

ATTACHMENT 1**Schedule of DERM's responses to proposed Opinions – Final Version: 4 March 2011**

Proposed Opinion 1 Page 50	The public were reasonably of the view based on the Project documents that surface work would be limited to the daytime, except in special circumstances.
DERM Response: DERM offers no comment on the linkage between the Project documents and the public's view. Conversations between DERM's field officers and members of the community suggest that there were community members who weren't aware that work would be conducted out of daytime hours and there were those who knew night-time works would occur but weren't prepared for the frequency or intensity of those night-time works.	
Proposed Opinion 2 Page 51	Condition 7(b) is inconsistent with the understanding of the community, from the Project documents that surface work would only occur during the daytime except in special circumstances.
DERM Response: DERM offers no comment on the link between the Project documents and the public's understanding. DERM agrees that condition 7(b) is inconsistent with an understanding that surface work would only occur during the daytime except in special circumstances.	
Proposed Opinion 3 Page 77	There is no evidence that the community was intentionally misled by any party about the possibility of night-time surface work during the Project.
DERM Response: DERM agrees with this comment	
Proposed Opinion 7 Page 80	CNI, DIP, CG and DERM took some steps to satisfy themselves that TJH would be able to achieve compliance with the CG's imposed conditions upon commencement of night-time surface work at Kalinga Park.
DERM Response: DERM requests the removal of the word 'some' from this Opinion. DERM took reasonable steps to ensure that TJH were in compliance.	
Proposed Opinion 9 Page 84	Condition 7(b) allows surface work to be carried out between 6.30pm and 6.30am Mondays to Saturdays and on Sundays and public holidays as long as those works do not generate excessive noise, vibration, dust and traffic.
DERM Response: DERM agrees with the Ombudsman's opinion that condition 7(b) allows surface work to be undertaken during those hours as long as it doesn't create excessive noise, dust, vibration or construction traffic movements or it is special circumstance as described in the condition. DERM recommends that the wording of the Opinion should be changed to reflect that used in the actual condition which reads <i>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.</i>	
Proposed Opinion 13 Page 101	The numerical criteria in condition 9 provide a reasonable indication of excessive noise in the context of night-time surface work for the Project, with the proviso that the night-time criterion of 40 dBA LAeq for steady, temporary noise in R4-R6 areas is at the upper end of relevant criteria and should be applied only with care.
DERM Response: DERM agrees with this opinion. DERM notes that the reasonableness of this criterion is critically linked to the validity of the 'R' category to which a residence is assigned. The lack of specificity within 'R' category definitions undermines the validity of the application of the noise criterion.	
Proposed Opinion 14 Page 118	The Airport Link monitoring reports do not provide sufficient information to permit the CG, DIP or DERM to make any meaningful analysis of exceedances of the noise goals in condition 9.
DERM Response: DERM agrees with this Opinion.	

