

**All correspondence to:**

**LEWIS TROJAN HORSE PTY LTD** (ACN 693 680 509)  
as Trustee of the **Owen Robert Inter Vivos Trust**

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**Contact details:**

## **COMPLAINT — DEPARTMENT OF TRANSPORT AND PLANNING**

Victorian Ombudsman File C/26/3280

Lal Lal Wind Farm — Ministerial Planning Permit Administration, Departmental Compliance  
Position and 2026 Permit Amendment

25 August 2026

Dear Victorian Ombudsman,

I write on behalf of **LEWIS TROJAN HORSE PTY LTD** (ACN 693 680 509), as Trustee of the **Owen Robert Inter Vivos Trust** (Trustee), to lodge a complaint concerning the administrative conduct of the Department of Transport and Planning (DTP) in relation to the Lal Lal Wind Farm and Planning Permit PL-SP/05/0461.

The complaint concerns the administration of a Ministerial Planning Permit containing express requirements concerning NZS 6808:2010, a Minister-endorsed Noise Compliance Testing Plan (NCTP), specific monitoring and reporting requirements, and matters required to be undertaken to the satisfaction of the Minister for Planning.

The statutory framework is important from the outset.

Section 97H of the Planning and Environment Act 1987 provides that, notwithstanding the general administration and enforcement role of the responsible authority specified in the planning scheme, the Minister remains the responsible authority for matters which the Permit specifies are to be done by, approved by, or done to the satisfaction of the Minister, and for amendment of the Permit under s 97J.

The pre-May-2026 Permit expressly placed relevant noise-compliance functions within that Ministerial framework. Condition 25 provided that the approved NCTP would be endorsed by the Minister and form part of the Permit, and that the use must be carried out in accordance with the NCTP to the satisfaction of the Minister for Planning.

Against that framework, the disclosed record now presents a comparatively simple administrative problem:

- DTP stated that post-construction assessments submitted by the proponent demonstrated that Lal Lal Wind Farm complied with NZS 6808:2010;
- subsequent DTP statutory searches have not identified several foundational records relevant to that position, including the requested record of submission of the K15aa

background report, individual turbine commissioning records and any Departmental document or written authority permitting the identified departures from the NZS definitions of Background sound level and Notional boundary;

- the developed documentary record was repeatedly placed before DTP and/or the Minister for Planning;
- DTP was expressly asked whether it maintained its earlier compliance position or considered that the later material required further consideration;
- no substantive reconciliation of that position has been provided;
- while those matters remained unresolved, the Minister amended the same Planning Permit under s 97J on 15 May 2026; and
- the final Permit contains material matters requiring reconciliation with the publicly exhibited proposal and the pre-existing administrative record, including new Condition 27A, the Responsible Authority wording and the disappearance of the earlier express reference to two permanent meteorological monitoring facilities and associated equipment.

The final Permit itself records that the 15 May 2026 amendment was made under s 97J to amend Condition 23, delete Conditions 24–27 and add Condition 27A so that operational wind turbine noise could be regulated under the Environment Protection Regulations 2021.

These matters are not raised for the first time through this complaint.

The relevant documentary questions were progressively put before DTP, including Michael Juttner, and/or the Minister for Planning. During 2026, the developed record was formally placed before them and repeated opportunities were afforded to identify, explain, maintain, qualify or reconsider DTP's administrative position.

The Trustee does not ask the Ombudsman to undertake an acoustic assessment, determine wind farm noise compliance itself, determine that any meteorological monitoring facility was unlawfully authorised, determine the legal validity of the amended Permit, or infer an improper purpose for any amendment.

The administrative question is more fundamental:

Did DTP have, and does its administrative record now disclose, an adequate documentary and statutory foundation for the compliance position it communicated and the Ministerial permit administration subsequently undertaken — and did DTP act reasonably when the apparent gaps in that foundation were repeatedly put before it for reconciliation?

## **1. Related Ombudsman complaints and existing administrative record**

The Ombudsman already holds substantial administrative and evidentiary material concerning the Lal Lal Wind Farm under File C/26/3280.

That material includes the Trustee's complaint concerning EPA Victoria's administrative and regulatory decision-making in relation to Lal Lal Wind Farm.

The Trustee has also lodged related complaints concerning Moorabool Shire Council, including:

- Victorian Ombudsman File C/26/15485, concerning Council's failure to provide substantive responses to identified administrative enquiries; and
- the subsequent complaint concerning the underlying adequacy, documentary foundation and historical administration of Planning Permit PL-SP/05/0461 by Moorabool Shire Council.

The present complaint is related to those matters but is substantively distinct.

The EPA complaint concerns EPA's own regulatory determination and continuing compliance position.

The Council complaint concerns Council's historical investigation, administration of the Planning Permit and categorical December 2022 no-breach determination.

This complaint concerns DTP's own conduct and the Ministerial planning framework, including:

- DTP's affirmative position that submitted post-construction noise assessments demonstrated compliance with NZS 6808:2010;
- the documentary foundation for that position;
- DTP's handling of later documentary material and its own FOI outcomes bearing directly upon that foundation;
- the Ministerial responsibilities preserved by the Planning Permit and s 97H of the Planning and Environment Act 1987;
- DTP's administration of the 2026 amendment under s 97J;
- the relationship between the publicly exhibited amendment and the final Permit; and
- DTP's handling of repeated requests for administrative clarification and reconciliation.

There is necessarily some overlap in the documentary material because EPA, DTP and Moorabool Shire Council dealt with different parts of the same planning and regulatory pathway.

The Trustee does not seek duplicate findings concerning the same conduct.

Rather, the Trustee respectfully asks that the Ombudsman consider the related complaints and material already held under File C/26/3280 together where that assists understanding of the broader cross-agency administrative record, while separately examining the conduct and responsibilities of each authority.

Historical correspondence referred to below which predates establishment of the Trust is relied upon as part of DTP's institutional administrative record. It is not represented as Trustee correspondence.

The matters raised are not abstract documentary concerns. They concern the administrative foundation upon which continuing planning and regulatory positions affecting nearby residential amenity are being maintained, and the Trustee's ability to obtain a reasoned administrative resolution of matters repeatedly placed before the relevant authorities. The continuing absence of an identifiable reconciliation leaves those underlying planning and regulatory questions unresolved.

