

22 April 2016

NSW Planning Assessment Commission Determination Report Cultural Event Site Concept Plan and Project D4399-16

1. Introduction

Planners North on behalf of Billinudgel Property Pty Ltd (the Proponent) has submitted an application to modify its existing Concept Plan and Project Approval (MP 09_0028) for the Cultural Events Site at North Byron Parklands.

The proposed modification primarily involves increases to the current noise limits and the inclusion of a low frequency noise control, which would allow the Proponent to operate in accordance with a more suitable noise criteria compared to the original approval by the Commission in April 2012. The modification also proposes the ability for the Proponent to host minor community events during the trial period.

The site is located on Tweed Valley Way and Jones Road, Yelgun within the Byron local government area. The site has been hosting events on a trial basis since 2012.

2. Background

On 24 April 2012, the Planning Assessment Commission (the Commission) approved a Concept Plan and Project Approval for a cultural events site at the North Byron Parklands, Yelgun as a five year trial (MP 09_0028). Concept Approval was granted to allow the site to be used for cultural, educational and outdoor events with associated camping/car parking facilities comprising two stages:

- Stage 1 Project Approval permitted outdoor events to be held until the end of 2017, construction of infrastructure including spine road, underpass, intersections, laneways, drain crossings; and vegetation management.
- Stage 2 provided for the construction of an administration building, a water treatment plant, and a wastewater treatment plant.

Since the original trial approval, North Byron Parklands has held five events at the site (three large trial events and two medium trial events). Works have also been completed on an access road, underpass, various intersections, laneways and drain crossings.

The current approvals allow the Proponent to carry out three events per calendar year (one small, one medium and one large event) over a five year trial period concluding at the end of 2017. Any events being held under the Project Approval are considered to be trial events, with the intent being that each trial provides a benchmark for further monitoring, trend analysis and subsequent continuous improvement. The Project Approval has been modified on two occasions for administrative amendments to the conditions of the Project Approval as well as correcting the naming of Yelgun Creek.

3. Application

The primary aspect of the modification application before the Commission is a request to revise noise criteria, based on the experience of previous trial events held in summer and winter at North Byron Parklands. The modification seeks to increase the noise limits provided under the current consent. The modification also seeks to include an additional criteria for lower frequency sound emissions (i.e. bass noise) rather just higher frequency or 'A weighted' emissions, as the current Project Approval does not regulate bass frequency noise.

In addition to changes to noise criteria, the modification request seeks to introduce a minor community focussed events category. As proposed, this would permit the trial to include non-music events of up to 3,000 patrons, thus enabling the site to be accessible to a broader range of uses by the wider community.

The Commission heard that, taken together, these changes will provide further local employment opportunities and enhance the region's competitive edge in the music, arts and cultural areas.

4. Delegation to the Commission

On 27 January 2016, the Department of Planning and Environment (the Department) referred the application to the Commission for determination under the Ministerial delegation of 14 September 2011, as more than 25 objections had been received to the proposal.

The Commission nominated to determine the application comprised Ms Lynelle Briggs AO (Chair), Ms Ilona Millar and Professor Zada Lipman.

5. Secretary's Environmental Assessment Report

The proposal has been assessed by the Department as documented in the Secretary's Environmental Assessment Report (SEAR). The key issues considered in the SEAR were:

- noise;
- minor community events;
- ecology; and
- other matters (traffic, meteorological conditions, amenity and local impacts, administrative amendments of the conditions and Statement of Commitments.)

Following a review of the application, the Department exhibited the modification request for a period of 18 days in June 2015; consulted with Council and other relevant government agencies; and notified residents within approximately two kilometres of the site by letter.

The majority of public submissions objected to the noise restriction modifications, and many argued that it was inappropriate to change a trial's conditions prior to its conclusion. Several submissions also objected to the holding of minor community events at the site, with concerns related to the potential increase in impacts, particularly noise, ecology and traffic.

The Department concluded that with the implementation of the Proponent's mitigation measures, in addition to the Department's recommended conditions, the site can continue to operate on a trial basis with minimal impacts upon the environment.

The Department found that the recommended inclusion of low frequency noise limits will provide benefits to the community and the Proponent through the provision of specific limits year round, and setting clear expectations and management measures to enforce these limits. The Department also found that the increased utilisation of the site for minor community events would have minimal environmental impact and would likely benefit the broader community.

Taking the above into account, the Department recommended approval of the modification application under section 75W of the *Environmental Protection & Assessment Act 1979*, subject to the recommended modified conditions of consent.

6. Site Visit and Meetings

Briefing by the Department of Planning & Environment

On 18 February 2016, the Commission was briefed by representatives of the Department. They outlined the history of the site; the events currently held; compliance assessments the Department has undertaken in relation to noise; improvements introduced by the Proponent to comply with the current conditions; and the Department's assessment of the modification.

The Department also provided further details on the non-compliance investigation process it undertook in relation to the noise complaints during the events. The current noise management and site operations to deal with noise impacts, traffic and overall disturbance were discussed.

A summary of key issues discussed is provided in **Appendix 1**.

Site visit and meeting with the Proponent

On 23 February 2016, the Commission inspected the site, accompanied by the Proponent who provided details of the current modification, as well as the broader rehabilitation works undertaken at the site.

In addition to the site visit, the Commission met with the Proponent at their office in North Byron Parklands. Proponent representatives presented a short video of the site and history of their approval processes up to date, outlining why they need to increase their noise limits through the modification. The Proponent also presented maps of sensitive receivers that are currently being compensated for noise impacts. The adequacy of the Industrial Noise Policy as a relevant compliance instrument was discussed, with its deficiencies highlighted in comparison to the current modification proposal.

Subsequently, on 24 February 2016, the Commission undertook a further unaccompanied inspection of the surrounding area including Jones Road.

A summary of the site visit and meeting with the Proponent is provided in **Appendix 1**.

Meeting with Byron Shire Council and Tweed Shire Council

On 23 February 2016, the Commission met with both affected Councils in order to discuss their views and any outstanding issues in relation to the modification assessment. Both Councils acknowledged that the Proponent had improved in the management of traffic since its first large event, and that it is fully aware of the waste management issues due to the meteorological conditions that the area is exposed to in the winter season. Councils also acknowledged the Proponent seeks to take immediate action on such issues during and after events and that noise impacts are still the main concern for sensitive receivers. Byron Shire Council also outlined the noise and impacts in relation to the operations of the Bluesfest. Council noted that the impacts from Bluesfest may be different to the size and type of music events held at North Byron Parklands.