Proposed Opinion 15 Page 119	The type of noise as intermittent or steady state is adequately distinguished by the noise goal criterion in condition 9.
DERM Response: DERM agrees with this proposed Opinion.	
Proposed Opinion 21 Page 131	The façade reduction method of assessing internal noise levels contained in the CG's statement of clarification of excessive noise is generally accepted industry practice, especially where the façade attenuations of the relevant residences have been explicitly measured.
DERM Response: DERM accepts this opinion. Provided that this approach is only applied in instances where the residents refuse entry for noise investigation purposes, this can be considered a fair option and DERM has no issue with the implementation of this method. Notwithstanding these comments, DERM notes that data obtained via this method could not be used for compliance purposes.	
Proposed Opinion 23 Page 133	Noise goals set for the project are based on noise measured in sleeping areas before all reasonable and practicable mitigation and management measures have been applied.
DERM Response: DERM disagrees with the wording of this comment. The noise goals are set in relation to the protection of sleep amenity which is a value independent of whether mitigation has or has not been applied.	
Proposed Opinion 24 Page 139	In respect of nearby residences with windows open there is evidence of regular and considerable excessive noise' within the meaning of condition 7(b) from night-time surface work at the Kalinga Park worksite since such work commenced in August 2009.
DERM Response: DERM agrees with this Opinion.	
Proposed Opinion 25 Page 150	DERM did not advise TJH that the section 451 notices had been adequately answered.
DERM Response: DERM agrees with this Opinion. DERM accepts that while there is no requirement in the Environmental Protection Act 1994 to acknowledge s451 notices, it is good practice to do so. If responses had not satisfied the requirements of the notice DERM would have taken appropriate action.	
Proposed Opinion 26 Page 151	DERM's failure to consider, or take action in respect of, the findings contained in the Heggies report constitutes administrative action that was unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.
DERM Response: DERM disagrees with this Opinion. Although DERM did not document a formal record of the consideration of the Heggies report, DERM did review, consider and discuss the Heggies report. It would be factually incorrect for the Proposed Opinion to indicate DERM did not consider the report and act accordingly.	
DERM's noise expert concluded that whilst the Heggies report provided valuable information on a number of issues, it did not provide a sufficient basis to take any compliance action due to a lack of clarity in defining the 'R' categories.	
As a result of DERM's review of the Heggies report and the ASK report, DERM determined that it would be appropriate to undertake a monitoring program. Accordingly, DERM initiated the monitoring program described in Opinion 34.	
Proposed Opinion 27 Page 153	I consider that: <input type="checkbox"/> condition 7(b) is enforceable <input type="checkbox"/> powers are available to the CG, DIP and DERM under the SDPWO Act and EP Act to compel TJH

	and/or other entities to comply with condition 7(b) (specifically, to ensure that noise from night-time surface works is not excessive).
<p>DERM Response: Given that DERM is seeking further advice about proposed recommendation 19 in accordance with your direction, DERM cannot, at this stage, provide specific comments in relation to proposed opinion 27. DERM does however agree that it has a wide range of powers available under the <i>Environmental Protection Act 1994</i>, some of which may assist with enforcement in the event condition 7(b) is not complied with. It must be noted however, that the CG is the entity with jurisdiction with respect to condition 7(b).</p> <p>It is also worth noting that DERM did actively engage DIP in discussions regarding the use of the enforcement tools available under the <i>Environmental Protection Act 1994</i> due to a perceived lack of intermediary enforcement tools available for DIP to utilise on behalf of CG. Parts of this discussion are identified within statement excerpts on pages 168 and 169 of the Proposed Report. The reason DERM discussed this possibility with DIP was to ensure any future action was not inconsistent with the intent of the CG conditions or any proposed enforcement action to be undertaken by CG.</p>	
<p>Proposed Opinion 28 Page 154</p>	Having regard to schedule 4, the CG has primary responsibility for ensuring night-time surface work complies with condition 7(b) and for taking appropriate regulatory action when there is prima facie evidence of non compliance with the condition.
DERM Response: DERM agrees with this Opinion	
<p>Proposed Opinion 29 Page 155</p>	<p>DERM has jurisdiction under the EP Act to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> investigate alleged noise nuisance from night-time surface work <input type="checkbox"/> take regulatory action (whether administrative or statutory) against a person who has caused an environmental nuisance, to the extent that the imposed conditions do not authorise the environmental nuisance.
DERM Response: DERM agrees with this Opinion, noting that in order to act accordingly DERM must first establish a contravention of condition within the CG's jurisdiction and would liaise with the CG (as the entity with jurisdiction for condition 7(b)) about an appropriate enforcement response in this regard.	
<p>Proposed Opinion 32 Page 160</p>	DERM is the lead agency for the regulation of environmental nuisance in Queensland.
<p>DERM Response: DERM would like to see this opinion reworded to read "DERM has a key role in the regulation of environmental nuisance in QLD" Local government is responsible for regulating noise nuisance as per the devolution of noise in section 99 of the EP Reg. Section 106 gives the most relevant circumstances where the devolution does not occur. DERM regulates environmental nuisance in regards to state government issued development approvals and issues relating to state and local government, though in cases where relevant development conditions exist, in the normal course of business DERM would expect authorising entities to enforce conditions they applied and have jurisdiction for.</p>	
<p>Proposed Opinion 33 Page 161</p>	DERM has failed to effectively monitor compliance with the noise goals in condition 9 and such failure constitutes administrative action that was unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.
<p>DERM Response: It is not apparent from the information contained in section 11.7 of the proposed Report on what basis the Ombudsman proposes to form the Opinion that the actions undertaken by DERM to monitor compliance with noise goals in condition 9 have not been effective.</p> <p>DERM is of the opinion that it effectively monitored compliance with the noise goals in condition 9 for the following reasons:</p>	