## **2. The statutory and Planning Permit framework is the starting point**

The starting point for DTP's administrative conduct is not a later technical report.

It is the Planning and Environment Act 1987 and the Planning Permit.

Section 97H provides that once a Ministerial permit is issued, the responsible authority specified in the planning scheme generally administers and enforces it, except that the Minister remains the responsible authority for any matters which the Permit specifies are to be done by, approved by or done to the satisfaction of the Minister, together with specified functions including amendment under s 97J.

Section 97J separately provides that, following consideration of the matters specified by the Act, the Minister may amend the Permit, amend it subject to conditions or refuse to amend it.

Those provisions matter because the historical Lal Lal Wind Farm Permit expressly preserved Ministerial responsibilities concerning the noise-compliance pathway.

Condition 23 required operation of the wind energy facility to comply with NZS 6808:2010.

Condition 23(a) required wind farm sound levels to be:

“determined in accordance with the Standard at noise sensitive locations (**as defined in the Standard**)”

The requirement was therefore not simply a numerical noise ceiling. The Permit expressly incorporated the Standard into the manner in which sound levels were to be determined. The permit record preserves that wording.

Conditions 24 and 25 established the NCTP pathway.

The auditor's contemporaneous January 2018 review records that Condition 24 required the NCTP to be prepared to the satisfaction of the Minister for Planning and that Condition 25 provided:

“When approved, the noise compliance testing plan will be endorsed by the Minister for Planning and will then form part of this permit”.

Condition 25 further required:

“The use must be carried out in accordance with the noise compliance testing plan to the satisfaction of the Minister for Planning”.

The endorsed NCTP was therefore not merely an acoustic consultant's advisory document.

It formed part of the Planning Permit and established objective requirements relevant to the subsequent compliance pathway.

Those requirements included:

- an updated K15aa background noise report before commencement of operation;
- measurement-location requirements;
- a two-stage post-construction monitoring program calculated from **commissioning of the last turbine**; and
- associated reporting requirements.

The complaint therefore concerns DTP's administration of requirements forming part of a Ministerial Planning Permit, not simply disagreement with the methodology preferred by one acoustic consultant.

### **3. DTP expressed an affirmative NZS 6808:2010 compliance position**

On 21 December 2023, an enquiry was put to DTP asking whether the Minister for Planning was satisfied that the requirements of the NCTP and NZS 6808:2010 had been met by Lal Lal Wind Farm.

That enquiry referred specifically to the SLR Elaine post-construction assessment and ARUP verification.

DTP subsequently responded through Michael Juttner on 6 May 2024.

DTP did not merely state that EPA was responsible for operational noise.

It stated:

“In recent years, the project proponent has submitted post-construction noise assessments for Lal Lal wind farm which demonstrate that the noise from the wind farm complies with New Zealand Standard 6808:2010 Acoustics – Wind Farm Noise.”

That is the starting administrative position for this complaint.

The statement was affirmative.

It represented that the submitted post-construction assessments demonstrated compliance with the very Standard incorporated by the Planning Permit.

The Trustee does not ask the Ombudsman to determine whether DTP's acoustic conclusion was technically correct.

The administrative question is:

What material did DTP have before it, what foundational facts had been established, and what assessment or administrative reasoning supported DTP's statement that the submitted assessments demonstrated compliance with NZS 6808:2010?

#### **4. The documentary foundation for that position was subsequently tested with DTP**

The enquiry did not end with DTP's affirmative statement.

During 2024, increasingly specific questions were put to DTP concerning the records and administrative basis underlying that position.

Those enquiries concerned, among other things:

- the reports DTP actually held;
- the February 2021 K15aa Compliance Baseline Noise Monitoring report;
- the date that report had been received by the Minister or Department;
- how the K15aa noise limits derived by SLR were considered to satisfy NZS 6808:2010; and
- the documentary or authorising basis for the monitoring methodology being relied upon.

On 21 August 2024, when relevant reports were sought, Michael Juttner responded:

“I am not sure that the department has them.”

The subsequent email specifically sought the date upon which the Minister had received the February 2021 SLR K15aa baseline report and stated that it was not apparent how the SLR-derived noise limits met NZS 6808:2010.

Later correspondence further narrowed the question to the authorising basis for the K15aa monitoring location and the relevant NZS framework.

DTP referred the operational-noise matter to EPA.

That did not resolve the question that had been raised.

The question was not merely which agency dealt with current operational noise complaints.

It concerned the documentary foundation for a DTP statement that the submitted assessments demonstrated compliance with NZS 6808:2010, under a Planning Permit which incorporated that Standard and made the Minister-endorsed NCTP part of the Permit.

The significance of the chronology is therefore straightforward:

DTP had expressed a positive compliance position, but when the documents and authorising basis underlying that position were subsequently sought, the requested foundation was not identified.

## **5. The developed documentary record was formally put back before DTP**

The Trustee did not proceed from those historical exchanges directly to allegations of maladministration.

In March 2026, a structured documentary record was formally provided to DTP.

That material included the Notice — Documentary Material Provided for Regulatory Record, together with the Supporting Record and Evidentiary Annexes.

The material addressed matters including:

- the evidentiary basis of background sound data relied upon in deriving noise limits;
- application of the endorsed NCTP;
- environmental-auditor verification; and
- cross-agency document custody and reliance.

The material expressly did not assert breach or seek enforcement action.

On 30 March 2026, the Trustee then wrote directly to Michael Juttner.

The correspondence referred expressly to DTP's earlier position that the post-construction assessments demonstrated compliance with NZS 6808:2010.

DTP was asked whether it:

- (a) maintained that position; or
- (b) considered that the additional material then forming part of DTP's record gave rise to matters requiring further consideration.

The stated purpose was:

“solely to ensure that the Department's current reliance position is accurately reflected on the administrative record.”

This was a direct opportunity to reconcile the position.

DTP was not required to agree with the Trustee.

It could have:

- maintained the position and identified the documentary basis for doing so;
- qualified the position;
- advised that further consideration was required;
- identified additional records not previously available; or
- explained why the material raised did not alter DTP's position.

No substantive reconciliation was provided.

## **6. The unresolved position was also placed before the Minister for Planning**

The matter was subsequently placed directly before the Minister for Planning.