A summary of the meeting with the Councils is provided in **Appendix 1**.

Public meeting

On 23 and 24 February 2016, the Commission held a public meeting at the Mullumbimby Civic Hall, 55 Dalley Street Mullumbimby. Fifty one speakers presented their submissions, with roughly similar numbers speaking for and against the modification.

Those who opposed the modification objected for a variety of reasons, including noise impacts not adequately managed during both of the large events; effects of noise on flora and fauna; failure to comply with traffic and waste management conditions; and the perceived inadequacy of the recommended noise limits by the Department.

Those speaking in support of the proposal outlined a range of reasons why the modification should proceed. These included that the large music events strengthen the area's popularity for tourism and deepen its expertise in the arts and creative industries. Speakers also noted the economic and employment benefits the events and associated support industries generate for the region. The benefits of having a venue ground for small events and the employment opportunities that it provides for locals was also mentioned, particularly by local schools and community groups.

A full list of speakers at the public meeting is included in **Appendix 2** and a more detailed summary of the issues raised is provided in **Appendix 3**.

7. Commission's Consideration

On the basis of the information available to the Commission and concerns raised at the public meeting, the following matters were considered in detail by the Commission:

- Noise (compliance, adequacy, low frequency noise);
- Minor Community Events;
- Ecology and Koalas;
- Appropriateness of modifying a trial consent.
- Other Matters

7.1. Noise

Concerns were raised in submissions and at the Public Meeting regarding the current noise impacts from the large events on nearby residences. In particular, failure to comply with the noise limits under the original consent and the perceived inappropriateness of the recommended increased noise limits, in comparison to the Commission's original consent. Potential noise impacts were also raised in relation to the effects on ecology and from low frequency noise.

Many speakers at the public meeting, both from sensitive receivers and from areas further way from the site, expressed concerns that during medium and large events the area had become unpleasant in noise character, and they referenced the scale and type of music that is presented at the events. While some people are not concerned about the noise these events generate (loud music), many others dislike them.

Compliance with current noise limits

Submissions made have alerted the Commission to complaints by local residents about current noise compliance breaches during the large events. At the request of the Commission, the Department provided information on its compliance investigations including:

- Confirmation the Proponent had breached the existing development consent conditions on a number of occasions and that these breaches had been subject to compliance action (including fines) by the Department.
- Advice that the complaints and their compliance investigations showed that non-compliance occurs *prior* to the event itself taking place, during the summer event days. Background noise monitoring shows that noise activity exceeds current noise limits during the hours before the events take place and throughout the day.
- Noise levels are further influenced by changes in meteorological conditions such as temperature inversions and strong wind patterns.
- Their investigations concluded that in most cases low frequency noise (C-weighted frequency noise) or 'bass' noise as described by sensitive receivers was most commonly attributed to the noise disturbance experienced by locals.

A late submission was received on 4 April from the Environmental Defenders Office (EDO) on behalf of local residents. The submission suggested the Department did not record its compliance monitoring data during focused compliance audit and inspections at the Splendour in the Grass 2014 and 2015 respectively. As a result, the submission argued that the Department was not able to provide supporting evidence of their compliance investigations.

The Commission is aware that the Department undertakes compliance audits regularly and issues a Penalty Infringement Notice (PIN) when breaches are confirmed. The Commission accepts that the issuing of PINs is a result of the Department's investigations, and is supporting evidence for compliance action having been undertaken.

Nevertheless, the Commission considers EDO's observation to have relevance and suggests that the Department ensures it records findings during a compliance audit and any follow up investigations. This will not only strengthen the evidence of whether a Proponent/Applicant is in breach or complying with its consent conditions, but will also provide important input into the evaluation of the trial.

Adequacy of the current and recommended noise limits

The Commission's original 2012 consent included noise limits that were established by the Commission taking into consideration the rural setting of the site and the impacts of noise upon sensitive receivers (including fauna and festival-goers). At that time, there were limited guidelines and policies relating to large music festivals, which made it difficult for the Commission to assign suitable noise criteria that minimised impacts upon the community. As the original Commission did not consider the use of one overall noise limit to be the most appropriate in the circumstances, it approved a flexible approach to noise management, using a background plus criteria, on a trial basis, based on guidance provided by the NSW *Industrial Noise Policy*.

The current Commission accepts that the NSW *Industrial Noise Policy* was not designed for, or intended to control noise from, music events. It is specifically aimed at large and complex industrial activities, which tend to run for extended periods, generating steady and continuous noise consistently throughout the year. As such, the Commission acknowledges the Department's questioning about whether the NSW *Industrial Noise Policy* is the most appropriate policy to use when assessing music festival noise.

The Commission understands that the Proponent is currently producing noise above the approved noise limits of up to 55dB (A) and 60dB (A) LAeq, 10-minutes between 11am and 2am. The Commission also understands that due to high fauna activity during the summer season, the surrounding area produces background noise at this same level; and on the days the events take place, noise monitors register noise breaches before the live music component of an event commences as shown in the Proponent's 2014-2015 performance report.

In its original decision, the Commission concluded that the previous recommended criteria of 65dB_{LAeq} before midnight and 60dB_{LAeq} after midnight would not be appropriate for all sensitive receivers as background noise varies significantly among properties adjacent to the site. The Commission acknowledges that there was no time specific period on these levels, thus potentially leading to disputes on measuring times.

The trial events held to date have provided a greater understanding of the noise environment in the surrounds of the site, producing data which assess the suitability and performance of the current and recommended noise levels. This leads the Proponent to seek defined limits for all times of the year across Zone 1, which comprises areas within 1 kilometre of the site, and Zone 2 that includes all other areas as shown in the figure below.

