

**A Submission to the Hon. Rob Stokes MP,  
NSW Minister for Planning**

**From:**

**Conservation of North Ocean Shores Inc. (CONOS Inc)**

PO Box 828 Billinudgel NSW 2483

[CONOS.NSW@Gmail.com](mailto:CONOS.NSW@Gmail.com)

**About:**

**S.75W Modification Application  
North Byron Parklands  
Modification Application in  
relation to Concept & Project  
Approval MP 09\_0028 MOD 3**

**21 June 2015**

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## 1. Introduction

Conservation of North Ocean Shores Inc. (CONOS Inc) is opposed to the project Modification regarding:

- Changes to PAC Project Approved sound criteria.
- Introduction of smaller events.
- A number of the proposed changes to PAC Project Approved Conditions of Consent.

We believe that the Modification proposals should be examined in the context of the **continual significant breaches of consent conditions** outlined herein. We outline non-compliance issues including those that go beyond noise levels and relate to numerous other compliance matters that collectively significantly dilute a central purpose of the PAC Conditions, that being protecting local residents' amenity and the protection of fauna and flora within the environmentally sensitive lands that comprise the locality.

**CONOS Inc. submits that the Planning & Assessment Commission (PAC) is the appropriate body to determine this Modification and provide their recommendations to the Minister for Planning, rather than the DOP&E/ Secretary, because the Modification proposes highly significant changes to some of the PAC's most fundamental Conditions of Consent prior to the expiry of the 5 year trial approval period.** We do not believe that the PAC anticipated such significant proposed changes particularly in term of sound level criteria, though we acknowledge that the PAC did anticipate more modest adjustments to sound level criteria.

**Notably the nearby Blues Festival major festival site operates at lower FOH (stage) noise levels and conducts a globally renowned festival with multiple stage without exceeding sensitive receiver noise limits.**

**The Modification statement that “background plus” criteria is unworkable is disputed by Acousticworks who state: “This statement is incorrect. The PA systems all have volume controls and consequently the volume and frequency characteristics can easily be reduced in order for noise emissions to comply.” (2014a).**

It appears that the proposed increases in noise levels are being justified on the basis that the proponent is unwilling to constrain the noise levels to those imposed by the existing PAC Conditions of Consent. We believe that rather than permitting these significant changes to noise limits, the proponent should be demonstrating, during the 5 year trial period, an ability to control noise levels to within the existing Consent Condition parameters, which they have repeatedly failed to do. There is a history of numerous noise complaints by the local community in this regard and we believe complaints would be reduced if the proponent demonstrated a willingness to operate within the existing sound criteria.

**The continual breaches of noise limits cause widespread dissatisfaction within the local community in terms of adverse noise impacts on amenity.**

The Modification's proposed noise criteria are riddled with problems:

- They seek to impose noise criteria that are too high;
- They fail to adopt “background plus” levels for sensitive receivers contrary to the PAC's purpose for doing so.

- They allow for a “tolerance” addition of 5dB(A) due to weather conditions, contrary to the NSW Noise Policy that requires incorporation of this factor into the overall criteria (not added on later as a bonus).
- They fail to provide for the addition of cumulative noise increases due to the simultaneous operation of multiple stages.
- They fail to adequately identify the low frequency octave bands that contribute to noise complaints.
- They seek to delete reference to FOH (stage front) noise criteria.
- They failed to compare noise criteria with the nearby Blues Festival site;
- They fail to account for a duty of care to patrons exposed to very high noise levels over multiple days.

We note that the PAC Conditions of Consent (below) state that the Minister has directed the Director-General (now Secretary) to mitigate adverse impacts where necessary:

**Relevant PAC Condition of Consent:**

**Part B: B2 (3) The Director- General may amend any approval that has been granted for a future trial event to minimise adverse impacts after considering -**

- (a) the performance of previous trial events;**
- (b) any monitoring data about the impact of those events: and**
- (c) the management plans that will apply to the future event.**

**(4) The Director- General may impose additional mitigation measures including (but not limited to) reducing the number of patrons permitted to attend the event, reducing the number of event days, imposing stricter noise limits or by amending plans of management for the event.**

CONOS Inc believes that there is abundant evidence of Consent Condition breaches that warrant the Director-General imposing mitigation measures ranging from project approval termination to reduction of “A” weighted noise level criteria and the imposition of “C” weighted noise criteria.