- DERM followed the process for addressing noise complaints as developed by the CG;
- DERM liaised with TJH to improve the reporting process by recommending changes to their complaints management process;
- DERM ensured that the community was informed of the procedure for the escalation of complaints;
- DERM officers attended the project site and observed TJH employees whilst they were carrying out noise monitoring to ensure that TJH were monitoring noise in accordance with relevant standards and procedures;
- DERM conducted meetings with noise experts from Heggies, CNI, DERM and DTMR to discuss technical issues with respect to noise monitoring and resourcing;
- DERM reviewed TJH non-conformance reports with consideration to DERM Enforcement Guidelines;
- DERM was in regular contact with the noise affected community;
- DERM organised for access to specific households to enable TJH to conduct in-house noise monitoring (to assess noise levels and underpin decisions about mitigation);
- DERM instructed TJH to carry out noise monitoring at a site where it reasonably thought that noise goals will be exceeded;
- DERM officers undertook both impromptu and planned site inspections to assess compliance with the noise goals;
- DERM regularly met with TJH to discuss upcoming works and to assess the effectiveness of noise mitigation to be employed;
- DERM conducted targeted inspections of worksites where DERM was concerned that the activities had the potential to produce excessive night-time noise;
- DERM organised and attended meetings with CNI and DIP to discuss issues surrounding monitoring and assessing compliance with noise conditions;
- DERM initiated regular meetings with 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);
- DERM conducted noise monitoring inside affected households in response to complaints;
- DERM officers accompanied BCC officers on night time noise assessments to assess the work conducted by the Public Utility Providers; and
- DERM officers negotiated 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.

In addition, DERM officers conducted 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 carpark site.

DERM officers report that members of the community vary in their assessment of the effectiveness of DERM in ensuring compliance with the noise goals. This is not uncommon given the highly subjective nature of individual’s experience of noise and the diversity of individual’s circumstances.

DERM has responded appropriately to complaints in accordance with a process established by the CG and by executing the actions described above, has, in the context of available resources and priorities undertaken reasonable actions to effectively monitor compliance with the noise goals in condition 9.

DERM has failed to undertake an effective reactive monitoring program in respect of compliance with the noise goals for the Project. This constitutes administrative action that is unreasonable for the purposes of s.49(b) of the Ombudsmen Act.

DERM Response: DERM disagrees with this Opinion.

Firstly, the CG conditions do not, in DERM's view, require DERM to undertake any form of monitoring program. Secondly, and notwithstanding this, DERM considers that it has undertaken an effective reactive monitoring program as DERM:

1. addressed complaints in accordance with a process established by the CG and considers that the process is appropriate for dealing with noise complaints;
2. responded to and successfully resolved a noise complaint that was escalated to DERM in accordance with the established process; and
3. in addition to the reactive monitoring that was taken following the escalation of complaints, DERM also took steps to monitor noise.

1. Process established by the CG

A monitoring program may be implemented in response to complaints from the community. In the first instance the CG conditions provide that it is the responsibility of the contractor to undertake monitoring for compliance purposes. The CG conditions also establish a process in respect of non-compliances requiring the contractor to report non-compliances. The contractor is also required to prepare and follow a process for receiving and responding to complaints. DERM notes that the conditions imposed by the CG are largely self regulatory and this approach is generally consistent with the approach DERM takes to conditioning and managing other environmentally relevant activities (ERA) administered by DERM under the *Environmental Protection Act 1994*.

CNI, DIP and DERM agreed to a process of escalation of complaints which required that, in the first instance the complainant contact TJH Hotline. If TJH failed to resolve the complaint satisfactorily, the complainant could escalate the complaint to CNI Hotline. If the complainant remained dissatisfied, the complainant was then advised to contact DERM or DIP. Upon receiving a complaint, DERM would determine whether monitoring would assist in resolving and/or investigating the complaint.

