

Breaking trust:

A community investigation into Airport Link condition breaches

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8 June 2010

Introduction

The Airport Link, Airport Roundabout Upgrade and the Northern Busway (Windsor to Kedron) project is the largest road infrastructure project in Australia.

Airport Link is a mainly underground toll road between Brisbane's northern suburbs, the airport and the inner city. The Windsor-to-Kedron section of the State-funded Northern Busway and the airport flyover are also being constructed in conjunction with the Airport Link project.

The project is affecting the city's inner-north, including communities in Bowen Hills, Clayfield, Hendra, Kedron, Lutwyche, Toombul, Windsor, Wooloowin and the Airport Roundabout precinct.

The communities have always supported the project and fully understood that the project would disrupt their lifestyle during the four years of construction. They have always understood that underground tunnelling would occur 24 hours a day, seven days a week.

They always knew surface works would occur only between 6.30am and 6.30pm, Monday to Saturday. They always knew work would not occur on Sundays or public holidays.

They understood that special circumstances — such as works on major roads, rail corridors, or works involving large prefabricated components — would require work outside these hours.

Contrary to what the community had always known, in August 2009 the Kalinga Park site began working 24 hours a day, five days a week.

In November 2009, the Kalinga Park site began working 24 hours a day, seven days a week.

The Bowen Hills site is now working 24 hours a day, seven days a week.

This document details how these working hours are in clear breach of the project's conditions.

The road to 24/7

The appointment of administrators and contractors

On 19 May 2008, the Queensland Government named BrisConnections as the preferred bidder for the \$5.6 billion Airport Link, Northern Busway (Windsor to Kedron) and the Airport Roundabout Upgrade projects.

BrisConnections contracted Thiess John Holland (TJH), a joint venture between Thiess Pty Ltd and John Holland Group, to undertake the design and construction of Airport Link, the Northern Busway (Windsor to Kedron) and the Airport Roundabout Upgrade.

City North Infrastructure (CNI), a wholly owned Queensland Government operation representing the State on major infrastructure projects, oversees the delivery of the project.

Changes to working hours: what the residents were told

Work commenced at the Kalinga Park site in October 2008. The hours of work were 6.30am to 6.30pm, Monday to Saturday, though, as the site developed, residents complained about concrete pours that finished after 6.30pm on some nights. As discussed below at page 8, at the time TJH and CNI acknowledged the conditions did not permit these time overruns.

On 4 August 2009 residents were notified¹ that, from 6 August 2009, the Kalinga Park site would operate 24 hours a day Monday to Friday, with no change to the Saturday 6.30am to 6.30pm shift.

On 31 October 2009, residents were notified² that from 7 November 2009, the Kalinga Park site would operate 24 hours a day, seven days a week.

When residents objected to, complained about and questioned TJH's right to work 24/7, TJH and CNI told residents that the Coordinator-General's (CG) conditions permitted 24/7 work.

¹ Airport Link community notice 4 August 2009. See Appendix p1

² Airport Link community notice, 31 October 2009. See Appendix p2

CNI advised³ residents that when TJH first proposed working 24/7, CNI had required TJH to demonstrate how the work still complied with the CG's conditions.

CNI said TJH met this requirement by:

- submitting results from predictive noise modelling
- updating its site environment plan, and
- establishing appropriate mitigation measures.

Shifting sands: from working hours to noise levels

As far as TJH, CNI and the State Government departments were concerned, the debate then shifted from the issue of whether 24/7 work was permitted to how much noise was permitted during night time surface operations. The question for these parties was:

What level of night noise is excessive?

As far as the community was concerned, any noise after 6.30pm Monday to Saturday and all noise on Sunday was unacceptable. The question for the community was:

Why did CNI and the State Government departments ever agree that the CG's conditions allowed TJH to work 24/7?

Residents had followed the project's development from concept stage to the reality of a huge construction site in Kalinga Park and knew there would be substantial disruption to their way of life. However, they also knew that for them to maintain any semblance of normal life, surface construction work had to be limited to 6.30am to 6.30pm, Monday to Saturday.

Every meeting residents attended, every document they read, every verbal and written guarantee they received assured them that, except for very limited special circumstances, 24/7 surface construction works would never occur.

³ Email from CNI to resident, 11 February, 2009 . See Appendix p4

However:

- TJH began working 24 hours, five days a week in August 2009 at the Kalinga Park site.
- TJH began working 24 hours a day, seven days a week in November 2009 at the Kalinga Park site.
- TJH is now working 24 hours at other worksites, with work at the Bowen Hills site now proceeding around the clock.