**RECOMMENDATION: If the trial approval proceeds then CONOS Inc proposes the imposition of “C” weighted criteria (that includes the frequencies between 31.5Hz to 125Hz 1/3 octave bands) with a difference of 10dB above the “A” weighted criteria. The “A” weighted criteria should be reduced in accordance with the factors noted above (ie inclusion of the weather tolerance and cumulative effects). Further FOH levels should be reduced from 102dB(A) to 95 dB(A) LAeq,15min in line with the nearby Blues Festival criteria. The number of stages in operation simultaneously should be capped to meet the existing PAC imposed “background plus” criteria for sensitive receivers.**

**Compliance needs to be a much greater focus during the remainder of the trial period to address the history of continual noise criteria breaches.**

The Modification application attempts to make alterations to the PAC’s Consent Conditions through their proposed “**Documentation Refinements**”. NBP (and the DOP&E’s newspaper public notification of the application) state that these refinements are minor in nature. We have attempted to review these proposed changes and note the following factors that inhibit thorough examination and call into questions the adequacy of the Modification attempt at “refinement”.

Problems with the proposed changes to PAC Consent Conditions include:

- Some proposed changes are very significant and far-reaching rather than ‘minor in nature’;
- Mistakes have been noted (eg number of patron for large medium events are wrong);

- Some changes are accompanied by inadequate justifications;
- Some unidentified changes have been incorporated;
- The complexity of six categories of proposed changes, plus wrong numbering, combined with the above issues make the refinements overly complex and adversely affect the “refinements” transparency.

**We suggest that such broad changes to the Consent Conditions should be detailed in a separate Modification rather than briefly outlined in this Modification. Therefore we oppose the proposed “refinements”.**

We believe that the Modification completely fails to provide enough information, and is too vague, to justify the holding of small events on-site. While the NBP claim to be swamped with requests to use the site, only one example is clarified (school cross country), and that example fails to examine alternative locations such as the nearby Brunswick Heads Sports Complex.

**CONOS Inc. believes that the Modification’s proposal to introduce small events is a non-issue and should be rejected outright as inadequate information is supplied (eg definition of the scope of events may allow trail bike riding); lack of evidence of demand; absence of an examination of alternative facilities etc (eg Brunswick Heads Sports Complex).**

## **2. Further Information**

Should the Minister or Department require additional information or clarification regarding matters raised herein, CONOS Inc requests that consultation precede determination of the Modification.

## **3. Issues with the procedural fairness of the public notification of the proposals, and the lack of transparency and inaccuracy of the Modification document itself.**

We find it deplorable that the DOP&E, in its Modification notification in newspapers, has failed to adequately identify the true nature of one major aspect of the proposed Modification, that being the proposed increase in dB(A) levels. Similarly the proponent’s Modification application has failed to adequately identify the scope of the proposal in terms of increases in noise level criteria and the true extent of other proposed changes detailed herein. Instead the Modification misleadingly only refers to ‘aligning general noise criteria with standard Statewide noise protocol for outdoor venues’.

This absence of transparency draws into question the procedural fairness of the Modification proposal.

The general public, who have been demonstrably keen to submit their views in the past, will undoubtedly be alienated and excluded by the complexity of the Modification Application, combined with the lack of transparency, and the misleading scope of the proposal advertisement within the public notifications.

## **4. Weighting of public submissions – a fair go for locals.**

CONOS Inc wants the Minister to be aware that submissions from local affected residents are likely to be swamped by thousands of submissions from patrons/ supporters of SITG and Falls festivals. This is due to NBP calling on these hundreds of thousands of patrons/ supporters to make submissions to help them “pump up the music” (see image below from FasterLouder for example). They give patrons the impression that the festivals will cease altogether without patron support for the noise changes.

CONOS Inc questions whether the Minister will be able to identify submissions from local residents given the submission process is largely an on-line process in accord with the DOP&E specifications. If the

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DOP&E cannot, or does not, identify the geographical locations of submitters through this on-line process then we believe locals will have been enormously disenfranchised.

However if the DOP&E can identify local region submissions then we urge the Department's report on submissions to identify the difference between local and more widespread as two distinct groups of submitters. In addition we hope that the Minister will give extra weight to local region submitters who are the most affected by the festivals.

## **5. Local community dissatisfaction with current continual breaches of existing noise criteria.**

The local community have been continually expressing their deep dissatisfaction with the excessive noise level via:

- Numerous letters to the editor in local newspapers;
- Complaints to festival hotline;
- Over 400 signatories to a Change.org on-line petition addressed to the NSW Planning Minister asking that the festival site be moved;
- On-line complaints documented on the CONOS Inc FaceBook Page.;
- Discussion within the local community.

The ability of the local community to make a complaint about excessive noise levels has been significantly compromised by:

- poor telecommunications/ inadequate hotline accessibility;
- at one event the Hotline did not function at all due to telecommunication issues;
- inaccurate and misleading advertising in local papers about music stage operation times (overstating the time limits);
- a public perception that complaints resulted in little or no action as noise levels continued to be excessive after complaints were lodged.
- Time lag between complaint and on-site noise monitoring.