The Trustee's April 2026 correspondence recorded:

- the developed material provided to DTP;
- DTP's existing compliance position;
- the 30 March request for clarification; and
- the absence of substantive clarification.

The purpose remained administrative.

The Minister was not being asked to conduct an acoustic assessment.

The outstanding issue was whether DTP continued to maintain its earlier position and, if so, the documentary basis upon which that position remained capable of being maintained.

The matter was therefore before both the Departmental administration and the Ministerial office before the later DTP FOI outcomes further developed the record.

## **7. DTP's later statutory disclosure materially tested the foundation of its earlier position**

The subsequent DTP FOI record materially developed the administrative picture.

The Trustee does not contend that inability to locate a document through FOI automatically proves that the corresponding requirement was breached.

That is not the proposition advanced.

The significance of the FOI outcomes is that they permit the documentary foundation for DTP's affirmative compliance position to be independently tested.

The results expose several unresolved foundational matters.

## **8. K15aa — the required report submission has not been established from DTP's record**

The endorsed NCTP recorded that the earlier background monitoring at K15aa was unsuitable.

It consequently imposed a specific requirement:

“Prior to commencement of operation of the wind farm, an updated background noise report is to be submitted to the Responsible Authority”

detailing the K15aa monitoring results and any additional background monitoring.

This was not a generic reporting preference.

It was contained in the Minister-endorsed NCTP forming part of the Permit.

DTP FOI CS015467 subsequently sought the date upon which the February 2021 SLR K15aa baseline report was submitted to the Department, Minister or Responsible Authority.

DTP undertook what it described as an extensive search.

No responsive record establishing the requested submission date was located.

The EPA complaint already before the Ombudsman records the same DTP outcome and the corresponding EPA/OVIC disclosure history.

The Trustee does not ask the Ombudsman to infer merely from that FOI result that the requirement was breached.

The administrative question for DTP is:

What contemporaneous record established to DTP that the updated K15aa report required by the Minister-endorsed NCTP had been submitted to the Responsible Authority before commencement of operation?

That question assumes particular importance because K15aa subsequently formed part of the background-noise relationship relied upon in the post-construction assessment which DTP later said demonstrated NZS 6808:2010 compliance.

### **9. K15aa — the disclosed measurement-location pathway also requires reconciliation**

The K15aa monitoring location provides a second concrete example.

The original Marshall Day Acoustics background assessment encountered contamination from household mechanical noise at K15aa.

For its second survey, MDA relocated the monitor and expressly recorded that the location was:

“the only alternative position for placing the noise monitor in accordance with NZS 6808:2010, at a location representative of the noise environment around the dwelling.”

That second dataset remained affected by local noise and MDA concluded that the results could not be relied upon for deriving noise limits or assessing post-construction compliance.

The Minister-endorsed NCTP subsequently expressly required:

“The measurements shall occur within 20 m of the dwelling.”

The later SLR methodology was different.

SLR's post-construction assessment expressly reproduces the NCTP requirement that measurements occur within 20 metres of the dwelling, while recording that the updated K15aa background monitoring undertaken in 2019 was instead completed approximately 100 metres north of the residential dwelling to avoid the household mechanical-plant influence.

SLR further records that the subsequent compliance-monitoring location was consistent with that 2019 background-monitoring position.

The administrative issue does not depend upon the Ombudsman deciding whether the 100 metre location was acoustically representative.

The documentary issue is that:

the Permit invoked NZS 6808:2010 at noise-sensitive locations as defined in the Standard;

the Minister-endorsed NCTP expressly required measurements within 20 metres of the dwelling;

MDA had previously treated alternative K15aa siting expressly by reference to NZS 6808:2010; yet:

the later methodology used approximately 100 metres from the dwelling and then aligned subsequent compliance monitoring with that position.

The question is what authorised that pathway.

That question was subsequently tested directly through DTP FOI.



## **10. DTP's 4 August 2026 FOI clarification did not identify the requested authorising basis**

Part 4 of DTP FOI CS019200 specifically sought any document, instrument, statutory provision, ministerial determination, approval, delegation or written authorisation relied upon by DTP as permitting or authorising departure from the identified NZS 6808:2010 definitions of:

- Background sound level; and
- Notional boundary.

On 4 August 2026, DTP's Energy and Infrastructure Assessment Branch advised that it did not believe DTP possessed any document, instrument or written authority permitting or authorising departure from those definitions in relation to Lal Lal Wind Farm.

Following relevant enquiries, DTP was unable to locate any responsive document.

That result does not, by itself, establish that no lawful pathway could exist.

Nor does it require the Ombudsman to determine the legal meaning of NZS 6808:2010.

Its administrative significance is narrower and substantial.

DTP had communicated an affirmative position that the submitted assessments demonstrated compliance with NZS 6808:2010.

When DTP was later expressly asked to identify from its records the documentary authority permitting the identified departures from relevant NZS definitions, its responsible branch did not believe DTP possessed such an authority and no responsive document was located.

That gives rise to the obvious question:

What documentary or statutory basis did DTP actually rely upon when it concluded that the assessment pathway demonstrated compliance with NZS 6808:2010?

## **11. K15aa — later evidence also altered the factual context of the background monitoring**

There is a separate timing issue concerning the K15aa background monitoring.

The replacement monitoring was undertaken during 2019.

The later SLR Appendix H re-analysis records that early commissioning had commenced and wind turbine generators generated power during part of the monitoring period.

The subsequent Resonate peer review records that commissioning activity during part of the 2019 monitoring period was not known when the original K15aa baseline assessment was prepared.

The EPA complaint already before the Ombudsman records the essential chronology: the Batch 2 monitoring occurred from 22 October to 14 November 2019, while the later SLR re-analysis recorded early commissioning and generation during that same period.

The Trustee does not ask the Ombudsman to determine the acoustic consequence of those facts.

The significance to DTP is administrative.

The later professional record revisited a foundational factual assumption underlying background monitoring subsequently relied upon in the compliance assessment.

Once that evidence was available and placed on the administrative record, DTP had an opportunity to explain whether it affected the Department's earlier affirmative compliance position.

No substantive reconciliation has been provided.

## **12. Final-turbine commissioning is a separate foundational gap**

The NCTP contains a second distinct timing trigger.