Who gave the green light to 24/7?

Before 28 July 2009, TJH asked for permission to conduct night work at the Kalinga Park site.⁴ Right to Information (RTI) searches indicate that senior officers of the Department of Infrastructure and Planning (DIP) and CNI discussed the proposal.⁵

On 4 August 2009 the community was advised that night work would commence two days later, on 6 August 2009 and would continue for about seven months.⁶

On 6 August, the same day night work commenced, the Coordinator-General asked⁷ CNI to provide information on:

- the work being carried out
- the need for 24-hour work and
- who approved the 24-hour operation.

On the same day, 6 August 2009, CNI Media and Communications Director Wendy George wrote to the Coordinator-General advising that TJH did not require any approval and that, under the Coordinator-General's own conditions, TJH was always permitted to operate 24/7. Ms George advised that the

⁴ Internal Department of Infrastructure and Planning (DIP) email, 28 July 2009 (RTI 65). See Appendix p6
A series of emails and other documents have been obtained under the Right to Information (RTI) process directed towards the Department of Infrastructure and Planning. These are available on the DIP website.

⁵ DIP minutes of meeting, 29 July 2009 (RTI 66); email from DIP to CNI, 31 July 2009 (RTI 67); email from DIP to CNI, 31 July 2009 (RTI 71-2); internal email DIP 5 August 2009. See Appendix p7, 8, 9, 10

⁶ Airport Link community notice 4 August 09. See Appendix p 1

⁷ Email from DIP to CNI, 6 August 2009 (RTI 77). See Appendix p 11

process under which TJH would work 24/7 had been finalised on Monday, 3 August. The residents were notified on Tuesday, 4 August and 24-hour work commenced on Thursday, 6 August 2009.⁸

Thus, despite all the procedures in the Project Deed, reports and documents produced during the Airport Link approval process, it appears⁹ TJH was told it could conduct night time operations, including fixing of steel reinforcement and formwork and pouring and finishing of concrete, without even advising the Coordinator-General.

A litany of broken promises about 24/7 construction

Documents show neither the State Government, its project arm CNI, nor TJH believed 24/7 work was permitted under the conditions until the middle of 2009.

1. The Minister for Infrastructure and Planning

On 14 August 2006, the Minister for Transport and Main Roads, Paul Lucas, wrote to a local resident assuring her that:

“Construction activities at this site and at the surface would only be conducted within specific hours, not 24 hours a day, 7 days a week.”¹⁰

After 24/7 work commenced in 2009, residents complained to the State Government that Mr Lucas’s promise had been broken.

The Minister for Infrastructure and Planning’s principal advisor, Stuart Fyfe, responded that there had been significant changes to the design and construction methodology since the promise was made and, therefore, the State Government could not be held to its promise.¹¹

⁸ Email from CNI to DIP, 6 August 2009 (RTI 75). See Appendix p 12

⁹ Not all documentation relating to this has been released to the community. This statement is therefore qualified, but it is strongly supported by DPI emails the community has been able to access. Residents have lodged various Right to Information claims to CNI about Airport Link, which have all been rejected by CNI. The Information Commissioner ruled against CNI on (31 March 2010) and in favour of residents. CNI has appealed to the Queensland Consumer and Administrative Tribunal, which is due to make a finding in coming months.

¹⁰ Letter from Paul Lucas, Minister for Transport and Main Roads to a local resident, 14 August 2006. See Appendix p 14

¹¹ Letter from Stuart Fyfe, principal advisor, Stirling Hinchliffe, Minister for Infrastructure and Planning to a local resident, 11 March 2010. See Appendix p 17

The successful BrisConnections tender did change the design of the original project. The particular change to which Mr Fyfe referred was the relocation of the Tunnel Boring Machine (TBM) launch box to Kalinga Park.

Specialist environmental engineers, Heggies, were appointed to review the noise and vibration effects of the BrisConnections tender.

For the construction phase of the project, the only night time noise this report addressed was that associated with underground tunnelling, spoil haulage, the cut-and-cover across Kedron Brook, and the removal of the TBM sections at the Chalk Street site.

As part of the review, Heggies addressed the relocation of the TBM launch box.