Acousticworks note: "In responding to complaints, it is unclear as to the length of time between the time of complaint (assuming the noise was occurring at the time) and the time at which ANE arrived to assess the noise. In many cases it is likely that, due to the time lag between complaint and monitoring times, changes in song/act/stage may cause significant differences in the noise impacts. (2014a)

**These factors also significantly diminish the proponents ability to assess complaint trends over time.**

Sensitive receiver residents have felt compelled to employ their own professional sound consultants given their dissatisfaction with the proponents responses to their noise complaints. CONOS Inc makes reference to these private noise assessment herein with the agreement of the residents who commissioned those reports.

The following satellite image provides an example of noise complaints during a festival (SITG 14). The accompanying quotes are drawn from Letters-to-Editors and on-line remarks.

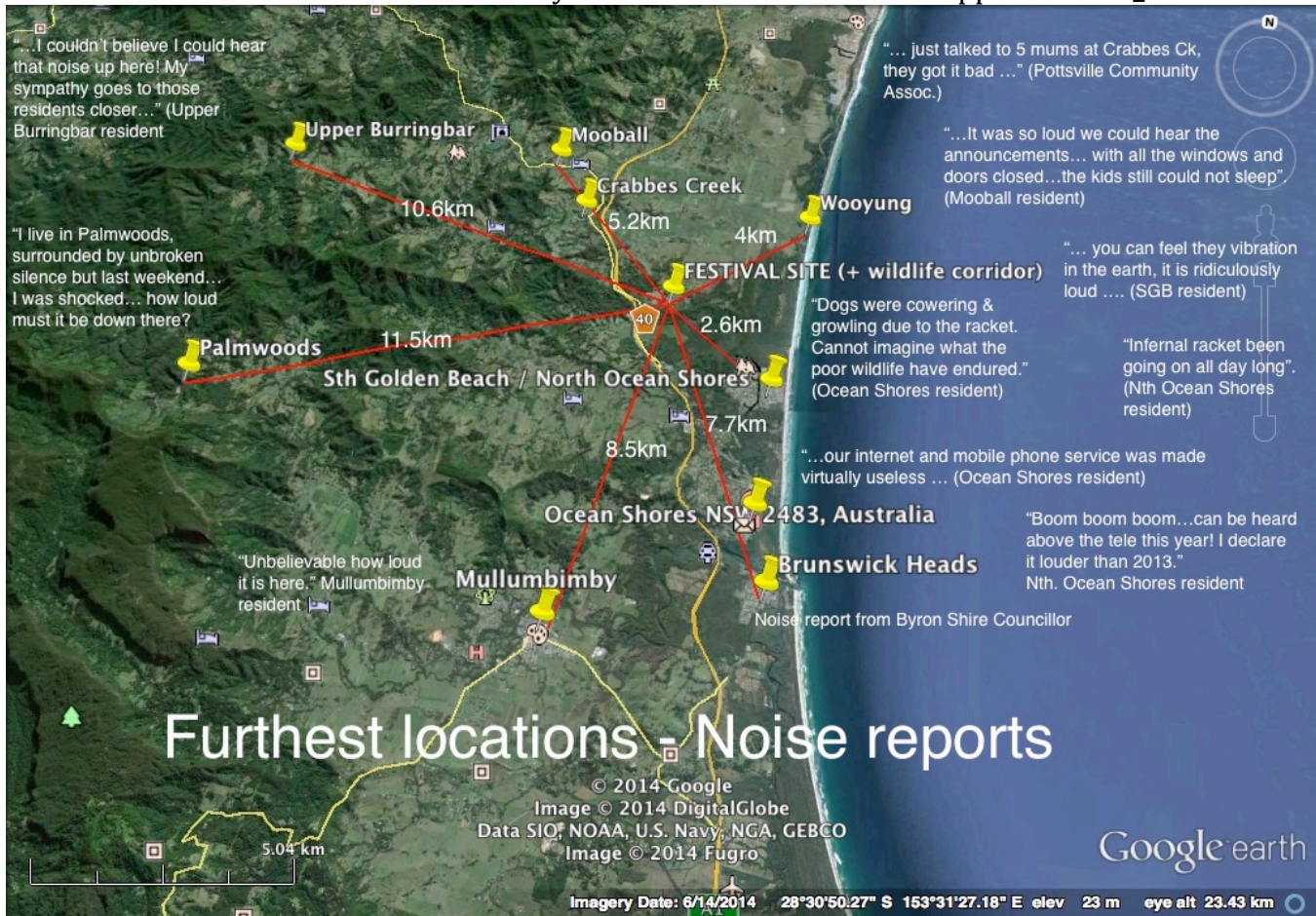


Image: Excessive festival noise levels resulting in complaints from residents more than 10km away

## 6. History of Non-Compliance with PAC's Conditions of Approval.

The PAC imposed numerous Conditions of Approval, to which the proponent has been substantially unable to comply. The regulatory environment imposed by the PAC and the DOP&E has proven to be unworkable in that the regulator (the DOP&E) are remotely located from the trial festival site; the DOP&E is dependent upon the proponent to assess their own project impacts; project certifiers have proven unable to document and address non-compliance; and the Regulatory Working Group (RWG) is unable to identify and impact identify upon many of the non-compliance issues.

