

Notice

Environmental Protection Act 1994

Environmental Protection Order

This environmental protection order is issued by the administering authority pursuant to section 358 of the Environmental Protection Act 1994.

Motoland Pty Ltd
9 Meaden Street
SOUTHBANK VIC 3006

Our reference: 211006-000044

26 May 2022

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Motoland Pty Ltd (you) by the administering authority. The administering authority is the Chief Executive of the Ipswich City Council (Council).

The EPO is issued in respect to the activities at Motoland situated on land described as Lot 138 on S3161 situated at 62 Coal Road, Chuwar, Lot 137 on S3161 at 145-179 Robin Street, Chuwar and Lot 136 on S3161 situated at Lot 136 Unnamed Road, Chuwar.

A. Grounds

This EPO is issued on the following grounds:

- to secure compliance with the *Environmental Protection (Noise) Policy 2019*; and
- to secure compliance with noise standards under s. 440Q of the Act; and
- to secure compliance with depositing prescribed water contaminants in waters under s. 440ZG of the Act; and
- to secure compliance with offence of causing environmental nuisance s. 440 of the Act; and
- to secure compliance with the General Environmental Duty (GED) under s. 319 of the Act.

The facts and circumstances forming the basis for these grounds are:

- Motorcycling QLD is the land owner for Lot 138 on S3161, Lot 137 on S3161 and Lot 136 on S3161
- A development approval issued in 1974, Development Approval #4147, grants the use of motorcycling activity from the above lots.

- Motoland Pty Ltd is the occupier for these lots that currently undertakes motorcycling activity to which the approval relates.
- The approval #4147 contains two conditions:
 - (a) the provision of an effluent disposal system to the satisfaction of the Council
 - (b) the provision of a 2 metre landscaped buffer strip around the perimeter of the property
- From 3 October, 2021, Ipswich City Council (Council) has received complaints in regard to environmental nuisance. The majority of these complaints were for noise nuisance specifically related to motorcycle activity and earthworks activity (including the use of a high capacity storage water truck). The motorcycling activity occurs on a weekend, the earthworks is conducted during the work week and before and after motorcycling activity on the weekend. There were a small amount of complaints raised for stormwater contamination and dust nuisance.
- As the approval conditions are not prescriptive in relation to intensity levels or operational timeframes in regard to environmental nuisance, regulation was carried out under the *Environmental Protection Act 1994* and subordinate regulations and policies under this Act.
- Multiple noise monitoring inspections were undertaken by Council Authorised Officers, from various locations between October and November 2021. These monitoring inspections occurred on 9 October, 17 October, 24 October, 3 November and 6 November, 2021. There were several environmental noise nuisances identified according to the Act and also the acoustic quality objectives under the *Environmental Protection (Noise) Policy 2019*.
- Acoustic report, Noise Impact Assessment (Report 27401.0002R01V01 dated 24 January 2022 and prepared by Trinity Consultants Australia), was submitted in response to Council's EPO. Authorised Council Officers have reviewed the Noise Impact Assessment report.
- The Authorised Officers have determined that the limited amount of noise monitoring conducted during motocross activities has informed an incomplete set of recommendations which will not adequately manage the noise nuisance at the nearby sensitive receivers within the surrounding community. This is justified through the following:
 - In relation to earthworks and water truck noise associated with the normal use of the site the Noise Impact Assessment makes recommendations for utilising a quieter watering truck, prohibiting the use of the tractor and D3 dozer from the intermediate and beginner tracks, utilising the posi-track (in preference to the D3 dozer and tractor) on all tracks and constructing a 5m high noise barrier along the southern site boundary (adjoining 26 Coal Road).
 - In relation to motorcycle noise, the site activity logs presented for Friday 14th – Sunday 16th January provided an indication of the areas of use within the site. For Saturday 15th and Sunday 16th January 2022 (when the main track is operational) the logs provided an indication of the intensity of use by listing the numbers of motorbikes using each track (this, however, is only listed for the morning hours).
 - A limited concurrent noise monitoring dataset is presented for the three identified assessment locations for periods when the intensity of motorbikes using the tracks is 'high' (as identified from the spread of track usage data presented in Tables 5.4-5.5). The recommendations for 139 Robin Street appear to be based on approximately 30 minutes only of noise monitoring during this 'high' usage intensity.
 - The greatest level of noise emission from the site will occur when, in addition to the intermediate and beginner tracks, the main track (permitting larger and more powerful bikes) is operational.


The maximum number of motorcycles utilising the premises during any of the noise investigation monitoring was 63 vehicles (35 of which were on the main track) and this occurred on the morning of Saturday 15th January 2022. Section 7.1.3 of the acoustic report states that 35 bikes on the main track represents typical works-case scenario, however it is not clear if this included all the 63 vehicles operating on the site, to represent a 'worst case' scenario for the entire site.

