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Dinuka McKenzie - M5 Widening

From: "Legato, Frank" <Frank.Legato@det.nsw.edu.au>
To: <plan_comment@planning.nsw.gov.au>
Date: 6/1/2011 1:49 PM
Subject: M5 Widening
Attachments: img-6011426-0001 (2).pdf

Director: Infrastructure Projects
NSW Department of Planning and Infrastructure,

Please find attached comments on the M5 Widening project.

Regards

Frank Legato

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privileged information or confidential information or both. If you
are not the intended recipient please delete it and notify the sender.

42 Maple Road
CASULA NSW 2170

1st June, 2011

Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Sir

The Legato family has experienced a significant change in the natural environment of the area as a result of progressive development of major arterial roads in the area. The change has been to the detriment of the enjoyment of our property.

We have experienced various forms of pollution as a result of the M5 and the M7, with the greatest impact associated with noise.

The Legato family at 42 Maple Road, Casula has first-hand experience of the noise impact from major arterial roads and the RTA misrepresentation of noise impact from traffic utilising the M5 and the M7.

Prior to the construction of the M5 we enjoyed a wonderful acoustic environment which was classified in the M5 EIS as a rural environment. The noise we experience day and night is never ending and interferes with the rest and repose of our family both outdoors and indoors.

We are not the only residents adversely affected by road traffic noise although we are one of the few pre M5 families still in the area.

A review of the M5 Extensions EIS in relation to our site at 42 Maple Road, Casula (and nearby properties) leads us to question the independence and accuracy of the acoustic assessment. There are a significant number of acoustic issues with respect to the acoustic report attached to the EIS that are addressed by way of a separate attachment. There is clearly a misrepresentation of noise criteria and the appropriate levels that are acceptable.

The EIS fails to identify or address community concerns as to road traffic noise impact. There is concern based upon our experience that the RTA will again short change the community and ignore conditions of consent and/or any suggestion that they will even undertake what is prepared in EIS.

A large proportion of our land was resumed for the M5 and we received compensation for that land based upon RTA valuation advice. There was no allocation of compensation in relation to noise as in hindsight it would appear that the interpretation of the proposal was based upon the EIS and achieving the noise targets that were suggested as being clearly acceptable. This simply did not arise and also we experience the fact that the RTA during construction of the M5 chose to downgrade the acoustic barriers with the consequence of a deliberate intent to create additional noise to the community.

Despite undertakings by various Ministers of Roads and local members to attend our site to witness first-hand the substandard acoustic environment which we are forced to experience none of those representatives have attended our site.

We received responses generated by the RTA that simply repeat incorrect material and suggest that the noise at our property is acceptable and does not warrant any further response. This is despite there being measurements data to prove the noise level generated by the M5/M7 clearly exceeds the consent conditions applicable to the road network adjacent to our property .

An examination of the noise report forming part of the M5 Extensions EIS (including the amended report) clearly reveals the previous practice of the RTA to misrepresent the facts continues. Any reasonable person when made aware of the relevant facts can only conclude that acoustic assessment prepared for the RTA are not truly independent as they are assessments prepared to support the subject application. There is clearly a moral and ethical responsibility of such consultants to consider adverse impact on the community which is not reflected in the documentation so provided.

The unsatisfactory performance of the RTA by ignoring the concerns of the community and the reality of the pollution that they have intentionally generated, the blatant disregard for conditions of consent and the nature of the all pervading noise that the residents receive on a continuous basis can only lead to further adverse comments from the community that in the end may give rise to significant community reaction.

It is clearly the case that the Department of Planning must instigate a truly independent acoustic assessment of the proposed M5 Extensions that takes into consideration the adverse impact that will be generated as a result of the current proposal and what additional measures are required to protect the acoustic amenity, the health and well-being of the community.

Yours faithfully



F LEGATO
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M5 West Widening

Appendix F to the EIS refers to a noise assessment prepared by Wilkinson Murray that ignored the western end of Casula that is located on the eastern side of the M5.

The report identifies noise levels for catchment CVW_HH_S and indicates that there are no actual measurements conducted in the western end of Casula.

The report appears to rely upon measurements for Casula conducted by Heggies in December 2009 that utilised a location at 45 Incense Place that bears no relationship to the majority of residences situated alongside the M5. The location was subsequently discarded in the acoustic assessment (section 4.1) but not replaced with another site or further measurements.