DERM considered that the above process is appropriate given the volume and often complex nature of noise complaints (for example, the transitory and subjective nature of noise and the differing sources of noise such as idling vehicles, noise associated with Council street sweepers, contract staff talking loudly).

2. Noise complaint example – Woolloowin

DERM notes that the conditions related to the Woolloowin worksite reduced the potential for noise related complaints by ensuring that structural noise mitigation measures were in place prior to commencement of works. In DERM's view, such conditions are important in establishing mitigation measures to prevent complaints in the first instance.

The wording of the conditions relevant to the Woolloowin site also enabled DERM to take effective action in response to complaints. For example, a complaint was escalated to DERM in relation to the Woolloowin site (as detailed in the proposed Report). DERM reviewed the complaint and successfully resolved the complaint by negotiating a prompt and satisfactory environmental outcome. DERM notes that the Woolloowin conditions were drafted with the benefit of experience in regulating noise from the remainder of the project. It may be appropriate for the Ombudsman's report to acknowledge this.

3. General noise compliance measures – other worksites

The proposed Report does not adequately capture DERM's noise monitoring efforts. Following the review of the Heggies report, DERM placed self activated noise monitors in selected houses. DERM officers also conducted night time surveillance of project work sites that were identified as being possible sources of noise complaints. The surveillance consisted of driving to sites where night time works were proposed and identifying possible sources of noise, assessing potential noise

nuisances and determining where it may be appropriate to conduct future noise monitoring. DERM is continuing to undertake noise monitoring in response to complaints escalated by the community and will conduct attended monitoring at a specific residence following a recent noise complaint.

DERM strongly encourages the Ombudsman to more completely reflect this activity within the report.

Proposed Opinion 37

Page 166

DERM has a partner role in respect of monitoring noise from the Project to ensure compliance with the noise goals in condition 9. Part of that role is to ensure that a proactive monitoring program is in place.

DERM Response: DERM disagrees with this Opinion. DERM agrees that it has a role in relation to ensuring compliance with condition 9. DERM notes that TJH undertakes proactive noise monitoring.

Proposed Opinion 38

Page 166

DERM has not established a proactive monitoring program to monitor compliance with the CG's imposed conditions. This constitutes administrative action that is unreasonable for the purposes of s.49(2)(b) of the Ombudsman Act.

DERM response: DERM disagrees with this opinion. There are no CG conditions that require DERM to establish a proactive monitoring program to monitor compliance with the CG's conditions. It would set a significant precedent with major resourcing consequences for all CG or development approval/environmental authority conditions that require proactive noise monitoring by proponents, to also be interpreted by agencies as requiring secondary proactive monitoring by a regulatory entity.

In order to assert that DERM's actions are unreasonable, the Ombudsman report would need to demonstrate that the CG conditions require proactive monitoring by DERM in addition to proactive monitoring by the proponent under the compliance and enforcement framework implemented by CG and DERM.