- The acoustic report makes recommendations for acoustic controls, involving a noise mound located on the southern site boundary (to shield impacts to 26 Coal Road) based on the limited noise monitoring data set. It is acknowledged that the acoustic report presents a correlation between measured LAeq vs Number of motorbikes on the Main track for the impacts to 26 Coal Road location and states that if the number of bikes on the main track were to increase above 35 noise levels will not necessarily increase.
- The acoustic report did not conduct analysis of measured LAeq and the number of bikes on the main (and other) tracks adjacent to the 139 Robin Street receiver. There is currently insufficient noise monitoring data presented for 139 Robin Street, for periods where significant motorcycle activity is occurring on the tracks, to be able to adequately ascertain the need for noise management controls.
- The acoustic report methodology referenced in Section 5.3, states that wind is not considered to be a feature of the area and the assessment has therefore been undertaken during calm conditions. An analysis of the gradient winds for the daytime assessment period when undertaken separately for each of the summer, autumn, winter and spring season (in accordance with the methodology required by the Planning for Noise Control Guideline) would be expected to show winds to be a feature for a certain portion of the year with noise levels greater than the modelled (and monitored) noise levels presented in the report.
- Authorised Officers have undertaken an assessment of the noise emission in accordance with the general emission criteria/ noise emission criteria outlined in [section 363C](#) of the Act. They have determined that the construction work conducted on the tracks are an environmental nuisance as there is unreasonable interference. Authorised Officers have measured sound level pressures and determined that they are clearly audible at nearby sensitive uses.
- I am satisfied that the acoustic attenuation measures identified in the acoustic report submitted by Motoland Pty Ltd, (Noise Impact Assessment (Report 27401.0002R01V01 dated 24 January 2022 and prepared by Trinity Consultants Australia), did not provided sufficient evidence that environmental noise nuisances according to the Act have been addressed.
- On 9 October 2021 and 6 November 2021, dust was observed emanating from site across Robin Street, at the northern end of lot 138S3161. From a visual inspection, the dust was dense enough that it could effect visibility for drivers along Robin Street and or cause a nuisance depending on wind speed and direction. A water truck is used on site, however, this is utilised for break times before and after motorcycle activity. Given that a water truck or other dust suppression system is not used whilst motorcycle activity is being undertaken, dust is leaving the site as a result.
- Dust sampling was not undertaken as per requirement of the EPO.
- I am satisfied that Motoland Pty Ltd have not taken appropriate measures to minimise dust whilst motorcycle activity is being undertaken.

B. Requirements

In accordance with this EPO, you are required to do the following:

Requirement number	Requirement
1	<p>(i) By 20 February 2022, Motoland Pty Ltd, must engage a suitably qualified person (e.g. acoustic engineer) who must conduct continuous sound monitoring of all the activities on site for 18 months and submit to Council the findings of the sound monitoring, every three months or when otherwise requested by Council.</p> <p>Sound monitoring must include (but not limited to) a sound level meter and a noise logger from the boundary at the following locations (but not limited to) listed below:</p> <p>139 Robin Street, Chuwar</p> <p>26 Coal Road, Chuwar</p> <p>2 Blackwall Road, Chuwar</p> <p>For clarification as to when Noise Monitoring Reports are to be submitted, please see the below dates:</p> <ul style="list-style-type: none">• 20 May 2022• 20 August 2022• 20 November 2022• 20 February 2023• 20 May 2023• 20 August 2023 <p>Note: Suitably qualified person means a person who has demonstrable professional qualifications, training, skills and/or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards, methods or literature.</p>
2	<p>Motoland Pty Ltd shall have completed the installation of the control measures recommended identified in the acoustic report submitted by Motoland Pty Ltd, (Noise Impact Assessment (Report 27401.0002R01V01 dated 24 January 2022 and prepared by Trinity Consultants Australia), taking in consideration the changes and requirements below:</p> <p>(i) From 26 May 2022, and until such a time that the installation of the noise control measures required for the site are completed and deemed appropriate by Council, motorcycling activity will not be permitted on site unless the activity can be demonstrated by an acoustic report which deems that the activity will not cause a nuisance in the absence of acoustic barriers.</p> <p>(ii) Erect a 5.0 metre high acoustic barriers along the southern property boundary (26 Coal Road, Chuwar) and in addition along the western property boundary (139 Robin Street, Chuwar) as generally indicated in blue as below.</p>