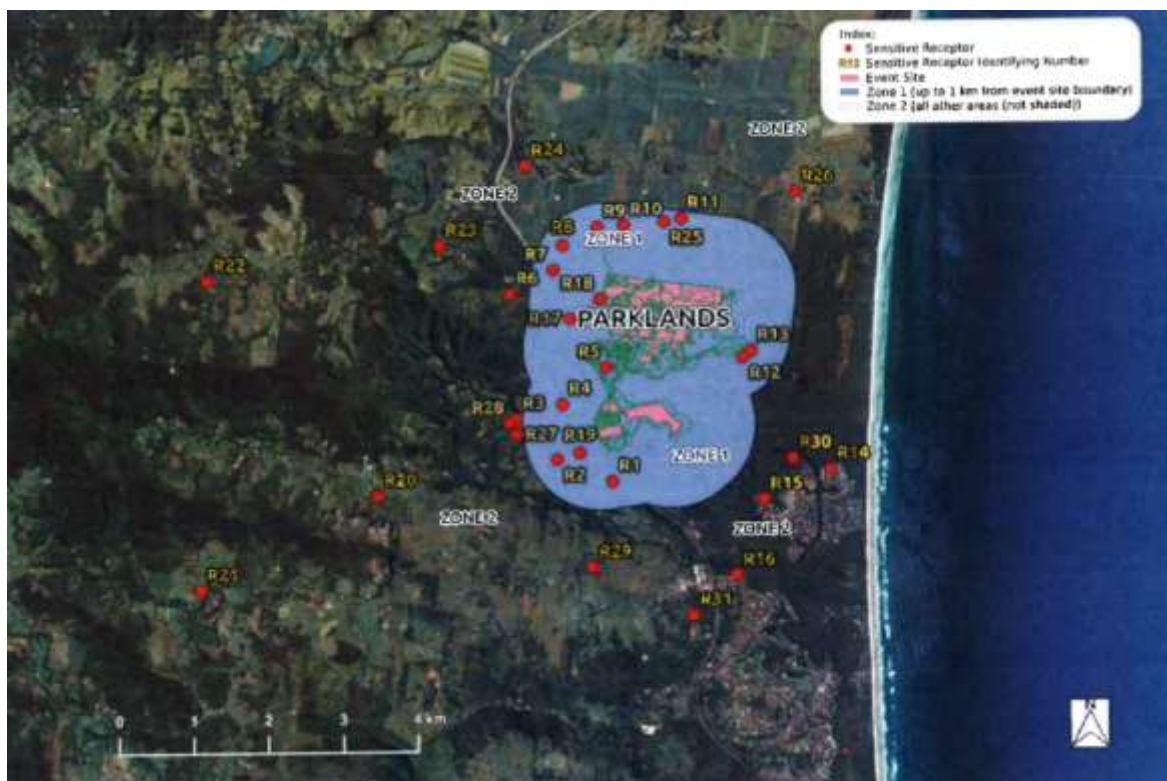


Figure 1: Map representing the NBP site (pink) and the two noise zones (Zone 1 (purple) and Zone 2).

During the public meeting, submissions pointed out that the proposed noise limits would amount to a doubling or tripling of current noise limits, thus enabling the Proponent to emit noise at higher levels. Similarly, the Environmental Defenders Office (EDO) argued that the criteria recommended in condition B3 (2) *“will result in significantly increased levels of noise at the sensitive receivers and beyond, in some cases resulting in noise that would be perceived as four times as loud.”*

The Commission is advised that the current noise levels emanating from large events may not increase if noise limits are changed. However, questions remain as to whether the increased limits will cause additional or less disturbance to sensitive receivers and the overall community having regard to the natural seasonal background noise levels at the time of the different events.

At the request of the Commission, the Department advised that an increase of 10dB is perceived as a doubling in loudness. However, it is not possible to say that such an increase would produce twice the annoyance as the increase may not be audible, dependent on various aspects (such as the context in which the noise is heard, its characteristics and loudness). The modification seeks an increase of the permitted noise limits, not the actual noise generated. This is contrary to the perception that the Proponent requests to increase the actual noise emanating from the outdoor events.

The Commission considers that the recommended noise limit change from background plus to 60dB (A) LAeq, 10-minutes provides for a more appropriate noise compliance restriction. The new restriction will not allow the Proponent to increase the actual noise emanating from the events. Overall, it would assist the Proponent to provide better noise management and to ensure that all necessary mitigation and management measures are in place across the two noise zones.

In light of the above, the Commission is satisfied that specific noise limits across the two delineated zones would provide greater certainty and that specific limits would be consistent across all events held at the site. The modification will establish consistent, measurable and enforceable controls, throughout the remainder of the trial period and set clearer expectations amongst the community for each event.

Low frequency noise levels

The Commission notes that the existing approval that applies to trial events at the site does not provide low frequency noise limits (C-weighted frequency). The Commission’s original determination report did not fully address this matter and focused on A-weighted frequency noise which is the sound detected by, and known to cause damage to, the human ear.

As the trial period has progressed, the events held have provided performance base data on the Proponent’s operations at the site, particularly in relation to noise compliance monitoring. The Commission notes that the Department’s compliance investigations and detailed monitoring have established that low frequency noise is causing much of the disturbance within the surrounding community. This is supported by a high proportion of complaints from the community mentioning ‘bass’ noise in community feedback to the Proponent.

The Commission understands that the Proponent analysed data collected from previous events, which indicated that the low frequency noise emanating from the events was predominantly within the 63 hertz octave band. This octave band is considered to capture most drum and bass beat signals.

Nevertheless, those that objected due to noise issues in their submissions or who spoke at the Public Meeting stated that, regardless of the difference in type of frequency, whether A-weighted or C-weighted, disturbance from noise is still the main issue that needs to be addressed. The Commission acknowledges that many sensitive receivers settled in these areas prior to the site's use as a venue for music focussed events and that these events have brought considerable disturbance to their quiet rural lifestyles.

The Commission is aware that other sources of low frequency noise can be attributed to vehicle traffic and ocean noise, both found in close proximity to the site and many of the sensitive receivers. This supports the view that the application of a standard low frequency noise limit would not provide an accurate representation of the contribution of event noise to the noise environment. Therefore, setting an additional specific criterion in the 63 hertz acoustic bandwidth (within the C-weighted noise spectrum) will provide a limit on the more disturbing components of event noise upon the community.

The Commission understands that the C-weighted frequency or 'bass sound' control measure may in some instances be insufficient to completely reduce or prevent disturbance/annoyance from occurring. Regardless of the Proponent's effort to manage this and other frequencies, extreme weather and environmental conditions may significantly alter how and where the noise will be perceived or heard. Nevertheless, the proposed low frequency limit will assist in controlling noise at affected sensitive receivers during the remainder of the trial.

The Commission notes that the recommended noise limits have been produced by the Department based on research of sound levels adopted for similar events in other jurisdictions (both domestically and internationally). The Commission sought further advice from the Department on their research and requested a summary comparing the researched noise limits to the limits currently proposed. The Department responded providing a table referencing similar outdoor venues (see tables below).