Schedule of DERM's responses to proposed Recommendations

<p>Proposed Recommendation 1 Page 51</p>	<p>Proponents of future significant projects be required in the EIS process to clearly and unambiguously communicate to the community any possibility of night-time surface work, the circumstances in which that work may be undertaken, and the likely duration (if known) in order that the CG may receive and consider submissions made by the community.</p>
<p>DERM Response: DERM supports this proposed Recommendation.</p>	
<p>Proposed Recommendation 2 Page 78</p>	<p>CNI, in consultation with BrisConnections and TJH, immediately prepare a projection of worksites in which night-time surface work, other than special circumstances work, is possible for the duration of the Project and send out community notices advising community members in affected areas of the possible works and their likely duration.</p>
<p>DERM Response: DERM supports this proposed Recommendation.</p>	
<p>Proposed Recommendation 3 Page 78</p>	<p>CNI, in consultation with BrisConnections and TJH, inform itself of the timing and duration of night-time surface work, other than special circumstances work, as soon as the necessity to do that work becomes known and send out community notices advising community members in affected areas of that work at the earliest possible time.</p>
<p>DERM Response: DERM supports this recommendation.</p>	
<p>Proposed Recommendation 5 Page 118</p>	<p>The CG and DERM review the information in the Airport Link monitoring reports relating to noise, and request that TJH include the following information, as a minimum, in future Airport Link monthly reports:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the street address or location where monitoring was undertaken and the location of the noise generating activities <input type="checkbox"/> whether internal or external monitoring was undertaken and whether mitigation has already been applied <input type="checkbox"/> nature of the mitigation applied <input type="checkbox"/> the date, time and duration of monitoring undertaken <input type="checkbox"/> atmospheric conditions prevailing when monitoring undertaken <input type="checkbox"/> names and relevant qualifications of monitoring personnel <input type="checkbox"/> a clear description of the construction activities taking place and the plant and machinery being used <input type="checkbox"/> the relevant R category for the receptor, including whether there has been any change in category and any explanation for the change <input type="checkbox"/> the criterion applied, that is, for steady state noise, temporary or long term and rationale for selection of the criterion for the type of work being conducted at the time of monitoring <input type="checkbox"/> the relevant CG goal for steady state noise <input type="checkbox"/> the relevant CG goal for intermittent noise <input type="checkbox"/> any façade reduction applied <input type="checkbox"/> monitoring results against the relevant CG goals or façade reduction levels <input type="checkbox"/> continue to highlight in red the exceedances by the Project <input type="checkbox"/> where exceedances are claimed to be a combination of Project work and external factors, an assessment to be made by TJH of the dominant noise source and if the dominant source is Project work, record the entry as an exceedance attributable to the Project.

DERM Response: DERM supports this recommendation. DERM suggests that "street address or location where the monitoring was undertaken" should be changed to "detailed location where the monitoring was undertaken, including the height of the microphone".	
DERM notes that the impact of implementing this recommendation is restricted by the State's capacity to 'request' rather than 'require' provision of this information. DERM also notes that the value of this information is tempered by the monthly reporting cycle which means that information may be up to one month out of date by the time the report is published and that, due to the dynamic nature of the project, the activity to which the monitoring relates may be finished or being undertaken at an acoustically different location.	
Proposed Recommendation 6 Page 118	DERM monitor and evaluate the information contained in the revised monthly reports to assist it in determining whether TJH are in compliance with the noise goals.
DERM Response: DERM recognises that the revised monthly reports would produce useful information in regards to investigating exceedances. However, in the first instance it is the responsibility of the operator (TJH) to notify the CG of any non-compliance or exceedances with of any condition or goal (as per condition 4 of the CG imposed conditions). Any investigation into an exceedance needs to be timely in order to gather necessary information/evidence for any action to be taken. Therefore, DERM suggest that this recommendation be reworded as follows: DERM monitor and evaluate the information contained in the revised monthly reports to assist it in investigating exceedances of the noise goals, which must be reported to the CG by the operator.	
Proposed Recommendation 7 Page 118	In the event the information gained as a result of proposed recommendation 6 indicates noise from night-time surface work may constitute excessive noise for condition 7(b) (also noise nuisance), DERM: (a) report its assessment to the CG and (b) consider whether its regulatory powers under the EP Act should be exercised.
DERM Response: DERM agrees with this recommendation.	
Proposed Recommendation 8 Page 123	The CG review the night-time surface work being undertaken at all worksites, and planned future works, to determine whether the works are properly classified as temporary or long term under condition 9.
DERM Response: DERM has no comment on this recommendation.	
Proposed Recommendation 9 Page 123	Where appropriate, the CG provide guidance and/or instruction to DERM and TJH on the appropriate classification of work as temporary or long term and the relevant noise criteria for modelling and monitoring work.
DERM Response: DERM agrees with this proposed Recommendation	
Proposed Recommendation 10 Page 124	Where appropriate, the CG provide guidance and/or instruction on the meaning of 'major' or 'minor' road.
DERM Response: DERM agrees with this proposed Recommendation	
Proposed Recommendation 11 Page 128	As AS1055 shows indicative background noise levels for the various R categories in day, evening and night periods, the CG ensure that, for future projects where NIAPSP applies, provision is made for background noise readings to be taken pre-construction for the period 10.00pm to 7.00am as the basis for determining the night-time R category.
DERM Response: DERM agrees with this proposed Recommendation.	