**The ineffectiveness of the RWG environment is demonstrated by the fact that the RWG was not given the opportunity to consider the proposed Modifications prior to the application being made. Further, formal Recommendations from the RWG that the noise levels should be reduced have failed to be addressed by the DOP&E although the PAC Conditions specify that the RWG can make such recommendations.**

The proponent has been responsible for numerous breaches of Consent Conditions some examples of which are summarised below. Most of these breaches have not been documented by the proponent (eg within the Performance Reports), nor by the project certifiers, nor by the DOP&E. However, CONOS Inc is able to document evidence of many of these Consent Condition breaches. Appendix A provides samples of photographic evidence of non-compliance issue at the Falls Festival 2014/15 which we believe are indicative of that which occurs at other festivals held at this site to date. (Appendices are provided in a separate submitted document).



- excessive noise levels at sensitive receiver locations and in the broader locality (contrary to Sch 3; C14);
- inability to provide noise data to the DOP&E that could be interpreted in the context of the imposed limits (Splendour 2013) (contrary to C52);
- Failure to monitor noise levels at sensitive receiver sites, including ecological sites, during Falls 2013 (contrary to Sch. 3; C14 (6));
- The proponent admits purposely breaching dB(C) levels for the SITG14 event stating: “... SITG14 operated the event using elevated levels for this lower frequency emissions (i.e. LCmax > 120dBC).” (pg 22) (Contrary to Sch 3, C14, 11 which requires control of dB(C) levels).
- Failure to attenuation/ compensation to sensitive receivers prior to any and all festivals being held at the site.
- the provision of camping areas beyond the footprint of the festival site (contrary to Sch. 2 Part A; A2 (a)(1); & Sch 3, C9 (1)).
- vehicle parking and camping sites abutting forest blocks (absence of buffer zones) (contrary to Sch. 2; Part C; C26);
- high turbidity and litter within drainage channels (contrary to Sch. 3; C 9; 5);
- entry and consumption of large amounts of high strength alcohol (contrary to Alcohol License);
- Misleading and incorrect information published about the event times and noise limits (contrary to Sch. 2; Part C; C35);
- Patrons found on adjacent private property and in other exclusion areas such as Jones Road and the Billinudgel Nature Reserve (contrary to Sch 3; Part C; C13; 4 & 5);
- Unsightly litter and unsanitary conditions during festivals last day (contrary to Sch 3; Part D; D11);
- Use of laser lights focused on surrounding bushland and private properties (contrary to Sch 2; Part C; C19e);
- Inability to produce Noise Monitoring Programs 60 days prior to proposed festivals (contrary to Sch 2; Part C; C16;2);
- Denial of CONOS Inc requests for access to basic information (contrary to Part C; C1);
- Patrons exposed to excessive noise levels at Front of Stage (failure of a duty to care);
- Continual use of fireworks on-site (contrary to Sch 3; Part C; C9; 11);

## 7. Noise level criteria

The existing PAC Conditions of Consent are formed by the Concept and Project Approval which incorporates the proponents Statement Of Commitments (SOC). The existing Approval details the sound criteria for sensitive’s receivers in Part B, B3. While the Front Of House (stage) sound criteria are detailed in Schedule 3 of the Approval, that is, the proponents SOC and the proponents NBP Noise Standard 008. There is no inconsistency between these two parts of the Approval, as they seek to provide sound criteria for two different aspects of sound criteria, that is, sensitive receivers sound levels and FOH (source) sound levels.

The Modification’s proposed “document refinements” extraordinarily seek to delete reference to FOH noise criteria which is a major component of the existing Approval, rather than a minor administrative change as the Modification states. CONOS Inc considers this unreasonable and at odds with government policy, guidelines and legislation.

As identified herein, the festival events continually exceed the PAC imposed noise criteria set out in the Approval. FOH noise levels are excessive and sensitive receiver noise levels are excessive. The PAC placed significant weight upon the potential for noise levels to impact on local resident amenity and the natural environment. Incredibly, the Modification seeks to disenfranchise sensitive receivers by



CONOS Inc. Submission – North Byron Parklands Modification Application 09\_0028 Mod 3 disallowing noise mitigation, following a proven complaint, unless the noise breach continues over more than two consecutive events (proposed “refinement” to C17).