The Heggies Report 20-1605-R6, delivered on 26 May, 2008, states:

*The review has taken into account the information supplied to the State by the preferred tenderer.*¹²

The report deals specifically with the relocation of the TBM launch site to Kalinga Park. It states: *Launching TBMs from Kalinga Park changes the noise environment in the area associated with the TBM set-up activities. Whilst construction noise associated with setting up the TBMs from this site is different to the Reference Design, other construction noise was anticipated from this worksite for the EIS and **all such activities will be limited to daytime hours (6.30am–6.30pm) until the cut-and-cover tunnel is intact acoustically.***¹³

This report refutes the argument that the changed TBM launch site made the Minister's promise null and void. It states, explicitly, clearly and unambiguously, that all surface construction in Kalinga Park is to be carried out in daytime hours.

¹² Heggies Report 20-1605-R6 (26 May 2008), p4.

¹³ Heggies Report (26 May 2008) p 9.

2. Thiess John Holland

On 5 October 2008, two months after *The Change Report* was released, a senior TJH representative addressed a community meeting in Kalinga Park, expressly saying that work in the park would only occur between 6.30am and 6.30pm, Monday to Saturday. He also said the only 24-hour work that would occur would be tunnelling which would not affect residents because it would be underground.

3. City North Infrastructure

TJH and Brisconnections established Community Liaison Groups (CLGs) comprising community members and other stakeholders. The Toombul CLG comprises residents in the Kalinga Park area. At a meeting of the Toombul CLG on 12 May 2009, a community member complained that concrete pours had been taking place after 6.30pm.

A community member asked what consequences TJH faced for working past 6.30pm on the concrete pours.

The minutes of the meeting state:

*CNI advised that activities of this nature are considered non-compliances and are reported to the CG on a monthly basis. CNI commented that TJH try to learn from such non-conformances to avoid them occurring again.*¹⁴

In the same meeting, a TJH representative outlined techniques that were being employed to ensure that concrete pours did not continue past 6.30pm. These measures included cancelling a concrete pour before it began if it were obvious that it would finish after 6.30pm.¹⁵

Thus, in May 2009, TJH stated that it would do everything possible to ensure that concrete pours did not continue past 6.30pm and CNI stated that concrete pours after 6.30pm were non-compliances. Less than three months later, both TJH and CNI stated that the Coordinator-General's conditions had always provided for 24/7 work.

¹⁴ Minutes of Toombul CLG, May 2009, p 4. See Appendix p 19

¹⁵ Minutes of Toombul CLG, May 2009, p 3. See Appendix p 18

The hitchhiker's guide to Airport Link project reports

- March 2005** ***Policy Analysis — TransApex Road Tunnels***
- This study was the initial investigation into the feasibility of a system of tunnels to link the Brisbane road network.
- October 2006** ***Environmental Impact Statement (EIS)***
- A comprehensive document that provides the basis for understanding the Reference Project for the Airport Link development, alternatives considered, proposed solutions to particular issues, the existing environment, impacts that may occur and measures taken or proposed to mitigate adverse impacts.
- Volume 1** is a detailed summary document, which identifies the key issues, the predicted environmental impacts and recommended mitigation measures.
- Volume 2** contains detailed technical drawings.
- Volume 3** contains the technical reports dealing with matters such as noise and vibration, ecology and social environment.
- April 2007** ***EIS Supplementary Report***
- A response to the submissions received to the EIS.
- May 2007** ***EIS Evaluation Report and supporting material***
- Draws on information contained in the EIS and Supplementary Report, all properly made and other submissions about the EIS and the Supplementary Report, and other advice from agencies, including the Department of Main Roads, Queensland Transport, Department of Health and the Environmental Protection Agency.
- The conditions for the project are contained in [Appendix 1](#) of the report.
- May 2008** ***Airport Link Request for Project Change***
- Submitted as Part A and Part B.
- The successful tenderer, BrisConnections, submitted this because its proposal required changes to the original Reference Project. *The Request for Project Change* identifies the changes from the Reference Project, the reasons for the changes and their effects.

July 2008

Coordinator-General's Change Report

This report provides the Coordinator-General's evaluation of the proposed changes to the Airport Link project which resulted from the Request for Project Change. The conditions are found in Appendix 1.

June 2009

Wooloowin Worksite Request for Project Change

A request to establish and use an additional worksite at Rose Street, Wooloowin, and the construction of a shaft and access passage from that worksite to the mainline tunnels being constructed from Clayfield.

October 2009

Coordinator-General's Wooloowin Change Report

The Coordinator-General's evaluation of the proposal to establish the Wooloowin worksite.

What the EIS states about hours of work

The Environmental Impact Statement was released in October 2006.