Summary of key Australian Noise Limits				
State	Venue/Area of Application	Event Details	Time	Noise Restrictions
New South Wales	Centennial Park and Moore Park	<ul style="list-style-type: none"> 8 concerts per year Up to 4 consecutive days 	10am - 10:30pm (some may continue to 11:00pm)	LA Max - 65 dB LC Max - 85 dB
	Sydney Cricket Ground	<ul style="list-style-type: none"> 4 concerts per year 3 hour time limit 	10am - 10:30pm	LA Max - 70 dB LC Max - 90dB
	Sydney Football Stadium		10am - 10:30pm	LA Max - 80dB LC Max - 100dB
	Sydney Olympic Park	<ul style="list-style-type: none"> Noise levels measured at the closest residential façade 	Noise level of 85dB (A) (LA10, 15mins)	
	Blues Fest	<ul style="list-style-type: none"> Event Specific 	7am - 6pm Leq(15min) 65 dB(A) 6pm - 10pm Leq(15min) 55dB(A) 10pm -12am Leq(15min) 50dB(A)	
	Bliss n Eso (Domain of the Sydney Royal Botanical Gardens) 16 and 17 April 2014	<ul style="list-style-type: none"> Event Specific 	LAmax 70dB(A)	
	Field Day (Domain of the Sydney Royal Botanical Gardens) 31 December 2013 and 1 January 2014	<ul style="list-style-type: none"> Event Specific 	LAmax 70dB(A)	

Summary of key Australian Noise Limits				
State	Venue/Area of Application	Event Details	Time	Noise Restrictions
	Sydney Festival (Parramatta, NSW) 21 January 2012	• Event Specific		L _{Amax} 75dB(A)
	St Jerome's Laneway Festival Rozelle Hospital Grounds (Sydney, NSW) 2 February 2013	• Event Specific		L _{Amax} 75dB(A)
	A Day on the Green Centennial Vineyards (Bowral NSW) 11 November 2012	• Event Specific		L _{Aeq} 65dB(A)
	A Day on the Green Bimbadgen Estate Winery (NSW) 24 March 2014	• Event Specific		L _{Amax} 65dB(A)
Queensland	Queensland (<i>Environmental Protection Act 1994</i>)	Throughout Queensland. There may be other event specific criteria	7am - 10pm	70dB(A)
	Brisbane City Council Local Law Policy ((<i>Entertainment Venues and Events</i>) 1999)	Throughout Brisbane There may be other event specific criteria.		Rear of Venue: 85 dB(A) Leq to a max of 100 dB(A) L10. Nearest Residence: 55 dB(A) Leq to max of 70 dB(A) L10. FOH: 95 dB(A) to max of 100 dB(A) and 105 dB(A) @ 63 Hz.
	Foo Fighters Metricon Stadium	• Event Specific		L _{Aeq} 70 dB(A)
	A Day on the Green Sirromet Winery (Mt Cotton, QLD) 30 March 2014	• Event Specific		L _{Aeq} 70 dB(A)
	Splendour in the Grass Woodford, QLD July 2011	• Event Specific		Daytime - Midnight Leq(5min) 60 dB(A) / L(Max) 63 dB(A) / C-A of 10 to 15 dB. Midnight - 2am L(Max) 45 dB(A) / C-A of 10 to 15 dB.
Victoria	State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2	Throughout Victoria. There may be other event specific criteria.		Till 11pm 10pm if > 5hrs 65 dB(A)
	A Day on the Green The Hill Winery (Waurin Ponds VIC) 16 February 2013	• Event Specific		L _{Aeq} 65dB(A) outdoors and 55dB(A) indoors
	Falls Festival, Lorne	• Event Specific		11am - 11pm Leq 65 dB(A) 11pm - 2am Leq 55 dB(A) 2am - 6am Leq 40 dB(A)
	Meredith Music Festival, Meredith Victoria	• Event Specific		65 dB(A) 10am - Midnight 50 dB(A) Midnight - 3am
Western Australia	Environmental Protection (Noise) Regulations 1997. (Not applicable to approved non - conforming events)	Throughout Western Australia. There may be other event specific criteria.		7am - 7pm: 65 dB(A) 7pm - 7am: 60 dB(A)
South Australia	Adelaide City Council. Event Noise Mitigation SoP.	Throughout South Australia. There may be other event specific criteria.		7am - 11pm: 60 dB(A) / 75 dB(A) L _{max} 70 dB(lin) in 31.5 / 63 / 125 Hz (recommended) FOH 110 dB© (recommended)

Summary of key Australian Noise Limits				
State	Venue/Area of Application	Event Details	Time	Noise Restrictions
Tasmania	Falls Festival, Marion Bay	• Event Specific	11am - 11pm: Leq65 dB(A) 11pm - 2am: Leq 55 dB(A) 2am - 4am: Leq 40 dB(A)	

Table 1: Summary of Key Australian Noise Limits
Source: Secretary's Environmental Assessment Report

Summary of some International Noise Limits for the United Kingdom and Ireland			
Venue	Internal Criteria	External Criteria Leq	Low Frequency Limit
Lancashire County Cricket Club	None	80 dB(A)	No
Heaton Park, Manchester	None	80 dB(A)	No
Hyde Park, London	None	75 dB(A)	No
Victoria Park	None	75 dB(A)	No
RDS Showground, Dublin	None	75 dB(A)	No
Twickenham Stadium	None	75 dB(A)	No
Hampden Park, Glasgow	None	75 dB(A)	No
Ricoh Stadium, Coventry	101 dB(A) Leq	75 dB(A)	No
Don Valley, Sheffield	None	75 dB(A)	No
Portman Road, Ipswich	None	75 dB(A)	No
Madejski Stadium, Reading	None	75 dB(A)	No
St Marys, Southampton	None	75 dB(A)	No
Rosebowl, Southampton	None	75 dB(A)	No
Stadium of Light, Sunderland	None	75 dB(A)	No

Table 2: Summary of International Noise Limits
Source: Secretary's Environmental Assessment Report

Glastonbury					
Time Period	10:00 - 18:00 Friday, Saturday & Sunday	18:00 - 00:00 Friday & Saturday	00:00 - 00:30 Saturday & Sunday	18:00 - 23:30 Sunday	23:00 - 00:00 Sunday
Noise Level Leq (15 min)	60 dB(A)	65 dB(A)	57 dB(A)	65 dB(A)	57 dB(A)

Table 3: Glastonbury Noise Limits
Source: Secretary's Environmental Assessment Report

The Commission notes that the noise levels shown in the Department's response are consistent with what is currently adopted in similar outdoor venues; however in some venues less stringent limits are imposed compared to those being proposed. Furthermore, the C-weighted frequency, currently attributed for most of the annoyance at the North Byron Parklands, is not currently regulated in all venues across the nation.