Section 4.3 requires:

- Stage 1 monitoring to commence within two months following commissioning of the last turbine; and
- Stage 2 monitoring to commence between 10 and 12 months following commissioning of the last turbine.

The trigger is therefore not a generic project-operational date.

It is commissioning of the last turbine.

DTP FOI CS019200 sought records including:

- individual turbine commissioning records;
- commissioning certificates;
- acceptance certificates;
- practical-completion certificates;
- handover certificates; and
- equivalent records.

DTP's Energy and Infrastructure Assessment Branch did not locate responsive records of that character. The related EPA complaint records the same DTP FOI result.

Again, that does not require the Ombudsman to select the correct commissioning date from competing historical material.

The administrative question is:

What date did DTP rely upon when accepting or relying upon a post-construction assessment whose mandatory monitoring timetable was calculated from commissioning of the last turbine, and what contemporaneous record established that date?

If DTP possessed some other reliable source establishing that trigger, the Trustee asks that it be identified.

If it did not, the Ombudsman is respectfully asked to examine how DTP satisfied itself that the assessment demonstrated compliance with the Minister-endorsed NCTP.

## **13. DTP's own record of a proposed revised NCTP does not presently supply the missing pathway**

DTP FOI CS019241 disclosed an administrative history concerning a proposed revision of the endorsed NCTP.

DTP held material concerning the proposed revision and its consideration.

The proposed revised NCTP was subsequently withdrawn and was not endorsed.

The significance is not that the Ombudsman must determine the legal consequences of the attempted revision.

It is that DTP's own disclosed administrative record distinguishes between:

- the existing Minister-endorsed NCTP;
- a later proposed revision;
- DTP's consideration of that proposed revision; and
- the fact that the proposed revision did not become the endorsed instrument.

The existing endorsed NCTP therefore remains the identifiable instrument against which DTP's historical compliance position must be understood unless DTP can identify some other lawful documentary pathway.

This is particularly relevant because the NCTP itself expressly maintained the 20 metre measurement requirement rather than providing the modification subsequently sought through FOI.

#### **14. The attended-observation record provides a further NCTP reconciliation issue**

The endorsed NCTP also prescribed a specific methodology for identification of Special Audible Characteristics.

That methodology required attended observations by a qualified acoustic engineer experienced in wind farm sound, three sets of attended observations during each monitoring stage, the wind farm to be operating during the observations, at least one set of observations during the night, and reporting of the attended observations and supplementary procedures.

The subsequently disclosed Stage 1 Elaine record does not presently show a night-time attended-observation set at the Elaine compliance monitoring locations.

The Stage 1 Appendix D records attended observations at the Elaine compliance locations on 9 March, 10 March, 31 March and 11 June 2021. The unattended Stage 1 monitoring period concluded on 13 May 2021, meaning the 11 June observations have no corresponding operational monitoring data from the Stage 1 monitoring period.

There is also a subsequent public explanation from SLR's Gustaf Reuterswärd that some attended surveys had been conducted but were not included in the report after SLR reviewed the operational record and concluded that the wind farm was not producing electricity at those times.

The Trustee does not ask the Ombudsman to determine whether a Special Audible Characteristic was present or whether any particular observation was technically adequate.

The administrative significance is narrower.

The attended-observation procedure formed part of the Minister-endorsed NCTP, and DTP subsequently stated that the submitted post-construction assessments demonstrated compliance with NZS 6808:2010.

The question is therefore:

What consideration did DTP give to whether the attended-observation and reporting requirements of the Minister-endorsed NCTP had actually been completed and documented when reaching or maintaining its affirmative compliance position?

## **15. These later disclosures are not relied upon as hindsight criticism**

The Trustee recognises an important distinction.

Some information subsequently obtained through FOI or later professional review may not have been available to DTP in precisely the same form when it communicated its earlier compliance position.

The Trustee therefore does not contend that DTP should retrospectively be attributed knowledge of every later-disclosed fact.

The significance of the later material is different.

It permits the documentary foundation for DTP's earlier position to be tested.

Where DTP held material at the time, the question is what that material was.

Where later statutory searches reveal the absence or uncertainty of a foundational record, the question is what contemporaneous evidence DTP actually relied upon instead.

And once the later material was expressly placed before DTP and the Minister, the further question becomes:

Did DTP reasonably reconsider, maintain, qualify or reconcile its earlier position?

The 30 March 2026 correspondence expressly provided that opportunity.

This complaint therefore seeks investigation, not retrospective assumption.

## **16. The regulatory-transition issue was expressly raised before the amendment was determined**

The issues subsequently raised concerning the transition from the Planning Permit noise-compliance framework to regulation under the Environment Protection Regulations were not identified only after the amended Permit was issued.

On 25 February 2026, the Trustee made a formal submission concerning the proposed amendment to Planning Permit PL-SP/05/0461.

The submission expressly did not assert non-compliance. It identified what it described as a question of regulatory sequencing and statutory coherence arising from the proposed amendment of Condition 23 and deletion of Conditions 24–27.

The submission recorded that Conditions 23–27 then provided a structured permit-based compliance pathway including the endorsed NCTP, staged post-construction assessment, environmental-auditor review, Ministerial satisfaction, powers concerning further review and shutdown testing, complaint investigation and reporting requirements.

The submission specifically raised whether that permit-based framework should be removed before the existing framework had been formally closed and the replacement regulatory framework had been demonstrated to be complete.

In particular, the submission identified two matters requiring clarification before deletion of Conditions 24–27:

1. whether Ministerial satisfaction under Conditions 23–27 had been formally recorded; and
2. whether the replacement regulation 131E Noise Management Plan had been finalised and auditor-verified.

The submission recorded operator correspondence indicating that a draft NMP had been prepared, that it was to be revised following further updates, and that environmental-auditor review had not yet commenced and an auditor was still being identified.

It also recorded that EPA's statutory disclosure had not identified an auditor-verified NMP.

The determination sought was correspondingly confined. The Trustee asked that the responsible authority:

- confirm whether Ministerial satisfaction under Conditions 23–27 had been formally recorded;
- confirm whether an auditor-verified NMP existed and was in force under regulation 131E; and
- defer deletion of Conditions 24–27 unless and until those matters were clarified.