In Chapter 1, the Introduction, it states:

1.2 *Worksites will be developed with measures to contain, minimise and mitigate the construction impacts on near-neighbours.*¹⁷

In Chapter 4, Project Description, it states:

4.3.20 *Hours of work for the construction phase would be:*

- *Surface/above ground — 6.30am–6.30pm, Monday to Saturday with no work on Sundays or public holidays, although some out-of-hours work may be required on roads where high traffic volumes during the day preclude normal working hours;*
- *Tunnel works — 7 days per week, 24 hours per day, with all activities underground or within the acoustic sheds; and*
- *Spoil haulage — five and a half days per week, being 6.30am Monday to 6.30pm Saturday, with no*

¹⁷ EIS Chapter 1, 1.2, p 1-3

haulage on Sundays or public holidays.¹⁸

In Chapter 5, Traffic and Transport, it says:

5.7.1 Work Sites and Working Hours

The construction of the project would be organised around the three connections and associated construction areas identified in Chapter 4 of the EIS.

Working hours for surface works would typically be between 6.30 am and 6.30 pm Monday to Saturday with no works expected to be carried out on Sundays and public holidays.

In some cases, works on major roads may have to be carried out at other times, if approval agencies (relevant sections of BCC, Main Roads and the Police) consider the traffic impacts of daytime works unacceptable. Such works should be identified in the TMP¹⁹ (construction). Underground works would continue 24 hours a day.²⁰

In Chapter 10, Noise and Vibration, it states:

1.2.3 Assessment Criteria

The operation of some equipment, such as tunnelling equipment, would include 24hr, 7day per week work, whereas above ground work would mostly be limited to 6.30am to 6.30pm Mondays to Saturdays. There would be some circumstances where out of hours work on the surface would be required to avoid or minimize disruption to surface traffic flows or daily patterns of activity.²¹

1.2.3 Construction Noise Criteria

To achieve the objective of preserving community values for noise during construction, where reasonable and practicable, construction activity above ground and outside an acoustically lined work enclosure, should be limited to the hours of 6.30am to 6.30pm Monday to Saturday, excluding public holidays. The Airport Link Project would involve some instances where construction activity would be required to be

¹⁸ EIS Chapter 4, 4.3.20, p4-38

¹⁹ TMP, Traffic Management Plan

²⁰ EIS Chapter 5, 5.7.1. p5-101

²¹ EIS Chapter 10, 1.2.3, p10-9

taken on a 24-hour basis, mostly underground, and that would likely be audible outside of regulated construction hours.²²

In Chapter 19, Draft Outline EMP²³ (Construction), it says:

19.6 Mitigation Measures

- Hours of work
 - Construction activities on or above the surface and which generate excessive levels of noise, vibration, dust or traffic movements should only be undertaken between 6.30am and 6.30pm Mondays to Saturdays and at no time on Sundays or Public Holidays except for special circumstances where the above surface works should be conducted outside these days and hours.
 - Special circumstances include works on Arterial Roads (to avoid disruption to peak traffic flows), works in railway corridors, spoil haulage, or works involving large prefabricated components such as bridge elements or Tunnel Boring Machines.
 - Notify local communities of duration and timing of surface works to be conducted outside of usual working hours.²⁴

The EIS unequivocally shows that, except for special circumstances, surface works are to take place between the hours of 6.30am and 6.30pm, Monday to Saturday.

The Change Report: what changed?

The successful BrisConnections tender for the Airport Link project contained a number of changes to the original Reference Project as described in the EIS. This saw it referred to as the 'Changed Project'.

The Coordinator-General evaluated the proposed changes to the project and his report on this evaluation is called the *Coordinator-General's Change Report on the Environmental Impact Statement for the Airport Link Project (July 2008)*. It is referred to as *The Change Report*.

²² EIS Chapter 10, 1.2.3, p10-9

²³ EMP, Environment Management Plan

²⁴ EIS Chapter 19, 19.6, p 19-17

The design changes to the project relate to tunnel alignments, connections to the surface road connections, some minor changes to ventilation stations and the relocation of the tunnel control centre.

The construction changes to the project relate to tunnel depths, spoil haulage, worksite arrangements, the method of construction of connecting ramps at Lutwyche and Kedron and the doubling of the number of TBMs and the relocation of their launch site from Kedron to Kalinga Park.

The Coordinator-General assessed the proposed changes and, in Appendix 1, Schedule 3, he set out the conditions under which the project would be implemented. These are referred to as the Imposed Conditions.