The assessment report did not include a number of residential properties on Maple Road and in particular the Legato property at 42 Maple Road, Casula (even though there were measurements conducted by Heggies at that site).

The amended report following public submissions included the Legato residence (as a coloured building) on a number of the appendices to the report, but not all of the appendices if one follows the indicated noise levels.

The report suggests that the computer prediction of noise levels overestimates the actual noise obtained at residential properties, but provides any excuse that of the assessment considers free-flowing traffic whereas in reality the congested situation of the existing motorway leads to a lower traffic speed and therefore a lower noise level.

The amended acoustic report suggests that the noise level at the Legato property at night in the future will be in the order of 56 dB(A) and that there is no need for any modification of the existing barriers.

The amended acoustic report suggest that with respect to sleep disturbance the methodology provided by the RTA does not reveal that there is a level of disturbance at the Legato property, which is contrary to the experience of the family residing at that property.

The predicted levels do not accord with measurements that have been conducted at the Legato property (and the adjoining properties) by acoustic consultants employed by the RTA and individual land owners.

There is a fundamental problem with the assessment in that it misrepresents the EPA road traffic noise policy (ECRTN) and suggests that the RTA's ENMM accords with the ECRTN, which is incorrect.

There is also a fundamental problem with the assessment report in that it has ignored the conditions of consent that have been specified for the M5 and the M7, or that the M5 is non-compliant with the condition of consent, has been non-compliant for some time and the RTA failed to comply with the conditions of consent requiring monitoring of the M5 from commencement of operations to the nominated assessment period 10 years after the M5 opened.

Acoustic Issues

The M7 project manager has stated that the RTA do not have to abide with anything that is identified in the EIS but is required to comply with the conditions of consent which can be vastly different to what is set out in an EIS.

Experience has revealed the RTA are not interested in the community and simply ignore any noise complaints, nor accept their responsibility for the environmental harm that has been generated as a result of their construction works and subsequent operation of motorways in the Casula area.

In highlighting the mistrust the community has with respect to the RTA, that in turn raises significant concerns with respect to the current application and the assessment report that has been prepared for the RTA the following matters are identified:

M5 EIS

the M5 EIS nominated noise targets that were sought to be achieved at residential properties in proximity to the motorway and presented to the community a noise reassessment prepared by Challis Consulting that indicated the rural nature of the land that was resumed (stolen) by the RTA and would have appropriate barriers (varying from 5 to 6 m at the Legato property) so as to achieve a night time level of 50 dB(A) at the Legato residence.

However whilst there were traffic noise goals nominated for designated "R" zones set out in table 11.5 of the EIS, the noise level objectives for residential buildings set out in a table 11.4 of the EIS was 60 dB(A) as a 24-hour level and 55 dB(A) as a night time level, although for lower noise areas the concept of ambient +12 dB(A) was also expressed without identifying or defining ambient noise. If the ambient noise was taken as the background level then the noise target by the RTA objectives would have been 53 dB(A) for the day and 52 dB(A) for the night.

Post M5 EIS

The clause 64 report required noise mitigation barriers to meet the objectives set out in Table 11.4 the EIS for predicted traffic in the year 2011 and, when practicable, to achieve the more stringent goals recommended in the EIS.

Contrary to the suggestion in the EIS, and without any consultation to the neighbours so affected, the RTA altered their position in terms of barriers in proximity to the Legato property during construction and erected barriers lower than nominated in the EIS.

Monitoring conducted by the RTA in 2001 on the Hasserati property north of the Legato property revealed noise levels significantly greater than that permitted by the consent. The RTA would therefore be well aware that they are in breach of the conditions of consent, yet it ignored that breach.

M7 EIS

The RTA produce an EIS that claimed the M7 would not have an adverse impact at the Legato property in that the existing noise from the M5 exceeded the ECRTN criteria and would continue to do so in the future. Figure 12.2a identifies daytime noise levels exceeding the noise target

The Operational Noise Management Sub Plan prepared by Heggies in 2003 and 2004 for a ground level position suggested the daytime level of 55-56 dB(A) would increase to 60 – 65 dB(A) as a consequence of the increase in traffic flow on the M5 at the time the M7 would come into operation.

Similarly, the Operational Noise Management Sub Plan prepared by Heggies in 2003 and 2004 for a ground level positions suggested the night time level of 53-54 dB(A) would increase to 55 – 60 dB(A) as a consequence of the increase in traffic flow on the M5 at the time the M7 would come into operation.