Appendix B: (**CONOS Inc records of non-complying noise levels at the FOH- Falls 2014/15**), provides an example of the excessive noise levels at FOH at the Falls Festival 2014/15 which the NBP claim was their most complying festival to date. Sound levels recorded by CONOS Inc. at FOH are consistently above those required by the PAC Conditions of Consent and contrary to the Modifications claim that FOH noise levels are maintained at 102dB(A). (Appendices submitted separately).

We note that Acousticworks (2014a) found “... the 63Hz octave band does not cover the entire range of problem frequencies (as presented in the Acoustic Works noise monitoring reports for SITG 2013 and 2014). The preferred frequencies of interest are 31.5Hz to 125Hz 1/3 octave bands.” **Therefore the control of Bass frequencies should not be restricted to the 63Hz octave band. The Modification proposes only dealing with the 63Hz octave band.**

**The proposed noise limits contain no duration or descriptor for either the “A” nor “C” weighted frequencies.**

**Acoustic works describe the same proposed noise criteria (when proposed in the ANE report 2014) as a significant increase in noise at sensitive receivers, and as, “... unacceptable for this locality, particularly given the number of complaints already received based on the current noise limits.”**

**CONOS Inc proposes the imposition of “C” weighted criteria (that includes the frequencies between 31.5Hz to 125Hz 1/3 octave bands) with a difference of 10dB above to the “A” weighted criteria. The “A” weighted criteria should be reduced in accordance with the factors noted above (ie inclusion of the weather tolerance and cumulative effects). Further FOH levels should be reduced from 102dB(A) to 95 dB(A) LAeq,15min in line with the nearby Blues Festival criteria. The number of stages in operation simultaneously should be capped to meet the existing PAC imposed “background plus” criteria for sensitive receivers.**

**a) Modification proposed noise criteria.**

The Modification proposes (pg 18):

“The key noise management controls proposed in this modification at the sensitive receiver are:

- a. Between 11:00am and midnight, music noise levels must not exceed LAeq 65 dB(A) or 75 dB(C) Leq in the 63 Hz 1/1 octave frequency band;
- b. Between midnight and 2:00am, music noise levels must not exceed LAeq 55 dB(A) or 70 dB(C) Leq in the 63 Hz 1/1 octave frequency band;
- c. A 5 dB tolerance above the criteria listed above be provided during extreme meteorological conditions, but must be accompanied by reasonable and feasible measures to manage dB(C) in the 63 Hz 1/1 octave frequency band; and
- d. On New Year’s Eve, the event noise being permitted to operate between 11:00am and 2:00am.”

**b) The “tolerance” component.**

The Modification’s 5dB “tolerance” noise component should have been incorporated directly into the PAC proposed noise criteria in line with the EPA’s Noise Policy which states: *“When assessing noise impacts, the project-specific noise levels are expected to apply under weather conditions characteristic of an area. These conditions may include calm, wind and temperature inversions”*. Hence, exceedance of the Consent Condition

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sound levels can not be expected due to weather conditions. Instead weather conditions must be accounted for at the outset.

The wording of the inclusion of the “tolerance” component is open to interpretation and distinctly benefits the NBP. Using the terms “reasonable and feasible” will allow the NBP to increase noise levels at their discretion.

Why should the NBP receive a ‘bonus’ 5dB increase when conditions are unfavourable to them, and then the sensitive receivers are forced to suffer extra disadvantage through no fault of their own?

**Similarly, previous Acoustic Management Plans (AMPs) and Noise Management Plans (NMPs) should have, but did not, included a noise component to allow for local characteristic weather conditions.**

**c) Allowance for the logarithmic addition of the cumulative sound effects for operation of additional stages.**

Similarly to the nearby major music festival site at Tyagarah (Blues Festival; Byron Shire), the Modification should have included noise criteria, at FOH and at sensitive receivers, based upon the cumulative effect of multiple stages in operation at the one time (Geolink, 2014. Statement of Environmental Effects Community Events Facility Tyagarah, Appendix C Acoustic Assessment). The cumulative effect is based upon logarithmic addition. Therefore at NBP with a FOH noise criteria of 102dB(A) LAeq,15min, the cumulative effects can be summarised thus:

- \* one stage: 102dB(A) LAeq,15min;
- \* two stages: 105dB(A) LAeq,15min;
- \* three stages: 107dB(A) LAeq, 15min;
- \* four stages: 108dB(A) LAeq,15min.

Therefore, with the NBP events the Falls festivals, with two main stages, the FOH level would be 105dB(A). While SITG with 3 main stages, the FOH level would be 107dB(A). With the 2015 SITG introducing a fourth stage the FOH level would be 108dB(A). When either event has more than one stage operating at the one time, then the FOH noise criteria exceed 102dB(A)LAeq,15min dictated by the PAC.

