be made verbally by Ports Authority personnel as recently as December 2013, two years after the NSW Government's own commissioned report (PAE Holmes 23 June 2011) clearly demonstrated this was untrue.
- Such an analysis may have led to a cap on the number of ships which are allowed to use the WBCST. In 2010, Sydney Ports Corporation told agencies and the community that they estimated ships would dock on about 60 days per year at WBCST. In the first year of operation the number was more than 130, and by 2016 a 27 percent increase on 2013 levels is currently anticipated, with consequent health impacts.
- Such an analysis would have exposed the hypocrisy and ethically questionable behaviour of cruise ship operators who transfer old ships that pump out highly toxic emissions on local residents at White Bay, while trumpeting their environmental and ethical credentials in other markets. There are numerous cruise company press releases to support this assertion.
- It is documented that the WBCST development proponent, Sydney Ports Corporation, argued against investigating the use of shore power in 2010 on the basis that only the oldest and dirtiest ships were coming to White Bay. The NSW agency charged with protecting pollution effectively ensured there would be no analysis of why this might be the case.

- The Ports Authority of NSW and the Department of Planning have told residents in meetings they did not know the impacts from the WBCST would be so great. This says much about the inadequacy of the modelling on air quality issues which was signed off by the EPA in 2010, and endorsed by the Director-General of Planning in April 2013 in approving the *Operational Air Quality Management Plan* for the WBCST.

On the basis of the foregoing points, I contend that, in relation to the WBCST, the EPA has not properly discharged its duty to promote pollution prevention, and to advise the Government to prescribe more stringent standards, where appropriate, than those prescribed by Commonwealth and State legislation.

CURRENT POSITION OF EPA:

- It took almost 12 months after the commencement of terminal operations in April 2013 for any government agency to acknowledge the plight of Balmain residents. Ironically, it was NSW Health, which did so - an agency which had not been part of the approvals process of WBCST in 2010. Until the intervention of NSW Health, the EPA's approach was to advise residents that regulation of the pollution from the cruise ships was beyond their jurisdiction. Valuable time was lost.
- Finally, in June 2014 the new Minister for the Environment, the Hon Rob Stokes, MP publicly acknowledged the adverse health impacts of the WBCST. EPA officials have subsequently said the agency is considering options to ameliorate the current situation of Balmain residents, and has started discussions with the cruise ship industry with a view to reducing emissions from cruise ships.
- Any proposal to reduce the sulphur content of ships' fuel will not of itself reduce pollution to a satisfactory level at White Bay. The increasing number of ships and lack of shore power will ensure that the particulate matter and toxicity of fumes, particularly from the highly dangerous components other than sulphur dioxide, will still be an issue for Balmain residents.

- Residents who now meet bi-monthly with NSW Government agencies have been assured that the EPA is working to find a solution; they have promised an investigation of the use of shore power, which, if implemented, should result in conditions similar to those present in North America and the European Union. However, the EPA admits to finding the issue complex. It has not been able to provide a definitive plan or time frame for resolution. It does not display any confidence that an acceptable solution will be found.
- The EPA is now seeking to do what it requested be done four years ago, without any public sign that the now Ports Authority NSW, the NSW Government more generally, or the cruise ship companies have any desire or willingness to cooperate.
- Cruise companies have been forced to take action to modify ships and practices in the northern hemisphere. As a result Sydney Harbour has become a lucrative dumping ground for old, dirty, cruise ships which are not worth retrofitting to take shore power for the northern markets. It is expected these companies will, as a result, strongly resist any move by the authorities to change the current operating conditions at WBCST.
- The cruise ship companies seem reluctant to match what they do for Northern Hemisphere communities, or to explain publicly why the health of these communities is seemingly worth more than that of residents in Sydney, Australia, where they hide behind inadequate legal limits. I cite statements from the Port of Los Angeles in August last year, where, in announcing significant reductions in toxic emissions, credit was given to *“industry partners who have invested in technology that in some cases surpass government regulations”*.
- The Balmain community needs immediate solutions to reduce pollution as it faces the summer cruise season. This may mean putting temporary solutions in place whilst we await the longer term regulatory changes that the EPA says it is working on. This will require a resolute Government and a cooperative industry.
- As a result of our experiences to date, I have little confidence the EPA will do anything differently from 2010 in the face of opposition from entrenched vested interests.