These include Condition 7(b) which defines the project's hours of work.²⁵

However, as the Coordinator-General notes in *The Change Report* (July 2008):

*Appendix 1 contains several minor amendments to the conditions compared to the Coordinator-General's Change Report of May 2007.*²⁶

The Imposed Conditions in the July 2008 Change Report are identical to the Imposed Conditions in the Appendix to the EIS Evaluation Report of May 2007 for the hours of work and noise goals.

The wording of Condition 7(b) — the hours of work — and Condition 9 — the noise goals — in the two documents is exactly the same.

Due to significant changes to the project, the community recognised the need for a change report. Indeed, the applicable legislation required that such a change report be prepared. *The Change Report* documents these changes and their impact on the community. What **DID NOT CHANGE** was the conditions (work hours and noise goals) under which this work was to be undertaken.

²⁵ Change Report (July 2008), Appendix 1, Schedule 3 Condition 7(b), p12

²⁶ Change Report (July 2008), p 46

Why are there night-time noise goals in the EIS and Change Report?

Night time noise goals appear in the EIS²⁷ and *The Change Report*.²⁸

TJH and government agencies have used this to claim that 24/7 work is permitted under the imposed conditions for the Airport Link project. For example, CNI has said night time work is valid because: *... the Coordinator-General's conditions include provision for out-of-hours construction. This is evident with the Coordinator-General's inclusion of goals for night time noise based on sleep disturbance.*²⁹

However, the construction noise and vibration technical reports on which the EIS is based make it clear that these night time goals refer to night time tunneling, and the operation of the ventilation plant and any other plant that operates at night. These documents are concerned with the potential noise impacts and mitigation measures during the construction phase of the project. There is no mention of the noise impacts of night time surface construction.

To understand the significance of the night time noise goals in the EIS and *The Change Report*, it is necessary to read the detailed technical report on which Chapter 10 of the EIS is based. This is found in Volume 3 of the EIS — *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006). This report is concerned with the:

*Identification and assessment of significant noise and vibration impacts which may arise from the construction of the Project, including noise and vibration generated by tunneling works and surface construction sites.*³⁰

The report's Executive Summary states:

*The most significant potentially intrusive noise scenarios at worksites are extensive initial daytime earthworks. The night time tunneling activities are conducted within proposed acoustic enclosures.*³¹

²⁷ EIS Volume 1, Chapter 19, 19-26, 19-27

²⁸ Change Report (July 2008), Appendix 1, Schedule 3, Condition 9, pp. 14-16.

²⁹ Email from CNI to local resident, 4 March 2010. See Appendix p 20

³⁰ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p12

The report then discusses the noise and vibration impacts of the construction at each of the worksites for site preparation, daytime tunnelling and night time tunnelling. Since the Kalinga Park site has the most extensive 24/7 activity, this report specifically addresses that site.

Though the effects are different at each site, the general comments about the application of night time construction are uniform across the project. In the *Noise and Vibration Report 20-1605R3* (July 2006), the Kalinga Park site is identified as the Sandgate Road site.

Site preparation — noise impacts

The site preparation phase extends over more than two years. The primary noise-generating activities at the Kalinga Park Worksite during this period are summarised in Table 48.³²

6.3.6 Noise Impacts of Site Preparation states:

*These works would be carried out during the daytime only.*³³

This is reinforced in Table 49³⁴ which tabulates the noise goals for the site preparation. **Only daytime internal noise goals are tabulated.**

Tunnelling — noise impacts

The primary noise-generating activities associated with daytime and night time tunnelling are summarised in Table 50 and 51.³⁵ These are identified as the ventilation plant and the electric conveyor drive. Table 51 contains noise goals for sleeping areas. The table is headed: Noise Impacts — Sandgate Road Worksite — Night Time Tunnelling.³⁶ **There is absolutely no mention of night time surface construction works.**

³¹ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p2

³² EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p72

³³ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p72

³⁴ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p73

³⁵ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p76,77

³⁶ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p77

Construction of roadways — noise impacts

The noise impacts of the construction of the roadways at the Sandgate Road connection are summarised in Table 59.³⁷

7.3.2 Noise Impacts for North East Surface Connections

All construction noise levels will be limited to daytime construction except areas interfacing with the existing road infrastructure at Sandgate Road and the East-west Arterial.³⁸

Night time construction would be limited to specific tasks of limited duration where daytime construction would be precluded by existing traffic flows.³⁹

Table 60⁴⁰ tabulates the noise impacts of the open cut-and-cover construction at the Kalinga Park site.