Additionally, the Commission notes that the Department's research showed that international events such as those hosted in the United Kingdom and Ireland do not regulate the C-weighted frequency.

The Commission is of the view that the decision to include a specific low frequency noise limit acoustic bandwidth within the recommended consent is appropriate during the remainder of the trial period. This would go some way to provide certainty to the community, more specifically to sensitive receivers that different types of noise will now be constantly monitored and managed.

The Commission accepts the Department's advice that the modification to noise restrictions is consistent with other noise restrictions currently adopted at other outdoor events and that it *'will result in a zonal arrangement of noise catchments that considers sensitive receivers both close to and further away from the site.'* While noise impacts do remain, the Commission notes that these impacts are consistent with the level of impact contemplated in the original approval. On balance, the Commission accepts that the increase in noise limits does not make a substantive or any difference to the noise impacts already occurring. In this regard, the Commission notes that the Department has amended condition *B3 Noise Restrictions* to reflect the recommended noise limits including the C-weighted frequency.

Overall on noise, the Commission agrees that the NSW *Industrial Noise Policy* is not the adequate compliance instrument for the site to assess its performance. Considering the site is under a trial period, the Commission agrees to the Department's recommendation that the current noise limits be revised based on evidence from previous events and feedback from the community at different times of year.

7.2. Minor Community Events

Many people at the Public Meeting supported the inclusion of minor community events in the trial. However, concerns were raised in submissions and at the Public Meeting about the type and number of events that could be held at the site and the potential noise impacts emanating from the minor community events.

The Commission notes that the modification request seeks approval to host non-music focussed community events in addition to the major events. The Department recommended approving five events for the 2016 trial year and, based on the performance of these events, the Proponent may request unlimited small community events for the 2017 trial year.

The type of minor community events the Proponent desires to hold on the site are defined within the Department's recommendation as follows:

- *'minor community event' is an outdoor trial event of up to 1,500 persons that is non-music focused, provides an educational purpose or a cultural experience for the community and operates between the hours of 9 am to 10.30 pm.*

The Proponent has requested on their application under section 75W to limit the types (and as a result the impacts) of these minor community events to be:

- Non-music focused;
- Small enough not to require external traffic management;
- Conforming with the applicable Parklands general management protocols and consent conditions.

Additionally, the Proponent has confirmed they would not levy any charges for certain minor community events (see **Appendix 4**). They have advised that the specific eligibility criteria for a small community event to have access to the site free of charge is that they must be either:

- A registered not-for-profit organisation; or
- An accredited educational institution (i.e. primary and secondary schools, universities, TAFE, etc.).

The Commission also notes that the Proponent requests to have up to 3,000 patrons allowed for minor community events, with 50% arriving by bus. This would double the capacity of patrons originally allowed.

The Commission supports holding a limited number of minor community events on the site during the trial period as a means of supporting local community activities (such as cross-country running) and providing returns from the facility to the region.

The Commission notes Roads and Maritime Services' (RMS) concerns in relation to the traffic mitigation measures proposed by the Proponent. RMS stated that enforcing 50% of patrons to arrive by bus would not be viable or enforceable as at any given event more than 50% of patrons (above 1,500) may arrive in personal vehicles. Therefore, traffic impacts would be immediately felt at the south off-ramp considering the limited capacity of the Yelgun Interchange.

The Commission reviewed the information within the SEARS, the submissions by RMS as well as public submissions and agrees that the impacts of minor community events could be managed within the confines of the site of up to 1,500 patrons regardless of their arrival means. This patron capacity would assist in ensuring that traffic impacts remain manageable and of limited disturbance to local residents while these minor events take place. The Commission also recommends restricting operating times of the minor community events to 9:00am to 10:30pm on any day.

Additionally, the Commission recommends limiting the site to host only one event per day and amends the Department's recommendation of approving unlimited minor community events to ten (10) minor community events for the 2017 trial year.

The Commission believes it is important to ensure that sensitive receivers are not further impacted as a result of the inclusion of the minor community events in the trial. Should the Proponent fail to comply with conditions, specifically with the performance management of these events during the 2016 trial period, the number of events to be requested by the Proponent for the 2017 trial year shall be at the discretion of the Secretary following consideration of the performance management plan, and no more than ten (10) minor community events may be held.

Moreover, in correspondence from the Proponent the Commission was advised that the types of small events envisaged "do not rely heavily on amplification equipment (like music type events do)." The Commission is satisfied with this and in addition recommends to specifically exclude events such as motocross, monster trucks and similar. This will be achieved through the careful definition of the term 'minor community event' as outlined in the modified instrument. Further information is provided in **Appendix 4**.

Conditions of approval and restrictions of the type of events should reflect these recommendations within *Condition B2 – Trial period for outdoor events* including additional minor community events.

7.3. Ecology

The modification request does not propose any significant amendments to the original ecology conditions. However, submissions received before and after the Public Meeting raised concerns in relation to the requested modifications of noise limits and their potential to indirectly impact upon the ecology of the site and the surrounding area, along with impacts resulting from the inclusion of minor community events.

The Commission acknowledged in its original 2012 report that forecasting the cumulative impacts of events upon the ecology of the area is difficult, and thus recommended a trial and monitor approach (as proposed by OEH) to determine the effectiveness of the Proponent's management plans on ecological values on and around the site, including koalas.

The Proponent has produced its annual Performance Report, which highlights a number of environmental performance goals that have been met. The report also highlights that impacts upon flora and fauna have been minimised, with no significant adverse impacts as a result of events held to date, according to the Event Impact Monitoring (EIM) that the Proponent has undertaken.

OEH's submission noted that whilst matters requested within the modification appear to be minor, the accumulation of the proposed modifications would result in an intensification of the use of the site. It further indicated that intensification is likely to result in an increase in both direct and indirect impacts upon the ecological values of the site.

The Commission notes that within the Proponent's Statement of Commitments, the Proponent committed to the implementation of an 'Ecological Structure Plan' which requires the rehabilitation of the site and ultimate dedication of some land parcels to OEH. OEH has further advised that *"the Ecological Structure Plan will inform the rehabilitation works required across the identified areas of the North Byron Parklands site"* and that the focus is *"to restore pre-disturbance vegetation communities..."* including koala food trees. OEH has also agreed to be consulted throughout the development and implementation of the ecological monitoring program and structure plan. For that reason, the Commission supports the Department's recommendation that an implementation schedule for the Ecological Structure Plan be developed in consultation with the Regulatory Working Group and OEH, along with the respective recommended provisions.