**These progressive increases in noise source will also increase the noise levels at sensitive receivers logarithmically. Therefore plans must be proposed to control the source/ FOH outputs from the various stages that are operating simultaneously to ensure that the cumulative sound effects do not impact sensitive receivers.**

**The Modification (and previous AMPs and NMPs) should have included a noise allowance for the addition of cumulative effects. Any new criteria should include this factor.**

**d) Failure to provide alternative “C” weighted criteria proposals.**

The Modification proposes “C” weighted criteria based upon proposed “A” weighted criteria. The Modification fails to propose “C” weighted levels as a fallback should the “A” weighted levels not be approved.

The Modification claims that C weighted sound levels are not regulated for the NBP events, yet the proponents own Statement of Commitments, based on their Noise Standard 008, states that NBP should control dB(C) levels.

CONOS Inc agrees with the need to provide “C” weighted criteria as a logical progression from the need to “control” dB(C) levels. However we do not agree with the Modification’s proposed criteria.

The Modification proposes to ‘assume’ a 10dB difference between FOH “A” weighted and “C” weighted noise levels but then applies for “C” weighted sound levels beyond this difference. This modification proposes to utilize the dB(C) levels previously tentatively proposed by the DOP&E that were targeted by the event organisers during Falls 2013 and Splendour 2014. However these ‘aspirational’ levels resulted in numerous complaints from as far afield as 10km. **Hence the Modification would entrench dB(C) levels that are already proven to be entirely unsatisfactory.**

**Acousticworks (2014) found a massive 30dB(C) above L90 noise levels (ambient levels).**

The local residents’ privately commissioned acoustic experts stated that the NBP’s “aspirational” levels contained in the AMPs appears to have been selected in order to allow the NBP to continue at high “C” weighted level that have caused considerable noise problems within the local community (Acousticworks, 2014). These private studies observed audible rattling of windows (due to “C” levels) at two sensitive receivers properties (which had not been attenuated at the outset of the trial as required by the Conditions of Consent).

Acousticworks (2014) note that apart from direct noise levels, the repetitive nature of the bass content also needs to be regulated. They note that, in NSW, the repetitive nature of the bass would attract a penalty reduction of 5dB(C).

#### f) “A” weighted sound levels

While the proponent tends to focus upon the dB(C) levels as the intrusive component of noise complaints, the reality is that dB(A) levels are also a significant intrusion. This is particularly so in light of the continual failure of the proponents to maintain dB(A) levels to within the PAC criteria. **Additionally, the Acousticworks studies (2014 & 2014a) found that: “ ... the 63Hz octave band does not cover the entire range of problem frequencies (as presented in the Acoustic Works noise monitoring reports for SITG 2013 and 2014). The preferred frequencies of interest are 31.5Hz to 125Hz 1/3 octave bands.”**

The proponent’s claim (pg 20) that they are unable to conduct outdoors music events, within the existing sound limits, without increasing the dB(A) levels is demonstrably a nonsense. The other major Byron Shire festivals site (Blues Festival) has similar sound limits and manages to operate within those limits. Yet the Blues Festivals are further limited by an allowance for the logarithmic addition of the cumulative sound effects for additional stages. While the NBP, should, but do not make an allowance for cumulative effects for additional stages (Geolink, 2014. Statement of Environmental Effects Community Events Facility Tyagarah, Appendix C Acoustic Assessment).

Contrary to the Modification claim that NBPs FOH levels are maintained at 102dB(A), we submit that the NBP events have a FOH level greater than 102dB(A) due to being understated. Further, due to the cumulative effect of more than one stage operating at the same time, source sound is greater than individual FOH levels.

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Operating at their site over the last 5 years, the Blues Festivals have sensitive receiver targets of 55 dB(A) LAeq,15min. during the daytime, and 50dB(A) LAeq,15min. during the nighttime. Blues Festival's Acoustic Assessment states that they have only once exceeded the night time criteria of 50dB(A)LAeq,15min. for one sensitive receiver. Similarly, the existing NBP sensitive receiver criteria are 57dB(A) during summer events at night, and 48dB(A) for winter events at night (11am-12am), yet the NBP site continually exceeds sensitive receiver noise criteria. It should be noted that ambient noise levels at the Blues Festival (average night time levels 40dB(A)), and the NBP site are very similar.

**By contrast, the NBP exceeded dB(A) criteria for sensitive receivers by a massive 15dB(A) during SITG 2014 (Acousticworks, 2014).**

Hence despite similar ambient sound levels at the two festival sites, NBP 's Modification proposes significantly louder noise criteria than Blues Festival of 55dB(A) LAeq until 10pm, and 50dB(A) LAeq from 10pm until midnight. Notably the Blues Festival operates only until 12 midnight while the NBP has music until 2am (albeit smaller stages). Despite the similarities with the highly successful Blues Festivals, the NBP Modification claims similar sound criteria are unworkable for them!