The submission concluded that this was:

“a matter of regulatory sequencing and statutory coherence.”

It expressly stated:

“It is not a technical dispute.”

“It is not an allegation of breach.”

“It is a request for orderly transition between regulatory regimes.”

The administrative significance is substantial.

The final amendment was therefore made against a record in which the transition from the existing Ministerial permit-compliance architecture to the Environment Protection Regulations framework had already been expressly identified as requiring clarification.

The final Permit subsequently introduced Condition 27A, preserving compliance with the Minister-endorsed NCTP and NCIRP to the satisfaction of the Minister until a Noise Management Plan has been prepared and implemented under regulation 131E.

The Trustee does not infer from that sequence that the submission caused Condition 27A to be introduced.

The narrower question is:

What consideration did DTP and the Minister give to the Trustee's 25 February 2026 Formal Submission when determining the amendment, including the expressly raised questions of Ministerial satisfaction, formal closure of Conditions 23–27 and the state of the replacement regulation 131E Noise Management Plan?

## **17. The 2026 amendment engaged the Minister's statutory function directly**

The second substantial limb of this complaint concerns amendment of the same Planning Permit in 2026.

Section 97J of the Planning and Environment Act 1987 provides that, after considering the matters specified by that provision, the Minister may amend the Permit, amend it subject to conditions or refuse the amendment.

The final Permit records that the amendment was made on 15 May 2026 under s 97J.

The publicly exhibited proposal had a defined scope.

The amendment material identified the proposal as directed to amendment of Condition 23, deletion of Conditions 24–27 and transition of operational wind turbine noise regulation to the Environment Protection Regulations framework.

Importantly, the exhibited material expressly stated:

“The proposal does not seek to alter any other conditions of the permit.”

That provides an objective documentary benchmark against which the final Permit can be considered.

### **18. The final Permit contains material matters requiring administrative reconciliation**

The final Permit did not simply reproduce the advertised changes.

It contains several matters which the Trustee subsequently asked DTP to explain.

#### **Condition 27A**

The final Permit deleted Condition 27 and introduced new Condition 27A.

Condition 27A provides:

“Compliance with the Noise Compliance Test Plan endorsed on 6 April 2018 and Noise Complaints Investigation and Response Plan endorsed on 14 June 2019 must be maintained to the satisfaction of the Minister for Planning until a Noise Management Plan has been prepared and implemented in accordance with the requirements of regulation 131E of the Environment Protection Regulations 2021 (Vic).”

The amendment history, however, describes the 15 May 2026 amendment as adding Condition 27A to remove operational wind turbine noise conditions so that they can be regulated “solely” under the Environment Protection Regulations 2021.

The Trustee does not contend that those propositions are necessarily legally inconsistent.

The administrative question is what DTP and the Minister intended and what contemporaneous assessment explains the final transitional arrangement.

#### **Existing Noise Management Plan**

The documentary record includes a Lal Lal Wind Farm Noise Management Plan dated 18 October 2022.

Condition 27A, however, operates until a Noise Management Plan has been prepared and implemented in accordance with regulation 131E.

Again, the Trustee has not presumed that the existing NMP necessarily satisfied or did not satisfy regulation 131E.

DTP was asked the simpler administrative question:

What consideration was given to the existing 18 October 2022 NMP when Condition 27A was formulated, and how was the transitional operation of the condition understood?

No substantive explanation has been provided.

## **Responsible Authority**

The pre-amendment material identified Moorabool Shire Council as the Responsible Authority for administration and enforcement.

The first page of the final Permit instead states:

“Responsible authority: Minister for Planning”

At the same time, the statutory notes attached to the final Permit reproduce the s 97H framework, under which the responsible authority specified in the planning scheme generally administers and enforces the Permit while the Minister retains the specified exceptions.

The Trustee does not ask the Ombudsman to determine the legal consequence of that wording.

The question is why the final Permit was drafted in that form, what assessment supported it, and how DTP understood the resulting administrative responsibilities.

## **19. The meteorological-monitoring wording is significant because the issue already existed before the amendment**

The pre-amendment Planning Permit expressly described the authorised development as including:

“two permanent meteorological monitoring facilities and associated equipment”.

The final amended Permit no longer reproduces that earlier wording in the permit-allowance description.

That change did not occur against an empty administrative background.

The number, status and authorising pathway of meteorological monitoring facilities had already been raised before the amendment.

The documentary record included:

- a November 2019 project bulletin recording met-mast installation at Elaine while turbine commissioning and reliability testing were occurring;
- DTP's 4 April 2024 secondary-consent amendment and endorsed Substation Layout Plan concerning a meteorological mast;
- the notation on that DTP-endorsed plan that the existing met mast was temporary and would be decommissioned prior to operations;
- Council's subsequent acknowledgment that the Permit allowed two permanent meteorological monitoring facilities;
- continuing enquiries concerning the number and authorising pathway of the facilities; and
- Moorabool Shire Council FOI SR.139279, under which Council's targeted search for any formal Council approval, consent, authorisation or endorsement concerning establishment or operation of the Elaine Meteorological Monitoring Facility identified no document within the confined scope of the request.

Council separately confirmed in September 2024 that the relevant secondary-consent amendment was issued by DTP, not Council, and that the modified plans were endorsed plans under the Planning Permit.

The Trustee does not contend that the Council FOI result establishes that the facility was unauthorised.

Nor does the Trustee allege that DTP removed the two-facility wording in order retrospectively to regularise an existing facility.

The disclosed record does not establish DTP's subjective reason for the change.

The significance is narrower:

There was an existing and documented administrative question concerning the number, status and authorising pathway of the meteorological monitoring facilities before the 2026 amendment, and the final Permit then ceased to reproduce the earlier express reference to two permanent facilities.

The appropriate administrative question is therefore:

What consideration did DTP give to that existing administrative record when determining the final Permit wording, and what contemporaneous record explains why the earlier express reference to two permanent meteorological monitoring facilities and associated equipment was no longer reproduced?

That is a question capable of being answered from DTP's own amendment record without attributing motive.

## **20. DTP was expressly asked to reconcile the advertised and final Permit**

The Trustee did not infer impropriety from the permit differences and proceed directly to complaint.