Once again, only daytime internal noise goals are used.

In summary, the 117-page report on the noise impacts of the construction phase of the project only uses night time noise goals when assessing the effects of underground tunnelling (ventilation and other plant and 24-hour spoil conveyor systems associated with the tunnelling) and the effects of reverberated noise from tunnelling.

This technical report clearly refutes TJH and CNI's argument that the Coordinator-General's conditions include provision for out-of-hours surface construction. The argument that the presence of night time goals in the Imposed Conditions justifies 24/7 surface construction work is clearly fallacious.

Condition 7(b) and 'excessive noise'

It appears that TJH and the State Government agencies concluded, late in July 2009, that 24/7 work was permitted under Condition 7(b), Schedule 3, Appendix 1 of *The Coordinator-General's Change Report* (July 2008). This is covered in 'Who gave the green light to 24/7?' on page 5 of this document.

³⁷ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p90

³⁸ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p90

³⁹ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p91

⁴⁰ EIS Volume 3, *Technical Reports 06 Noise and Vibration Report 20-1605R3* (July 2006), p91

Condition 7(b) reads:

Collection, unloading and haulage of spoil from construction sites may be undertaken at any time of the day or night between 6.30am Mondays to 6.30pm Saturdays, but with no haulage on Sundays or public holidays.

- (i) Otherwise, construction activities for works on or above the surface and which generate excessive levels of noise, vibration, dust or construction traffic movements, must only be undertaken between 6.30am to 6.30pm Mondays to Saturdays and at no time on Sundays or public holidays, except for special circumstances where the above-the-surface works should be conducted outside these days and hours.**

Examples of such special circumstances include:

- (ii) works on arterial roads to avoid disruption to peak traffic flows (e.g. Inner City Bypass, Lutwyche Road, Gympie Road, East West Arterial);
- (iii) works in rail corridors; and
- (iv) works involving and transport of large pre-fabricated components (e.g. bridge works).⁴¹

According to TJH and the State Government agencies' reading of Condition 7(b), the everyday activities conducted at a huge construction site do not constitute excessive noise.

According to them:

- construction of a massive acoustic shed
- excavation and construction of the Tunnel Boring Machine (TBM) launch box, 105m long and 22m deep (six storeys)
- use of cranes, steel fixing
- pouring, pumping, compacting and finishing of thousands of cubic metres of concrete
- assembly and launching of two TBMs, and
- construction of a gantry crane that is approximately 30m high and 180m long

does not constitute excessive noise as stated in Condition 7 (b).

It is important to note and acknowledge that there is no pejorative meaning attached to the word

⁴¹ Change Report (July 2008), Appendix 1, Schedule 3 Condition 7(b), p12

‘excessive’. There is no suggestion that excessive noise is, as such, not allowed or illegal. It is merely stating the obvious: that a massive construction site, located in a park in the middle of a residential area, cannot be permitted to operate out of daytime hours.

To allow it to do so is a completely unreasonable imposition on those residents who live in the vicinity of the project and have already had their lives dislocated for the good of the broader community. The fact that this project will be under construction for at least four years makes this even more evident.

Commonsense would dictate that any surface construction noise in a residential suburb that occurs after 6.30pm, Monday to Saturday and any time on Sunday is excessive.

This commonsense reading is supported by the reports discussed above including:

- The technical *Construction Noise and Vibration Report* to the EIS, Report 20-1605R3 (July 2006)
- The EIS, particularly Volume 1, Chapter 10 — Noise and Vibration (October 2006)
- *The Coordinator-General’s Imposed Conditions in the Coordinator-General’s Evaluation Report* (May 2007)
- The technical *Noise and Vibration Report to The Change Report*, Report 20-1605-R6 (May 2008)
- *The Change Report* and its imposed conditions (July 2008)

On what basis have TJH, the government and its agencies taken a different view?

TJH and the government agencies forsook the commonsense view (which is supported by all the documentation) that the noise generated by a huge construction site in a park, in the middle of a residential area was excessive. Not illegal, just excessive. They also ignored the fact that the night time noise goals referred to tunnelling, spoil conveyors and systems associated with the tunnelling (e.g. ventilation plants).

It might be expected that such a course of action would only occur after much consideration and after taking both technical advice from environmental engineers and legal advice from lawyers. It might be expected that the implications of their interpretation would be fully thought out before the interpretation was adopted and it was decided that 24/7 work by TJH was allowed under the Coordinator-General’s conditions. However, none of this occurred and they were then left with the

problem of having to define ‘excessive’ noise and somehow relate this definition to situations for which the term was never intended.