<p>Proposed Recommendation 12 Page 129</p>	<p>In any future significant project, where:</p> <ul style="list-style-type: none"> <input type="checkbox"/> night-time goals rely on a determination of the R category under NIAPSP and <input type="checkbox"/> the contractor has changed the classification of any sensitive receptor property identified in predictive modelling as R1-R3 to R4-R6 <p>the CG have in place a system by which the owner of that sensitive receptor property may complain directly to the CG, and the CG will coordinate an evaluation of the change and make a decision about the change.</p>
<p>DERM Response: DERM suggests rewording the last section of the proposed Recommendation to read: the CG have in place a system by which the owner of that sensitive receptor property may complain directly to the CG, and the CG will coordinate an evaluation of the change <i>in consultation with the authority that holds jurisdiction of any condition that may be affected by the change and make a decision about the change.</i></p>	
<p>Proposed Recommendation 13 Page 129</p>	<p>For the remaining stages of the Project, the CG:</p> <ul style="list-style-type: none"> (a) evaluate any proposed change by TJH of the R category to R4-R6 where predictive modelling reports previously identified that an R1-R3 category applied to particular noise sensitive receptors (b) make a decision about the change (c) advise TJH of the decision.
<p>DERM Response: DERM agrees with this recommendation. DERM suggests rewording point (c) to include advising DERM of the decision.</p>	
<p>Proposed Recommendation 14 Page 129</p>	<p>In determining the R category to be applied to a certain sensitive receptor, the CG and DERM take into account available background noise readings and, if unavailable, obtain:</p> <ul style="list-style-type: none"> <input type="checkbox"/> for night-time noise, the LA90 background noise level at each residence in the absence of noise from the Project; and <input type="checkbox"/> for daytime noise, the contribution of noise from a minor or major road to the total LAeq noise level at each residence, in the absence of noise from the Project.
<p>DERM Response: DERM acknowledges the intent of this Recommendation but notes this may result in a number of total project shut downs during noise measurement events at representative locations and this may have practical implications. There are no other practical or reasonable ways to obtain these noise levels "in the absence of noise from the project", since the project is well progressed and is expected to continue until completion. It should also be noted that measured background noise, even if established, would have no legal implications on determining 'R' zoning whilst the original CG's report has not provided a definition for the zones.</p>	
<p>Proposed Recommendation 15 Page 131</p>	<p>In any future significant project where internal noise goals for sleep disturbance are utilised, the CG should prescribe, in imposed conditions, a facade reduction approach where:</p> <ul style="list-style-type: none"> <input type="checkbox"/> entry to sleeping areas for monitoring purposes cannot be achieved; or <input type="checkbox"/> where broader noise testing programs around worksites to determine the likely impact on sleeping areas is required, or desirable.
<p>DERM Response: DERM supports this proposed Recommendation.</p>	