Table 8.1 in Appendix 9 of the Representation report in relation to the M7 EIS identified a daytime level of 64 dB(A) and night time level of 59 dB(A) as a result of the M5 for the subject category area E1.

The first joint conference of acoustic expert in Land & Environment Court Proceedings 30189 of 2004 confirmed in item 15:

The Noise Subplans indicate that if the M7 were not to be built, noise levels at the subject property both day and night would increase significantly above the limits in category 1 of the ECRTN (which are already exceeded at the time of acquisition).

Yet despite the above acknowledgements no action was taken as to the RTA breaching the conditions of consent for some considerable point in time. The result of the Legatos taking action in relation to compensation for a further resumption of land for the M7 was a concession made to increase the height of the barriers at the subject property with a claim that as a result of the M7 works compliance with the ECRTN criteria would be achieved.

The M7 EIS claimed there would be no increase of M5 noise at the Legato property as a result of the M7 construction.

However attendance at the Legato property indicates there is a clearly audible reflection off traffic passing under the M7 flyovers.

Relevance of Road Traffic Noise Levels at the Legato Residence

Noise monitoring at the first floor balcony of the Legato premises in June 2010 include a facade correction in the measurements and found a 24-hour Leq level of 61.3 dB(A), a Leq 15 hour level of 62.4 dB(A) and a Leq night time level of 58.4 dB(A).

These measured levels are significantly higher than the amended noise report for the M5 Extension nominates for the Legato residence.

These levels were conducted after the extension to the barriers at the rear of the Legato property and therefore show an increase in noise contrary to that identified in the M7 EIS.

If as claimed in the M7 EIS that the M7 would have no impact at the Legato property then the noise recorded levels at the Legato property must indicate the M5 is significantly breaching the conditions of consent for that motorway.

The M5 extension EIS having not conducted any measurements in the vicinity of the Legato property relies upon computer modelling which identifies noise levels that do not accord with measurements taken prior to the M5 extensions.

The M5 Extensions EIS proposes an assessment of sleep arousal which is different to that presented in the M7 EIS and different to that provided in DECCW documentation. In actual fact the noise assessment has misrepresented the EPA sleep arousal discussion presented in the ECRTN.

However notwithstanding that misrepresentation of assessment procedures for sleep arousal if one takes the methodology provided in the M5 Extensions EIS and utilises the measurements conducted at the Legato property in June 2010 one finds a night-time rating background level of 44 dB(A) with the maximum 1 hour Leq level for each night (over 10 nights of monitoring) to exceed background + 15 dB(A) on 9 of those nights. Therefore under the M5 Extensions EIS the existing road traffic noise generates sleep disturbance at the Legato residence which accords with the experience of that family. Yet the M5 Extensions EIS suggests otherwise.

If one further examines the M5 Extensions EIS it would appear that the position of actual measurement results is somewhat light on for such an assessment in that they rely upon measurements conducted by another organisation in 2009, without conducting the appropriate measurements themselves, and therefore rely upon computer modelling of which they indicate in the report they do not achieve correlation with the actual levels on the basis of difference in traffic speeds. One question arises in terms of that assessment is whether the model was rerun at speeds that occur to find out whether the model then validates the limited measurements that were undertaken, or whether there is an assumption that the model is correct.

Acoustic Issues

Acoustic Criteria for Road Traffic Assessment

The M5 Extensions EIS claims the assessment has been carried out under the Director-General's requirements that specifies the assessment is to be consistent with the ECRTN.

However the use of the RTA's ENMM procedures in undertaking the assessment is a clear breach of the Director-General's requirements because the ENMM is not consistent with the ECRTN.

The EIS seeks to utilise a "future is existing noise" concept to form the basis of the changing noise as a result of the proposed works.

However, the "future existing noise" concept is a methodology developed by the RTA and does not appear in the ECRTN.

The "future existing noise" methodology is a ploy by the RTA to downgrade the noise impact as a result of the proposed works and has been described as a con job to the community. The "future existing noise" method highlights the contempt the RTA takes with respect to the community that has to suffer excessive noise that clearly is of such a level and magnitude that exceeds recommended criteria by the World Health Organisation and clearly affects people's health.

The M5 Extensions EIS has failed to identify the extent and magnitude of noise associated with the existing road traffic and the proposed extensions constitutes "offensive noise" as defined in the Protection of the Environment Operations Act to such an extent that the community should consider class action against the RTA for their conduct in relation to the M5, the M7 and the proposed M5 extensions.