Why didn't the Modification compare sound levels against the Blues Festival (only some 15 km away) which has a strong similarities (eg ; traffic noise; located east side of the highway; climate and weather conditions; rural setting; locations for sensitive receivers etc).

The Modification proposal claims that "background plus" criteria is unsuitable due to the low level of ambient sound. However, the ambient sound levels are one of the key aspects that convinced the PAC to use "background plus" levels. Queensland's Noise Policy utilizes "background plus" levels, as do Bath (UK). Where this criteria is not used, then the FOH limits are much less than the existing FOH limits for NBP (refer SITG 2014, Noise Impact Report, Table 2.4).

**The Modification statement that "background plus" criteria is unworkable is countered by Acousticworks who state: "This statement is incorrect. The PA systems all have volume controls and consequently the volume and frequency characteristics can easily be reduced in order for noise emissions to comply." (2014a).**

CONOS Inc believes that the proposed noise level modifications should be considered in the context of the numerous breaches of the existing sound criteria. The proponent is demonstrably unable, or unwilling, to comply with the PAC imposed sound limit Conditions of Consent.

#### **g) A duty to care to patrons in terms of noise levels**

It should also be noted that the proponents should exercise a duty of care to protect patrons from the adverse health effects of the existing very high noise levels (about 120dB(A)) at the Front Of House (stages). Patrons are exposed to these levels of a number of days. PAC noted this issue by identifying patrons as sensitive receivers.

The demonstrated failure by North Byron Parklands to adhere to the Conditions of Consent in term of front of house (at Stages) sound levels (refer Appendix B) , may have resulted in a failure in their primary duty to protect the audience from safety risks associated with excessive sound levels (which is detailed in the Workers Health and Safety Act 2011, NSW).

According to WorkCover NSW: "A person conducting a business or undertaking has the primary duty under the WHS Act to ensure, so far as is reasonably practicable, that workers and **other persons** are not exposed to health and safety risks arising from the business or undertaking", (emphasis added). Because the decibel scale

CONOS Inc. Submission – North Byron Parklands Modification Application 09\_0028 Mod 3 is logarithmic, an increase of 3 dB represents a doubling or twice as much sound energy. This means that the length of time a worker could be exposed to the noise is reduced by half for every 3 dB increase in noise level. Based upon the CONOS Inc. sound levels recorded at distances of 20mt to 30mt from the speakers, it can be reasonably expected that the levels of exposure for a majority of patrons presented a safety risk extended by exposure over the four (4) day period of the Festival. Therefore WorkCover standard exposure limits appear to have been breached at the Festival.

Table 3 below demonstrates the length of time a person without hearing protectors can be exposed (over a 8 hour period) before the standard is exceeded. (NSW WorkCover 2011. Managing Noise and Preventing Hearing Loss at Work. Code of Practice. NSW Gvt Publ).

**Table 3: Equivalent Noise Exposure LAeq8h = 85 dB(A).**

(NSW WorkCover 2011. Managing Noise and Preventing Hearing Loss at Work. Code of Practice. NSW Gvt Publ).

Table : Equivalent Noise Exposures LAeq,8h = 85 dB(A)	
Noise Level dB(A)	Exposure Time
80	16 hours <sup>1</sup>
82	12hours <sup>1</sup>
85	8 hours
88	4 hours
91	2 hours
94	1 hour
97	30 minutes
100	15 minutes
103	7.5 minutes
106	3.8 minutes
109	1.9 minutes
112	57 seconds
115	28.8 seconds
118	14.4 seconds
121	7.2 seconds
124	3.6 seconds
127	1.8 seconds
130	0.9 seconds

## 8. Ecological Monitoring Programs

In this section CONOS Inc.:

- Addresses the high significance of the broader implications of the NBP ecological assessments.
- Provides a scientific critique of the ecological assessment to date.

We believe, contrary to the claims within the Modification, ecological impacts have not been adequately addressed.

Appendix C provides a scientific critique undertaken by Christine Cherry \*\*\*\* (who includes identification of non-compliance issues) of the NBP ecological assessments

***The critique provided suggest that the ecological assessments may lack scientific robustness which deserves independent review as we recommend below. The Modification's proposed noise increases should not be permitted in the absence of a demonstrably robust ecological Assessment program.***

**a) The broader significance of the NBP events ecological impact assessments/ studies.**

We urge the Minister to consider the broader implications of the ecological impact assessments/ studies being undertaken at the NBP. These assessments are likely to be used as precedents and scientific references for other events/ development elsewhere particularly relating to projects in biologically sensitive locations subject to high levels of noise.