<p>Proposed Recommendation 16 Page 133</p>	<p>The CG remove the statement 'noise goals set for the project are based on noise measured in sleeping areas after all reasonable and practicable mitigation and management measures have been applied' from the DIP website and replace it with a statement to the effect that noise is to be measured against the noise goals inside a residence in the absence of the effect of any mitigation measures.</p>
<p>DERM Response: DERM disagrees with the proposed replacement wording on the DIP website. In principle, noise limits and goals should be drafted to protect sleep amenity. The presence or indeed, the absence of mitigation measures is irrelevant to the setting of noise limits and goals.</p> <p>Further, in DERM's view, noise measurements should be taken in a variety of situations including when mitigation has been applied and also in the absence of mitigation. The measurements can then be objectively analysed in reference to particular circumstances.</p>	
<p>Proposed Recommendation 17 Page 133</p>	<p>In assessing whether there has been excessive noise from the Project, the CG, DIP, CNI and DERM give greater weight to monitoring results where monitoring with windows open shows exceedances against the noise goals.</p>
<p>DERM Response: DERM disagrees with the recommendation. It is DERM's practice to properly investigate any exceedance of a condition or noise nuisance that it has jurisdiction over and assess it against the individual circumstances (aggravating and mitigating) that surround that nuisance. It is DERM's view that the relative weight attributed to monitoring results with windows open would depend on the individual circumstances of each case.</p>	
<p>Proposed Recommendation 18 Page 150</p>	<p>DERM ensure that all responses to statutory notices issued under the EP Act are receipted, assessed and replied to.</p>
<p>DERM Response: DERM accepts this proposed Recommendation and agrees that this is good administrative practice. DERM notes that while there has not been any formal response to these Notices, these matters have been discussed freely in meetings, phone calls and site inspections with departmental officers. It does not appear that TJH were in any doubt as to DERM's acceptance of this response. DERM has and will continue to ensure that TJH is advised in advance of any enforcement action.</p>	
<p>Proposed Recommendation 19 Page 153</p>	<p>The CG and DERM:</p> <ul style="list-style-type: none"> (a) review the legal advices of Mr Wensley QC and the expert report of Wilkinson Murray (Dr Bullen, acoustical consultant) (appendices 1, 2 and 3 of this report) and (b) collate and review all reliable and probative evidence relating to noise generated from the Project, including for example the Heggies report and CNI report and (c) decide whether the CG and/or DERM should take regulatory action under the SDPWO Act and/or the EP Act including whether to seek a declaration under s.54G(2) in the Planning and Environment Court concerning whether there has been substantial compliance with condition 7(b) in relation to noise from night-time surface work.
<p>DERM Response: DERM agrees with this proposed Recommendation</p>	

<p>Proposed Recommendation 20 Page 153</p>	<p>By 28 February 2011, revised in accordance with correspondence from the Ombudsman dated 28 January 2011, to 14 March 2011, the CG and DERM advise me in writing of their decisions, together with reasons, concerning whether to take any of the regulatory action mentioned in proposed recommendation 19(c).</p>
<p>DERM Response: DERM agrees with this proposed Recommendation, but respectfully requests an extension of time to 28 March 2011 due to severe business impacts incurred by the recent disasters occurring across Queensland.</p>	
<p>Proposed Recommendation 21 Page 155</p>	<p>For all future significant projects where there is joint regulatory responsibility between the CG and another agency, the CG have appropriate arrangements in place in accordance with the relevant legislation (supported by a written agreement such as a memorandum of understanding) identifying which agency is the lead agency for specified categories of cases and the responsibilities of the lead agency and partner agencies.</p>
<p>DERM Response: DERM supports this recommendation. DERM notes that on a number of occasions DIP and CNI have acted independently of DERM in undertaking actions in relation to noise management. DERM suggests that this proposed Recommendation be expanded to require the development of a similar written agreement between CG, CNI and DERM which clarifies roles and communication to be put in place for the remainder of this project.</p>	
<p>Proposed Recommendation 23 Page 161</p>	<p>The Director-General of DERM:</p> <ul style="list-style-type: none"> <input type="checkbox"/> assess the capacity of DERM to discharge its responsibilities about noise regulation in Queensland, including responsibilities about noise from significant projects under the SDPWO Act; and <input type="checkbox"/> if necessary, acquire or engage sufficient human and technical resources to meet their obligations to discharge those responsibilities.
<p>DERM Response: DERM agrees with this proposed Recommendation, noting that information presented within the Proposed Report on page 161 is either factually incorrect or may have been taken out of context in the answers provided during staff interviews.</p>	
<p>To clarify, it is true the Brisbane City North team has 12 officers, two of whom are primarily working upon the regulation of the Airport Link Project. This team is one of four teams of similar numbers that undertake environmental regulation activities (specifically in relation to the <i>Environmental Protection Act 1994</i> responsibilities of DERM) between Brisbane and the New South Wales Border. Within these regional teams there are a number of officers who have experience with setting up and analysing noise monitoring equipment. The noise meter supplier to DERM, Bruel and Kjaer (B&K), conducts training sessions for DERM officers on how to set up and use the noise meters purchased.</p>	
<p>Analysis of noise data is more technical and this is where specialist expertise is of great value. The 'skilled but unqualified' officer referred to on page 161 has completed a certificate of attainment in Noise Assessment and Control from University of Western Sydney. This training, funded by DERM as a professional development opportunity, was targeted at collection of noise evidence for use in enforcement purposes. This officer has moved from the Brisbane City North team, but only into another of our regional teams based on the same floor in the same building and he remains a regional resource with substantial noise expertise.</p>	
<p>Regional officers also have access to substantial expertise and experience within DERM, including the qualified noise expert you mention on page 161. This person is part of a team of technical experts that are available for input into complex matters across the state, but also to ensure expert input into policy development initiatives. It is not a fair statement to consider this single individual as the only DERM officer in the state qualified enough to set up a noise meter, turn it on and collect data in accordance with the DERM Noise Measurement Manual.</p>	
<p>In extreme events, and it has been known to occur, where regional officers identify a lack of capability or availability of necessary noise expertise, DERM has been</p>	