Additionally, the Commission has determined, after the words 'a revised Ecological Structure Plan' in Condition C20(c), that 'incorporating the requirements of Commitment B12' be inserted, as this would reference the requirements for habitat restoration.

In an effort to ensure that the 'Flora and Fauna Rehabilitation Program' completely considers the impacts of the operations at the site on wildlife, the Commission believes that Condition C20(g) could be further strengthened. The Commission consulted the Department on this matter and the Department responded in accordance with OEH's advice that condition of consent C20(g) *"should be amended to ensure that existing frequency for monitoring is maintained for large and medium events"*. The Commission agrees with this advice and determines to reinstate the current monitoring regime as originally approved. This will ensure the data that has been captured to date can be compared over the five year trial approval period.

The Commission notes that the Proponent already has approval to construct and operate an administration building, a water and wastewater treatment plants; and that this modification application is not seeking to change the footprint of the site, nor clear additional land within or outside the landscape.

The Commission is satisfied that the Ecology concerns have been addressed properly.

Koalas

The potential impacts of the project on koalas and their migration corridors were raised as a concern at the Public Meeting. It was also raised that the Proponent had not included koalas in its referral to the Commonwealth.

The Commission heard that koalas were occasionally sighted in the vicinity of Jones Rd. However, the sightings were anecdotal and there is no evidence of the specific sighting being formally recorded.

The Proponent, in its response to the submissions heard at the Public Meeting, stated that although the project area is potential koala habitat, the project would be unlikely to cause any more than negligible impacts.

The Commission notes that the Proponent wishes to amend Condition C21 of the trial Project Approval to require an updated Koala Plan of Management in the event that a koala population becomes established on the site as a result of the continuous koala tree planting as part of the rehabilitation works of the identified areas advised by OEH. The Commission notes that the Proponent has undertaken five 'whole of property' koala surveys since 2007, along with the flora and fauna monitoring programs undertaken in conjunction with events held at the site, and that no koalas have been sighted during any of these monitoring events. Although the project does not involve any significant vegetation clearing and the site is not considered core koala habitat, it is up to the Proponent to ensure that appropriate referrals and authorisations are sought from the Commonwealth if koalas are sighted.

As the trial period still has two years before completion, the Commission supports the proposed amendment to Condition C21 of the trial Project Approval and is satisfied that any impacts on koala habitat that may occur as a result of the events have been previously assessed and that the current application will not lead to an increase in any impacts.

7.4. Modifying the approval during the trial

A number of submissions and speakers made the point that the trial consent conditions should not (and, in some cases, could not) be modified mid-way through the trial period. Concerns related to the technical ability of the consent to be modified and that, by changing the conditions, the purpose of the trial would be undermined.

The provisions of Section 75W of the *Environmental Protection & Assessment Act 1979* permit a modification application to be made and those provisions do not distinguish between ongoing consents or trial consents. The Department's assessment report has considered this issue. The Commission agrees with the position adopted by the Department that the proposed modification is within the scope of Section 75W of the Act. The proposal is a modification to the existing cultural events site approval (not a new project).

In this instance the Commission believes modifying certain conditions will increase the usefulness of the trial. The purpose of this trial is to ascertain if music-based outdoor events are suitable on this site. The purpose was not intended to be limited to determining if the original conditions are the most suitable means of controlling music based outdoor events.

As noted by the original PAC determination report:

'the trial period provides the proponent and event organisers with the opportunity to develop and refine the plans of management to ensure that outdoor events achieve a reasonable level of community acceptance. These plans of management, if effective, may be required as conditions of holding any events after the trial.

These noise control levels are to be reviewed after the first year of trial to assess their suitability and performance. The levels could be varied if for example, the affected landowner(s) agree to a higher level, or the RWG recommends stricter or different levels that are approved by the Director General.'

As noted by the 2012 Commission in its previous decision, a trial period assesses the capability of the Proponent to comply with conditions and the overall response from the community to its effects. The trial will enable any future consent authority to assess and either approve or refuse the site to host further events on an ongoing basis.

The evidence gathered to date illustrates the original trial conditions are not proving effective in controlling certain impacts from larger events, particularly those held in winter. The reality is they are somewhat ineffective for both the community and the event operators. With less than 2 years remaining on the trial, it is the Commission's view that seeking to adjust the trial conditions is both appropriate and necessary to better inform any future assessments and decisions regarding the long term use of the site. Indeed, it is considered to be in the public interest to explore variations to the original trial conditions at this time.

On balance, the Commission supports the modification of the trial event as it does not make a substantive difference to impacts already occurring, and provides a clear expectation to the community and opportunity for the Proponent to ensure its compliance with the conditions.

7.5. Other Matters

The Commission sought further advice from the Department in relation to some of the recommended conditions and amendments. Below, is a summary of the advice provided. Further information may be found in **Appendix 4**.

In relation to condition of consent C16 the Commission is of the view that the deleted words of "insulation/double glazing of sensitive receivers, etc..." list an example of an on-site impact in relation to the other listed examples of offsite impacts; and that although condition C18 provides a similar reference, it has a different focus.

During the Public Meeting, condition of consent C16 was subject to community concern as it ensures the identification and implementation of best practice management techniques for minimisation of noise on sensitive receivers. Therefore, the Commission does not support the deletion and recommends the words "insulation/double glazing of sensitive receivers, etc..." or similar be reinstated in condition of consent C16(d).

In relation to condition of consent C18(b), the Commission recommends, and the Department is agreeable, to amending the condition by extending the 12 month period for exceedances to an 18 month period to ensure that at least two large winter events are captured.

In relation to condition of consent C42, the Department states that some aspects of this condition duplicate previous requirements under condition of consent 16 and 17. The Commission does not necessarily disagree with this. However, it believes that the value of C42 is that it provides the community with a degree of certainty that all reasonable and feasible measures are taken to mitigate and manage the noise issue during the holding of events in the trial period. Consequently, the Commission has determined to reinstate condition of consent (C42).

8. Commission's Determination

The Commission has considered all the information available to it, including the Secretary's Environmental Assessment Report and submissions to the Department of Planning and Environment. It has also considered the information provided at the Public Meeting, information provided prior to and subsequent to the Public Meeting, as well as observations made during the site visit.