On 18 May 2026, the Trustee issued a formal:

### **NOTICE — REQUEST FOR ADMINISTRATIVE CLARIFICATION AND RECONCILIATION**

concerning Planning Permit PL-SP/05/0461-2.

The correspondence was directed to the relationship between:

- the publicly exhibited amendment material;
- the final Permit as issued; and
- DTP's associated administrative record.

It sought clarification concerning matters including:

- Condition 27A;
- the existing Noise Management Plan;
- Responsible Authority;
- meteorological-monitoring wording; and
- whether DTP held a tracked comparison, assessment memorandum, delegate brief or other administrative material explaining the differences.

The Trustee followed up on 26 May 2026.

On 26 June 2026, the Trustee recorded that neither acknowledgment nor substantive response had been received.

Importantly, the 26 June correspondence expressly stated that the Notice had been confined to administrative clarification and:

did not seek enforcement action, review of the Department's decision, or any other administrative outcome.



DTP was therefore not being asked to concede that its amendment was invalid.

It was being asked to identify and explain its own administrative record.

No substantive reconciliation was provided.

## **21. The historical compliance position and the permit amendment intersect**

The two limbs of this complaint are distinct, but they are connected.

Before the 2026 amendment, DTP had affirmatively stated that the submitted post-construction assessments demonstrated compliance with NZS 6808:2010.

Subsequent enquiries and statutory disclosure raised unresolved questions concerning:

- K15aa report submission;
- K15aa monitoring location;
- the circumstances of the background monitoring;
- the final-turbine commissioning trigger;
- the documentary authority for the identified NZS departures; and
- the operative status of the Minister-endorsed NCTP.

Those matters were formally placed before DTP.

DTP was expressly asked whether it maintained its earlier position.

While that administrative position remained unreconciled, the Minister exercised the s 97J amendment function in relation to the same Planning Permit.

The final Permit then introduced Condition 27A, which expressly preserved compliance with the Minister-endorsed NCTP and NCIRP to the satisfaction of the Minister during the identified transition.

DTP's understanding of the existing NCTP and compliance record was therefore relevant not simply to an historical Departmental statement.

It was relevant to an active Ministerial permit-amendment process.

That makes the continuing absence of substantive reconciliation significant.

## **22. The Minister for Planning was afforded a further opportunity before this complaint**

The Trustee has not proceeded directly to external oversight.

The unresolved Departmental reliance position was placed before the Planning Minister in April 2026.

The permit-amendment reconciliation questions were separately put to DTP in May 2026 and followed up in June.

Further correspondence concerning the developed administrative record was then sent to the Hon Sonya Kilkenny MP, Minister for Planning, on 10 August 2026.

That correspondence provided the Minister with a further opportunity to consider the developed record and respond to the outstanding administrative matters before the Trustee proceeded to external complaint.

A follow-up seeking acknowledgment was sent on 18 August 2026.

The earlier relevant Notices were also provided again so that the Minister had ready access to the chronology, the documentary material already placed before DTP, and the outstanding requests for administrative clarification and reconciliation.

The Trustee afforded 14 days from 10 August 2026 for a substantive response.

That period expired on 24 August 2026.

As at the date of this complaint, 25 August 2026, no acknowledgment or substantive response has been received from the Minister or DTP addressing the matters raised.

Accordingly, the Trustee now proceeds on the administrative record presently available.

The significance of this chronology is not merely delay or failure to correspond.

The issues now presented to the Ombudsman were squarely placed before DTP and/or the Minister responsible for the planning framework, including the developed documentary record bearing upon DTP's earlier affirmative NZS 6808:2010 compliance position and the subsequent questions concerning administration of the 2026 permit amendment.

DTP and the Minister were afforded repeated opportunities to:

- identify the documentary foundation for the existing Departmental position;
- explain or reconcile the later documentary and statutory-disclosure outcomes;
- maintain the existing position with reasons;
- qualify or correct that position if appropriate;
- identify the administrative record explaining the permit-amendment matters raised; or
- advise that further consideration was required.

No such substantive administrative reconciliation was provided before expiry of the period afforded.

The Trustee therefore does not ask the Ombudsman to intervene in a matter that DTP or the Minister has not first had an opportunity to address.

Rather, this complaint follows repeated attempts to obtain clarification directly from the Department and the Minister, culminating in a final opportunity afforded before external oversight was invoked.

### **23. Administrative concerns raised**

Considered individually, some matters identified above might be characterised as technical, historical or documentary anomalies.

Considered together, they raise a more fundamental concern concerning administrative foundation and record integrity.

DTP communicated an affirmative position that submitted assessments demonstrated compliance with NZS 6808:2010 under a Ministerial Planning Permit which:

- expressly required compliance with NZS 6808:2010;
- required sound levels to be determined in accordance with the Standard at noise-sensitive locations as **defined in the Standard**;
- made the Minister-endorsed NCTP part of the Permit; and
- required the use to be carried out in accordance with that NCTP to the satisfaction of the Minister for Planning.

The subsequent record has not identified:

K15aa report submission: the requested contemporaneous record demonstrating submission of the updated K15aa report to the Responsible Authority before commencement of operation;

Final-turbine commissioning: the requested individual turbine commissioning or equivalent completion records establishing the mandatory trigger upon which the NCTP monitoring timetable depended;

NZS authorising basis: any Departmental document, instrument or written authority identified through CS019200 as permitting the specific departures raised with DTP; or

Revised NCTP: an endorsed revised NCTP displacing the operative requirements of the existing Minister-endorsed Plan.

At the same time, the technical record itself now identifies matters requiring administrative reconciliation, including:

- the approximately 100 metre K15aa monitoring location against an NCTP requirement expressly stating measurement within 20 metres of the dwelling; and
- later professional material acknowledging commissioning/turbine operation during part of the 2019 background-monitoring period.

Those matters were put back before DTP and the Minister.

Separately, DTP administered the 2026 amendment of the same Permit.

The final instrument contains identified differences from the publicly exhibited proposal requiring explanation, including:

- new Condition 27A;
- treatment of the existing Noise Management Plan;
- the Responsible Authority wording; and
- removal of the earlier express reference to two permanent meteorological monitoring facilities against a pre-existing administrative record concerning those facilities.