When residents asked CNI for a definition of ‘excessive’ noise, it had no answer. At the Toombul CLG meeting on 8 December 2009:

*CNI advised that the exact definition of the CoG goals in terms of ‘excessive noise’ is still being discussed.*⁴²

This was four months after night time work had commenced at the Kalinga Park site.

On 26 February 2010, responding to a question from a resident about the definition of excessive noise, CNI said:

*CNI continues to closely monitor the project’s compliance with the Coordinator General’s conditions (for example noise goals; dust limits). We provide information, reports and technical advice to the Office of the Coordinator General. Any determination of what constitutes ‘excessive’ is a matter for the Coordinator General.*⁴³

This was seven months after night time work commenced at the Kalinga Park site.

On 10 May 2010, the Toombul CLG received a letter from the Coordinator-General informing them of his recent clarification and reinforcement of the term ‘excessive’ noise.⁴⁴

The Coordinator-General has taken the view that the generation of excessive noise, as stated in condition 7, occurs when noise measured at a sensitive place (for example inside a bedroom of a home nearby which has had mitigation measures applied) exceeds the noise goals stated in the Coordinator-General’s Report, appendix 1, schedule 3, condition 9, or the background noise (whichever is greater).

Internal noise goals for sleeping areas have been set for the project during night hours (from 6.30 pm to 6.30 am). These noise goals are based on existing national standards for sleep disturbance. The goals are detailed at appendix 1, schedule 3, condition 9 (d) (i) and (ii).

This was more than 10 months after night time work commenced at the Kalinga Park site.⁴⁵

⁴² Minutes of Toombul CLG, December 2009, p 2. See Appendix p 23

⁴³ Email from Wendy George (CNI) to local resident, 25 February 2010. See Appendix p 25

⁴⁴ Letter from Coordinator-General to Toombul CLG, 10 May 2010. See Appendix p 28

⁴⁵ Of course, as the analysis in this document has shown, the night time noise goals have no application to surface construction work. This is because night time surface construction work was never contemplated in any of the documents and was, therefore, not contemplated at all by the conditions. The night time noise goals, therefore, have no relevance to the issue of “excessive” noise.

Legal opinions

The community cannot confirm whether the government or its agencies took legal advice to support their reading of the conditions. They refuse to release any legal opinion obtained.

The community has asked the Minister for Infrastructure and Planning, the Coordinator-General and CNI if they have taken legal advice on the reading of Condition 7(b). These were the responses received:

The Minister

Firstly, I would like to clarify the issue you have raised about any legal advice obtained by CNI. As the Minister advised in his letter of 11 March 2010, any legal advice obtained by CNI is protected by legal professional privilege and is not subject to disclosure by third parties, including this office. None of the relevant parties on this project, including the Department of Infrastructure and Planning, the Coordinator-General nor CNI will be waiving their rights to professional privilege in relation to this matter.⁴⁶

Coordinator-General

With regard to your query about the taking of legal advice, I will again inform you that this matter is protected by legal professional privilege and I will not be waiving this privilege.⁴⁷

CNI

I would like to take the opportunity to address the query raised in your email of 2 March 2010 regarding CNI's legal advice on this matter. Any legal advice that CNI may have obtained is protected by legal professional privilege and is not subject to disclosure. CNI does not waive legal professional privilege.⁴⁸

⁴⁶ Letter from office of Minister for Infrastructure and Planning, 4 May 2010. See Appendix, p 31

⁴⁷ Letter from Coordinator-General, 17 May 2010. See Appendix, p 34

⁴⁸ Email from CNI, March 4 2010, see Appendix, p 35

Any organisation has the right to decline to release legal advice that it has obtained. However, in circumstances where decisions have been made that severely affect residential communities, every tenet of good government requires that the community be informed of the reasons for the decision. Transparency requires that the community be told if any of the parties to the decision took legal advice, when that advice was taken and the effect of that advice.

The community has no hesitation in revealing that it has obtained independent legal advice⁴⁹ from Peter Davis, SC that fully supports the community's reading of Condition 7(b) and the meaning of 'excessive' noise.

Mr Davis says:

"... the construction of condition 7 of the Change Report is quite straightforward.