The Commission has considered in detail matters regarding noise impacts (before and during events and for the different seasons), ecology and traffic management. The Commission has also considered other issues including the appropriateness of modifying conditions during the trial; compliance with the current NSW *Industrial Noise Policy*; and adequacy of the modification proposal. The Commission is satisfied that the set of conditions relating to noise (as amended by the Commission) is adequate for the purpose of the trial, and that the overall impacts are reasonable.

The Commission acknowledges the community has strong views both in support of and against the use of the site for large scale cultural events. It also acknowledges the impact that the large scale music events have in comparison to the rural idyll and quietness/remoteness otherwise experienced by some of the most immediately surrounding residents.

The Commission agrees the event site operations do provide broader economic and employment benefits to the region. The events and associated activities add to the area's economic diversity and are complimentary to other industries such as tourism and the arts. These benefits are not insignificant and should be recognised.

The purpose of the trial established by the 2012 Commission was to provide the Proponent and event organisers with the opportunity to develop and refine the plans of management to ensure that outdoor events achieve a reasonable level of community acceptance.

With less than 2 years remaining in the trial, it is the Commission's view that seeking to adjust the trial conditions is both appropriate and necessary to better inform any future assessments and decisions regarding the long term use of the site. Indeed, it is considered to be in the public interest to explore variations to the original trial conditions.

The Commission finds the inclusion of a new category for small community events is a positive modification. If operated in accordance with the limitations imposed by the consent, this new category will provide for non-music events that can serve a broad section of the community.

The Commission supports the Department's recommendation that the modification application be approved, subject to the recommended conditions, some of which are revised and supplemented as follows:

- reinstatement of the words deleted in condition of consent C16(d);
- reinstatement of the current monitoring regime in of condition of consent C20(g);

- the reinstatement of condition of consent (C42);
- the site can operate up to a capacity of 1,500 patrons regardless of their means of arrival during minor community events with restricting operating times to 9:00am to 10:30pm;
- limit the Proponent to host only one event per day and amend the Department's recommendation of approving unlimited minor community events to ten (10) minor community events for the 2017 trial year;
- should the Proponent fail to comply with conditions, specifically with the performance management of these events during the 12 month trial period, the Proponent may only request five (5) minor community events for the 2017 trial year.



Lynelle Briggs AO
Commission Member (Chair)



Ilona Millar
Commission Member



Prof. Zada Lipman
Commission Member

Meeting Notes

Meeting with the Department		
Meeting note taken by Jorge Van Den Brande	Date: Thursday, 18 February 2016	Time: 4:00pm
Project: D399-16 Cultural Events Site, Tweed Valley Way and Jones Road, Yelgun		
Meeting place: PAC Office		
Attendees: PAC Members: Ms Lynelle Briggs AO, Ms Ilona Millar & Prof. Zada Lipman PAC Secretariat: Jorge Van Den Brande & David McNamara DP&E: Chris Ritchie, Rebecca Sommer, Jeff Parnell & Ben Harrison		
<p>A summary of the key issues discussed is provided below.</p> <ul style="list-style-type: none"> • The Department took the Commission through the assessment report, and outlined the challenging noise issues and the fact there are no noise controls tailor-made for these sorts of events due to its limited operation and location outside urban areas. • The Department had undertaken monitoring activities and found that the events held at the site were not always complying with noise conditions. This was in various cases due to weather/meteorological conditions, such as temperature inversion and higher summer natural background noise levels, however other non-compliances did received compliance action by the Department. • The Department explained that the original PAC's noise limits recommendations were difficult to comply with and were not adequate for the type of events held at the site. • The Department explained why the noise was causing adverse impacts on nearby receivers and the effort the Proponent has put into addressing the difficulties. • The Department noted the approval is on a trial period basis, the Proponent has encountered challenging difficulties (traffic, noise, waste management) leading to non-compliance in first instances, however they have improved progressively over the years. • Noise is still the main issue among sensitive receivers, especially 'bass' noise. The Department is recommending an additional noise criterion to address these concerns. • The Department provided considerable information on noise. It explained the technicalities of the A weighted and C weighted levels and gave details of the reason the new conditions should be considered in terms of noise compliance. 		
Documents to be provided: Aerial plans of the site's sensitive receivers and use.		
Meeting closed at 6:00pm		

Meeting with the Proponent		
Meeting note taken by Jorge Van Den Brande	Date: Tuesday, 23 February 2016	Time: 11:30am
Project: D399-16 Cultural Events Site, Tweed Valley Way and Jones Road, Yelgun		
Meeting place: North Byron Parklands		
<p>Attendees:</p> <p>PAC Members: Ms Lynelle Briggs AO, Ms Ilona Millar & Prof. Zada Lipman PAC Secretariat: Jorge Van Den Brande & David McNamara Proponent: Matt Morris (General Manager) Rob Doolan (Town Planner - Balanced Systems) Stephen Connelly (Planners North)</p>		
<p>A summary of the key issues discussed is provided below.</p> <ul style="list-style-type: none"> • The Commissioned was briefed by the Proponent who explained that the original application was considered by the DP&E for permanent use, however the PAC proposed the trial period without the small trial events. • The proponent provided a short video presentation that illustrated the type of events held and outlining some of the mitigation strategies they have trailed to date. • The Proponent explained the mitigation measures that sensitive receivers obtain and the efforts it undergoes to address the noise issues still affecting sensitive receivers. • The Proponent also explained the reasons as to why the Industrial Noise Policy is not an appropriate instrument for compliance. It stated that current noise conditions' reliance on background noise mean the Proponent will necessarily have difficulties in complying as the conditions do not relate to the specific activity of this sort of music festival event. • The Proponent outlined that noise conditions compliance is particularly difficult in winter due to extremely low background noise levels. • The Proponent accepted that traffic and noise impacts were difficult to manage during the first event, however as the project is based on a trial, it had the opportunity to address the impacts and improve for future events. They felt traffic is no longer the significant issue. In addition the proponent has progressively engaged with highly qualified acoustic consultants to better mitigate and address noise issues. • The Commission raised that there were complaints about the use of fireworks at these events, however the Proponent stated that there is no use of fireworks and that the current conditions do not allow them to use any sort of pyro techniques. However, it also stated that some patrons bring their own fireworks to these events and fire them and that control measures are put in place when this occurs (being to locate and remove anyone found to be discharging fireworks). 		
Documents to be provided: NBP Community Management Program, Final Compliance Audit and Performance Report 2015.		
Meeting closed at 12:30pm		