The Trustee is therefore concerned that DTP may have:

- a. communicated an affirmative NZS 6808:2010 compliance position without maintaining or identifying all foundational records necessary to support that position;
- b. relied upon post-construction technical conclusions without adequately recording how the underlying mandatory permit and NCTP requirements had been established;
- c. failed adequately to establish or retain the documentary basis for the K15aa pre-operation reporting requirement;
- d. failed adequately to establish or retain the final-turbine commissioning trigger necessary to test NCTP monitoring timing;
- e. failed to identify from its own records the requested documentary authority explaining the K15aa timing/location departures specifically raised with it;
- f. failed subsequently to reconcile its earlier affirmative compliance position after the later documentary evidence and FOI outcomes were placed before it;
- g. failed to maintain or identify an adequate administrative record explaining material aspects of the 2026 permit-amendment process; and/or

h. failed reasonably to respond when repeatedly given the opportunity to clarify, maintain, qualify or correct its administrative record.

These are matters for investigation.

They are not presented as predetermined findings by the Trustee.

## **24. Matters requested for investigation**

The Trustee respectfully asks the Ombudsman to investigate:

- 1.** Statutory and Permit responsibility — how DTP understood and administered the Minister's responsibilities under s 97H and the Planning Permit concerning matters required to be approved by or undertaken to the satisfaction of the Minister.
- 2.** DTP's affirmative compliance position — what reports, records, advice, assessment or other material DTP relied upon when stating that the submitted post-construction assessments demonstrated compliance with NZS 6808:2010.
- 3.** Condition 23(a) — what DTP established concerning whether the sound levels relied upon were determined in accordance with the Standard at noise-sensitive locations as defined in the Standard.
- 4.** Minister-endorsed NCTP — how DTP satisfied itself that the use and compliance pathway had been carried out in accordance with the NCTP as required by the Permit.
- 5.** K15aa report submission — what record established that the updated K15aa report required by the NCTP was submitted to the Responsible Authority before commencement of operation.
- 6.** K15aa monitoring location — what documentary or statutory basis DTP relied upon in accepting or relying upon the approximately 100 metre monitoring location against the requirements appearing in the Permit and endorsed NCTP.
- 7.** K15aa background-monitoring circumstances — what consideration DTP gave to the later material identifying commissioning activity and turbine operation during part of the 2019 monitoring period.
- 8.** Final-turbine commissioning — what date DTP actually relied upon, what documentary source established that date and how the NCTP Stage 1 and Stage 2 timing requirements were tested against it.
- 9.** CS019200 authorising basis — how DTP's affirmative NZS compliance position is reconciled with its later FOI clarification that its responsible branch did not believe DTP possessed a document, instrument or written authority permitting or authorising the identified departures and that relevant enquiries located no responsive document.
- 10.** Proposed NCTP revision — what significance DTP attributed to the proposed revised NCTP and its subsequent withdrawal/non-endorsement when determining what compliance framework remained operative.
- 11.** Subsequent reconsideration — whether DTP reasonably reconsidered or reconciled its earlier compliance position after the developed documentary record and DTP's own FOI outcomes were expressly placed before it.
- 12.** 2026 s 97J amendment process — whether DTP maintained an adequate administrative record documenting the assessment and determination by which the publicly exhibited amendment resulted in the final Permit.
- 13.** Condition 27A — what assessment, advice or reasoning supported its introduction and how DTP understood its relationship with the existing NCTP, NCIRP, Noise Management Plan and regulation 131E.
- 14.** Existing Noise Management Plan — what consideration was given to the 18 October 2022 NMP when the transitional wording in Condition 27A was formulated.

**15.** Responsible Authority wording — what administrative and statutory basis supported the final Permit's identification of the Minister for Planning as Responsible Authority and how that position was reconciled with the statutory framework reproduced in the Permit.

**16.** Meteorological monitoring facilities — what consideration DTP gave to the pre-existing number/status/authorisation issue and its own 4 April 2024 secondary-consent record when the final Permit ceased to reproduce the earlier express reference to two permanent meteorological monitoring facilities.

**17.** Advertised and final Permit comparison — what contemporaneous record explains the identified differences between the publicly presented amendment and final Permit.

**18.** Administrative response — whether DTP acted reasonably when the Trustee repeatedly sought clarification of DTP's own existing positions and administrative record rather than asking DTP to accept a predetermined allegation.

## **25. Outcome sought**

The Trustee does not seek a predetermined finding that Lal Lal Wind Farm is non-compliant.

Nor does the Trustee ask the Ombudsman to undertake the functions of DTP, the Minister for Planning, EPA, the Responsible Authority or an acoustic expert.

The Trustee seeks an independent investigation into DTP's administrative conduct and documentary foundation.

In particular, the Trustee respectfully asks that DTP be required, where appropriate, to:

- identify the documentary basis upon which its affirmative NZS 6808:2010 compliance position was communicated;
- identify the primary records establishing the foundational K15aa and final-turbine commissioning requirements upon which that position depended;
- explain how the K15aa measurement-location and background-monitoring issues were administratively reconciled with the Planning Permit and Minister-endorsed NCTP;
- identify any statutory, permit, endorsed-plan or other documentary authority relied upon where DTP considered a different methodology permissible;
- explain whether and how its earlier compliance position was reconsidered after the later documentary and FOI record became available;
- identify the contemporaneous assessment and administrative record supporting the 2026 s 97J amendment;
- explain the basis for Condition 27A and its relationship with the existing NCTP, NCIRP and Noise Management Plan;
- explain the statutory and administrative basis for the Responsible Authority wording in the final Permit;
- explain the administrative basis for the changed meteorological-monitoring wording, including what consideration was given to the pre-existing facility record;
- correct or qualify any historical administrative position which cannot be substantiated from the available record;
- identify relevant records which ought reasonably to have been created or retained but cannot now be located; and
- reconsider any administrative position materially dependent upon a factual or documentary foundation which cannot be substantiated.

If DTP holds material which answers these matters, the Trustee asks that it be identified.

If DTP does not hold such material, the Trustee respectfully asks the Ombudsman to investigate how the relevant positions and decisions were reached and whether DTP's administrative process and record keeping were adequate.

## **26. Why Ombudsman investigation is warranted**

The Trustee recognises that wind farm planning and noise regulation involve technical material and overlapping agency responsibilities.