'Construction activities' which are both:

- 1. For works on or above the surface; and*
- 2. Which generate excessive levels of noise, vibration, dust or construction traffic movements... cannot be undertaken between 6.30pm and 6.30am on each Monday to Saturday and at no time on Sundays or public holidays.*

In determining what is 'excessive', one has regard to the impact upon the amenities of the local residents.

The prohibition does not apply in 'special circumstances'.⁵⁰

Conclusion

Brisbane's inner north communities are experiencing the disruption and dislocation to their way of life that must necessarily occur when a \$5.6 billion, four-year-long infrastructure project is constructed amidst their communities.

In all the project documents, from the EIS of October 2006 to *The Change Report* of July 2008, the impact of this project on the communities is a significant consideration.

⁴⁹ Opinion of Peter Davis SC, provided to Kalinga Woolloowin Residents' Association (KWRA), 23 April 2010.

⁵⁰ Opinion of Peter Davis SC, provide to Kalinga Woolloowin Residents' Association (KWRA), 23 April 2010, p8.

This document shows that

1. The communities had every reason to feel secure that their lives would not be disrupted by night time noise. Every meeting they ever attended, every verbal and written guarantee they ever received assured them that, except for very limited special circumstances, 24/7 surface construction works would **never** occur.
2. The EIS unequivocally shows that, except for special circumstances, surface construction works were only ever intended to take place between the hours of 6.30am and 6.30pm, Monday to Saturday.
3. Even though the successful BrisConnections tender contained a significant number of design and construction changes to the Airport Link project, these changes, and *The Change Report* itself, cannot be used to justify 24/7 work. The documents show clearly that, although there were changes to the project, there were no changes to the conditions (hours of work and noise goals) under which this work was to be undertaken.
4. The existence of night time noise goals in the EIS and the Change Report cannot be used to justify 24/7 surface work. Nowhere in the discussion of the night time noise goals (in the EIS, *The Change Report*, or the technical supporting documents) is there any discussion of night time surface construction.
5. CNI, the Coordinator-General and the Minister for Infrastructure and Planning do not have any legal advice that they are prepared to release that supports their contention that the Coordinator-General's conditions allow TJH to work 24/7. The community has obtained independent legal advice that supports the community's contention that Condition 7(b) does not permit TJH to work 24/7.

The community supported the Airport Link project and accepted that it was an important part of the State's infrastructure development. They also appreciated that there would be some disruption to their way of life. The community believed that the State Government and its project managers would ensure everything possible would be done to minimise the negative impacts of the construction.

In retrospect, the community's beliefs were naïve. Those who were obligated to protect the interests of the community abandoned the community. Instead, a fixation with hastening the construction works at all costs replaced consideration of the local community.

BrisConnections and TJH have pursued their own interest as contractors and abandoned their responsibilities as good corporate citizens.

CNI proclaimed that TJH was permitted to work 24/7 and then passed all responsibility to the Coordinator-General.

The Coordinator-General failed to act when CNI permitted Thiess John Holland to work 24/7. Since that time, the Coordinator-General has spent months avoiding the crucial issue, namely, that his conditions did not permit surface construction work beyond 6.30pm, except in "special circumstances".

The State Government allowed its solemn promises to be broken. Since that time, it has put forward justifications that have no connection to the reality of this project and the documents on which it is based.

As a result, the local community has been left without support and it is the community which has been forced to hold TJH accountable. Having faced months of disrupted sleep, community members have had to read project documents and old letters from government ministers, apply for disclosure of documents under RTI processes, write emails and make phone calls. In return, they have faced shifting of responsibility, obfuscation and disinterest.

The Airport Link project appeared to contain all the protection that comes with environmental impact statements, extensive technical reports, public consultation and corporate and government promises that community's interests would, at all times, be an important consideration in the way the construction works were managed.

In the end, all these reports, papers, conditions and assurances counted for nought. When Thiess John Holland decided its best interests would be served by working 24/7, the conditions were thrown to the seven winds and Government agencies provided no support for residents' legitimate grievances.

At the beginning of this project the community believed the impacts of the Airport Link project on local residents would be fairly managed because, in the words of the community and consultation requirements of the Project Deed for the Airport Link:

“The State is committed to maintaining a high quality of life for residents during the performance of the Project Activities and believes the community is entitled to expect that construction and operation of the Project Works will be well managed to reduce (and where possible avoid) disruption to businesses, community facilities and residents...”⁵¹

Unfortunately, it was not to be.

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⁵¹ Project Deed, Exhibit A Performance Specifications Part 1 Annexure 6 –Part 1 Community and Consultation Requirements, 1.2(b), p2