Meeting with the Tweed Shire Council and Byron Shire Council		
Meeting note taken by Jorge Van Den Brande	Date: Tuesday, 23 February 2016	Time: 1:30pm
Project: D399-16 Cultural Events Site, Tweed Valley Way and Jones Road, Yelgun		
Meeting place: North Byron Parklands		
<p>Attendees:</p> <p>PAC Members: Ms Lynelle Briggs AO, Ms Ilona Millar & Prof. Zada Lipman PAC Secretariat: Jorge Van Den Brande & David McNamara Byron Shire Council: Wayne Bertram (Major Development Assessments and Certifications) Tweed Shire Council: Doreen Harwood (Environmental Scientist)</p>		
<p>A summary of the key issues discussed is provided below.</p> <ul style="list-style-type: none"> • Byron Shire Council explained that the proposed noise conditions are a major concern as the Proponent had not done the appropriate monitoring during its current trial period; hence Council engaged an independent noise monitoring. • Byron Shire Council also explained that the Bluesfest has much more acceptance with local residents as it uses appropriate acoustic mitigation measures to avoid noise impacts. However, Bluesfest hosts a different type of music venue. • Byron Shire and Tweed Shire Council suggest that current noise conditions should remain fixed for the trial period and to continue to use the NSW <i>Industrial Noise Policy</i> as the noise regulating instrument, similar to requirements for the Bluesfest. • Byron Shire and Tweed Shire Council mentioned that there are current development applications near the site for residential use and that this may cause future land use conflict with these events. • Byron Shire Council acknowledged that traffic and noise impacts were difficult to manage during the first event; however the applicant addressed the impacts and improved the mitigation measures for future events. 		
Documents to be provided: NA.		
Meeting closed at 2:30pm		

Appendix 2

List of Speakers

DAY 1

Cultural Events Site Tweed Valley

Date & Time: Tuesday, 23rd February 2016 at 3:30pm

Place: Mullumbimby Civic Hall, 55 Dalley Street Mullumbimby NSW 2482

Speakers:

1. Carmel Daoud
2. Gary Opit
3. Elise Huntley
4. Camron Arnold (North Coast Tourism)
5. Peta O'Neill
6. John Lazarus (Byron Environmental Centre)
7. Clare Fisher
8. Brett Adlington (Lismore Regional Gallery)
9. David Bleach
10. Nearel Shearer
11. Andrew Benwell
12. David Rawlins
13. Mathew Evans
14. Judy Macdonald
15. Jan Mangleson
16. Gilles Gohalke

DAY 2

Date & Time: **Wednesday 24th February 2016 at 8am**

Place: Mullumbimby Civic Hall, 55 Dalley Street Mullumbimby NSW 2482

Speakers:

1. Kirra Pendergast
2. Laurie Hart/ Penny Valentine (Coalition For Festival Sanity)
3. Donna Pearson (Principle of Mullumbimby High School)
4. Collin Hussey (Visitors Centre)
5. Adrian Kennedy
6. Penny Valentine
7. Donna Shannon
8. Todd Cole (Water Lilly Ridge Community)
9. Sue Arnold (Australians For Animals Inc)
10. Chris Hauritz (Principle of Ocean Shores Public School)
11. Ri Fraser
12. Ben Kirkwood
13. Peter Whatton (Destination Byron)
14. David Fligelman
15. Peter Wood (Arts Northern Rivers)
16. Chris Cherry (Wooyung Action Group)
17. Joseph Anthonysz (Sae Institute Creative Digital Media)

18. Kim Dowling (North Byron Shire Business Chamber)
19. Clinton Hook
20. Denise Nessel
21. Russell Mills
22. Tina Petroff (Ocean Shore Tidy Town Committee)
23. Matt Morris (North Byron Parklands)
24. Kathy Norley (South Golden Beach Community Association)
25. Richard Whitling (Conservation of North Ocean Shores)
26. Kathy Norley
27. Val Scanlon
28. Stan Scanlon
29. Paul Arrowsmith/ Mark Enersen (Middle Pocket & Yelgun Progress Association)
30. Kate Little
31. Nathan Galatopoulos
32. Craig Beyers
33. Hanna Spalding

Appendix 3

Key issues raised at the Public Meeting

Comments provided during the public meeting are summarised below:

- **Flora and Fauna**

- Speakers raised concerns that ecological assets need further assessments as some studies suggest that noise impacts on wildlife adversely.
- It was also raised that the rehabilitation has not been done extensively and requests were made to increase the rehabilitation of the site.
- Some speakers expressed that there has been Koala sighting near Jones road and that their presence needs to be investigated.
- It was also requested that the inclusion of Koala food in the conditions be considered as the area is adequate for Koala settlements.
- Other speakers mentioned that the Proponent has undertaken thorough rehabilitation works after the events take place.

- **Compliance**

- Speakers who objected to the proposal raised concerns on the complications with overflowing sewage and waste management failures during the hosting of the winter events
- They throughout raised that the Proponent has breached its consent and that regardless of the noise mitigation measures, noise is still a major issue for the community and flora and fauna.
- One speaker representing a group raised concerns about the Department's not being able to provide their monitoring data result when focused audits were undertaken. It was said that the Department did not record their findings as proven in email received from a compliance officer.
- Other concerns were raised to a possible unlawful water extraction from the site.
- Speakers who supported to modification mentioned that the Proponent has overall improved its management over the years, pointing out that traffic management is one of them.

- **Noise impacts**

- The Proponent's measures to control noise were questioned as not being adequately managed, thus resulting in continuous noise impacts during the events.
- If announcements during the events are heard at different locations then noise is too loud.
- Sensitive receivers raised concerns in relation to the proposed inclusion of the bass noise. It was argued that regardless of the frequency either A or C weighted noise still affects them.
- Some speaker mentioned that although there are many complaints about noise, not all residents are able to hear them from around the site.

- **Social impacts**

- Supporting speakers pointed out that the Byron area possesses lack of product and events at the site increases interest for patrons to come.
- It was explained that the events are focused on a wider population and overseas patrons visit the region as a result of these events taking place.
- Some business owners of the area spoke in favour of the modification as during the events their and other businesses benefit from the financial impacts.
- Various young speakers and artists requested that the site provide more offers to local community events as the site has potential to help communities.
- It was noted that the site has significant importance to the local indigenous community and the land needs to be respected.