known to outsource such expertise by commissioning an acoustic consultant.	
The comment on page 161 that DERM has five noise meters also needs to include context that this figure referred to in the interview with staff, related to the five new 2260 B&K meters recently purchased for South East Region. Similar purchases occurred across other regions. This purchase supplemented pre-existing stocks of 2250 and 2236 B&K noise meters.	
Proposed Recommendation 24 Page 163	In addition to the matters identified in my proposed recommendation 5 concerning the information contained in the Airport Link monitoring reports, I consider the CG should require TJH to produce external monitoring results in the monthly reports.
DERM Response: DERM supports this proposed Recommendation. DERM is of the view that results of monitoring undertaken externally are useful however they will be of limited value from an enforcement point of view.	
Proposed Recommendation 25 Page 167	<p>By 31 January 2011, the CG and DIP, in conjunction with DERM, develop a program to proactively monitor noise from night-time surface work having regard to the following factors:</p> <ul style="list-style-type: none"> <input type="checkbox"/> the guidance on compliance with the imposed conditions contained in my report <input type="checkbox"/> the existing and planned program of construction for worksites for the duration of the Project <input type="checkbox"/> the worksites where there is a significant risk of work impacting on the amenity of residents in the evening, particularly in sleeping hours between 10pm and 6:30am <input type="checkbox"/> delivering the program in the most cost effective manner including, if necessary, the engagement of acoustic consultants for part or whole of the program <input type="checkbox"/> the objectives of the program to include obtaining information capable of being used to informally resolve issues as quickly as possible, where appropriate, but of a standard capable of being adduced as evidence in regulatory proceedings <input type="checkbox"/> the officers, at a senior level, within DIP and DERM who will be responsible for assessing the information (for example, noise monitoring reports) obtained by the program <input type="checkbox"/> the coordination of that assessment between the CG, DIP and DERM <input type="checkbox"/> how timely decision-making will be made between the CG, DIP and DERM as to the regulatory use to which that information will be put (to be clear, I am also referring to non-statutory regulation, such as the negotiation for stopping the use of a particular item of equipment at night).
DERM Response: DERM disagrees with this proposed Recommendation. DERM recommends that:	
‘By 31 January 2011’ be replaced with ‘By 14 March 2011’ and,	
‘to proactively monitor noise from night-time surface work’ be replaced with ‘to ensure that noise from night-time surface work is appropriately monitored’	
Proposed Recommendation 26 Page 168	The CG commence and implement the proactive noise monitoring program as soon as possible, but no later than 28 February 2011.
DERM Response: DERM offers no view on this proposed Recommendation.	
Proposed Recommendation 27 Page 171	The CG take steps to be kept regularly informed, and to give instructions to the DIP Compliance Unit and DERM, about environmental coordination issues arising from the Project.
DERM Response: DERM suggests that this proposed Recommendation should read <i>the CG take steps to be kept regularly informed, and to give advice to the DIP Compliance Unit and DERM, about environmental coordination issues arising from the Project.</i> DERM notes that a significant amount of formal and informal avenues already exist and are utilised for the exchange of information between departments.	