That complexity is not itself the complaint.

The concern is that complexity makes a clear, reliable and identifiable administrative record more important, not less.

DTP stated that the submitted post-construction assessments demonstrated compliance with NZS 6808:2010.

That statement was made in the context of a Planning Permit which expressly incorporated the Standard and a Minister-endorsed NCTP forming part of the Permit.

The later documentary record has exposed identifiable gaps or unresolved matters going to the foundation of that position.

Those matters were not withheld from DTP.

They were:

- progressively raised through correspondence with Michael Juttner;
- formally placed on DTP's administrative record;
- expressly put to the Minister for Planning;
- tested through DTP's own statutory FOI processes; and
- returned to DTP and the Minister for clarification and reconciliation.

DTP was not required to agree with the Trustee.

But an affirmative administrative position that submitted material demonstrated compliance should be capable of being explained by reference to an identifiable documentary foundation.

The same principle applies to the 2026 permit amendment.

The Trustee does not ask the Ombudsman to infer invalidity merely because the final Permit differs from the publicly exhibited proposal.

The Trustee asks:

What was considered?

What explains the differences?

What administrative record was created?

And why has that record not been substantively identified when expressly requested?

The essential difficulty can therefore be stated simply:

DTP said the submitted assessments demonstrated compliance with NZS 6808:2010. Its subsequent statutory searches have not identified several foundational records or the requested authorising basis relevant to that position. Those gaps were expressly put back before DTP and the Planning Minister, but the affirmative position has not been substantively reconciled.

DTP then administered an amendment to the same Ministerial Planning Permit. The final instrument contains material matters requiring reconciliation with the publicly exhibited proposal and with issues already present on the administrative record, yet the requested administrative explanation has not been substantively provided.

The Trustee respectfully considers that those circumstances warrant independent investigation by the Victorian Ombudsman.

The Trustee further asks that this complaint be considered together with the related administrative and evidentiary material already held under File C/26/3280, rather than requiring the entire Lal Lal Wind Farm documentary record to be reproduced again.

## **27. KEY DOCUMENTS PROVIDED WITH THIS COMPLAINT**

The Trustee has deliberately confined the attachments to this complaint.

A substantial part of the underlying Lal Lal Wind Farm documentary record has already been provided to the Victorian Ombudsman under File C/26/3280, including through the related EPA and Moorabool Shire Council complaints.

The Trustee does not consider it necessary or useful to reproduce that material merely because it is also relevant to DTP's administrative conduct.

The following documents are therefore provided principally to establish DTP's own administrative position, the opportunities afforded to DTP and the Minister to reconsider or explain that position, and the separate 2026 permit-amendment chronology.

### **Attachment A — DTP Correspondence — Michael Juttner — Affirmative NZS 6808:2010 Compliance Position**

DTP correspondence recording its position that the post-construction noise assessments submitted by the proponent demonstrated that noise from Lal Lal Wind Farm complied with NZS 6808:2010.

This is the Departmental position whose documentary and administrative foundation the Trustee subsequently sought to clarify.

### **Attachment B — Clarification of DTP Reliance Position — March–April 2026**

The Trustee's 30 March 2026 correspondence asking DTP whether, having regard to the developed documentary record, it maintained its earlier compliance position or considered that further consideration was required.

The attachment also includes the 7 April 2026 Notice to the Minister for Planning, which placed the unresolved Departmental reliance position directly before the Minister and afforded a further opportunity for administrative clarification.

### **Attachment C — Formal Submission — Proposed Amendment to Planning Permit PL-SP/05/0461 — 25 February 2026**

The Trustee's formal submission during the 2026 permit-amendment process.

The submission is provided to establish the matters raised with DTP before determination of the amendment, including the proposed transition from the existing planning-permit noise framework.

#### **Attachment D** — Publicly Exhibited Planning Permit Amendment Material — 2026

The publicly exhibited amendment material identifying the proposed scope of the amendment, including amendment of Condition 23, deletion of Conditions 24–27 and the express statement:

“The proposal does not seek to alter any other conditions of the permit.”

This material is provided as the relevant public proposal against which the final permit instrument and the Trustee's subsequent requests for administrative reconciliation can be understood.

#### **Attachment E** — Final Amended Planning Permit — 15 May 2026

The final Planning Permit resulting from the s 97J amendment process.

The Permit includes the final Condition 27A, Responsible Authority wording, amendment history and final permit-allowance description relevant to the differences subsequently raised with DTP.

#### **Attachment F** — Post-Amendment Administrative Reconciliation and Ministerial Correspondence — May–August 2026

The correspondence recording the opportunities subsequently afforded to DTP and the Minister for Planning to clarify or reconcile the developed administrative record, including:

- the 18 May 2026 Notice seeking administrative clarification and reconciliation following determination of the permit amendment;
- the 26 May 2026 follow-up;
- the 26 June 2026 correspondence recording the absence of acknowledgment or substantive response;
- the 10 August 2026 correspondence to the Minister for Planning seeking a substantive response or identification of the appropriate Departmental decision-maker; and
- the 18 August 2026 follow-up seeking acknowledgment.

The 10 August correspondence afforded 14 days for response. That period expired on 24 August 2026. No acknowledgment or substantive response had been received as at 25 August 2026.

Note concerning the existing Ombudsman record

The reduced attachment schedule is intentional.

The Trustee respectfully asks that this complaint be considered together with the related documentary material already held under Victorian Ombudsman File C/26/3280.

Documents already provided through that record are not reproduced merely because they are relevant to this complaint. This includes underlying planning-permit, noise-compliance, FOI and technical material referred to in the body of the complaint.

If the Ombudsman considers that any particular document should be provided again for the purposes of this complaint, the Trustee can provide it promptly.

The Trustee does not ask the Ombudsman to independently determine acoustic compliance, determine that a meteorological monitoring facility was unlawfully authorised, or determine the legal validity of the 2026 permit amendment.



The complaint instead concerns DTP's administrative decision-making, documentary foundation, record keeping, reconsideration and permit-amendment administration, viewed against the documentary record already before the Ombudsman.

Yours faithfully,

**LEWIS TROJAN HORSE PTY LTD** (ACN 693 680 509)  
as Trustee of the **Owen Robert Inter Vivos Trust**