	 <p>An Operational Works application for the two acoustic barriers is to be lodged with Council and approved prior to the commencement of construction.</p> <p>The acoustic barriers are to:</p> <ul style="list-style-type: none"> (iii) Be continuous and gap free; and (iv) To be constructed of materials that are consistent with the technical specifications of document, 'Transport and 'Main Roads Specifications – MRTS15 Noise Fences'; and (v) From 14 February 2022, Motoland Pty Ltd is to stop using the existing large water truck, tractor and D3 dozer on all tracks; and (vi) Noise from any other machinery used on site must not be more than 5dB(A) above the background level at the sensitive receptors.
3	<p>(i) From 14 February 2022, Motoland Pty Ltd, must comply with the revised operational timeframes when conducting earthworks:</p> <ul style="list-style-type: none"> (1) A person must not carry out earthworks in a way that makes an audible noise on a business day or weekend, before 8.00a.m. or after 5.00p.m; and (2) From 8.00a.m. to 5.00p.m, cannot make a noise of more than 5dB(A) above the background level from the sensitive receptor. <p>This change in operational timeframes is pursuant to s. 493A of the Act.</p>
4	<p>(i) From 14 February 2022, Motoland Pty Ltd, must comply with the revised operational timeframes which correlate to the noise standard under s. 440T of the Act.</p> <p>An occupier of the premises must not use, or permit the use of, the pump on any day-</p> <ul style="list-style-type: none"> (1) Before 7a.m, if it makes an audible noise; or (2) From 7a.m. to 7p.m, if it makes a noise of more than 5dB(A) above the background level; or (3) From 7p.m. to 10p.m, if it makes a noise of more than 3dB(A) above the background level; or (4) After 10p.m, if it makes an audible noise
5	<p>(i) From 14 February 2022, Motoland Pty Ltd, must comply with the revised operational timeframes which correlates with the noise standards under s. 440X of the Act. The timeframe for motorcycling activity being undertaken is as follows:</p> <ul style="list-style-type: none"> (1) A person must not undertake motorcycling activity in a way that makes an audible

	<p>noise on a business day or weekend, before 8.00a.m. or after 5.00p.m; and</p> <p>(2) From 8.00a.m. to 5.00p.m, cannot make a noise of more than 70B(A)(leq) at the boundary of a sensitive receptor.</p> <p>Please note that the appropriate noise level provided by the noise logger must be quantified and extrapolated back to the boundary of the sensitive receptor (to indicate the noise at affected residential boundary).</p>
6	<p>(i) By 30 September 2022, Motoland Pty Ltd, must have a suitably qualified person (e.g. environmental consultant) to undertake at least 3 days of inspections (at least 3 hours per inspection) of the site under dry conditions (no rain event has occurred 48 hours prior to the inspection) to determine the impact of dust from motorcycle activity on all surrounding properties.</p> <p>(ii) By 30 September 2022, a dust monitoring report must be submitted by the suitably qualified person to Council which demonstrates the impact of dust per inspection, the corresponding weather conditions per inspection, the level of motorcycle activity per inspection and recommendations for controlling dust on site.</p> <p>(iii) The installation of the control measures recommended by the environmental consultant will be considered by Council upon receiving of the report. The relevant timeframe required for the installation of such control measures will be directly proportional to the type of control measures recommended and corresponding application requirements. Therefore, timeframes allocated to this specific requirement will remain in force until further notice from Council.</p> <p>Note: Suitably qualified person means a person who has demonstrable professional qualifications, training, skills and/or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards, methods or literature.</p>

C. Obligations

If you propose to dispose of the place or business to which the EPO relates, you **must** advise the buyer of the existence of this EPO.

If you cease to carry out the activity to which this EPO relates, you **must** give written notice of ceasing to carry out the activity to the department within 10 days of ceasing the activity.

Take notice:

- the requirements of this order take effect immediately upon service of the order;
- failure to comply with this order is an offence under the Act;
- this order remains in force until further notice from the administering authority.

D. Penalty

Failure to comply with an EPO is an offence.

- The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units, totalling \$861,562 or five years imprisonment.

- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$4,307,812.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$620,325.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$3,101,625.

Failure to provide written notice to the buyer is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$ 6,892.
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 34,462.

Failure to provide written notice within 10 business days of ceasing the activity to the department is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$ 6,892
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 34,462.

Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

E. Reviews and appeals

The provisions regarding review of decisions and appeals may be found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the administering authority, may be able to apply to have the administering authority review that original decision.

Generally, a request to have a decision reviewed must be made:

- within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and
- be made using the application for review of an original decision please see ([ESR/2015/1572](#)).¹

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet - internal review and appeal to the Planning and Environment Court ([ESR/2015/1572](#)). You may have other legal rights or obligations and should seek your own legal advice.

Should you have any queries in relation to the notice, please contact Mr Lee Mason on telephone number (07) 3810 7338 or Lee.Mason@ipswich.qld.gov.au.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

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Signature

26 May 2022

Date

Peter Clifton

Environmental Health Manager (Planning and
Regulatory Services)

Delegate of the Chief Executive

Ipswich City Council

Environmental Protection Act 1994

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