It is essential that these impact assessments are scientifically robust especially given the paucity of existing literature on this subject matter within NSW/ Australia. Usually the robustness of such studies are published in respected journals and subject to the peer review process. This independent process provides for refinements and recommendations for improvements in the study processes.

At NBP these studies are being undertaken by the proponent. It is reasonable, and necessary, to test whether these studies/ assessments are robust. In order to achieve this outcome, **CONOS Inc urges the Minister to require the proponent to commission a government appointed independent expert to examine the NBP ecological assessments and publish the results for peer review prior to consideration of changes to noise limit criteria.**

**9. EPBC review required**

CONOS Inc believes that the DOP&E has a duty to notify the Commonwealth's Department of Environment of the likely potential for dB(C) noise levels to significantly impact upon the threatened fauna within the locality. The current EPBC approval conditions relate only to dB(A) levels. Further, the discovery of additional threatened species requires review of the EPBC approval. **The EPBC approval should therefore be reviewed.**

**10. Smaller events - Alternative locations/ justifications not addressed adequately**

We believe that the Modification completely fails to provide enough information to justify the holding of small events on-site. While the NBP claim to be swamped with requests to use the site, only one example is clarified (school cross country), and that example fails to examine alternative locations such as the nearby Brunswick Heads Sports Complex.

The Modification fails to address justifications and alternative locations for holding small events such as sports events (eg. school cross country runs). Yet the Brunswick Heads Sporting Complex (BHSC) is a viable alternative. The BHSC is a purpose-built, council maintained, sporting venue which is far superior to the NBP site. The BHSC provides a large area for sporting activities; club house facility, a weather protected canteen, permanent sewerer toilets, shelter, patron seating stands, toddler play ground, and formalised (bitumen) parking area.

Notably, the BHSC is only 2 -3 km further distance from the Ocean Shores Public Schools than the NBP site. As the children will be bused to either venue, this additional small distance is insignificant.

It is not in the public interest to ignore appropriate formal facilities in favour of a informal rural site that is in the process of being developed for purposes other than sporting.

Hence the proposal does not satisfy a legitimate need as claimed within the Modification.

**CONOS Inc. believes that the Modification's proposal to introduce small events is a non-issue and should be rejected outright.**

## **11. Consent Documentation Refinements**

Problems with the proposed changes to PAC Consent Conditions include:

- Some proposed changes are very significant and far-reaching rather than ‘minor in nature’;
- Some provide inadequate justifications;
- Some mistakes have been made (eg definitions of large & medium trials contain the wrong numbers of patrons);
- The complexity of six categories of proposed changes combined the above issues make the refinements largely unintelligibly.

**We suggest that such broad changes to the Consent Conditions should be detailed in a separate Modification rather than briefly outlined in this Modification. Therefore we oppose the proposed “refinements” as generally lacking detail; justification; and, accuracy.**

Below, we provide a review of the proposed refinements restricted due the issues identified above.

### **a) Part B – Trial of Outdoor Events -Parameters – CONOS Inc. Review of proposed changes**

**B1 Definitions - small community event (a non-music focused event with up to 3,000 patrons.)** The definition is poorly worded. It does not include 1 day events only nor does it prevent Parklands from staging “noisy emitting activities” such as BMX rallies. The PAC did not support these smaller events and therefore they should not be considered for the Trial. North Byron Parklands say that they have spoken with various community groups & Byron Shire Council, however, they do not mention that they have consulted with neighbours and those that are directly impacted.

CONOS does not support the proposed inclusion of 5) and 6) into the Project Approval because it would permit (with the Secretary’s approval) unlimited small community events annually, unlimited small community event days, and could cater for all types of “noise emitting activities”, further impact on the sensitive ecology of the locality and neighbouring communities.

Definitions of the large and medium trial events are **WRONG**. The number of patrons has been changed from the Project Approval B2(2) Table of patron number.

**B3 Noise Restrictions -** Firstly, the proponent has incorrectly included clause b) and c) as part of B3, yet these clauses are **NOT** listed in the Project Approval under B3. Secondly, the proponent does not justify **WHY** they are deleting all the clauses in B3 from 1) to 6). Clearly the PAC included these clauses into the Approval to restrict noise levels, to protect affected sensitive receivers and to provide opportunity for the RWG to recommend any increases or decreases in noise levels where justified. The inclusion B3a) which refers to the NMP and unnecessarily deletes reference to sensitive receiver noise levels; operating time; the RWG; and, Director-General’s/ Secretary’s ability to amend noise limits. Although these aspects may be referred to elsewhere, there is no harm in continuing to have them up front.

**B4 Traffic Management and car parking -** We do not support the modification in clause 5) from 20,000 patrons to 10,000 patrons. It is unclear if this proposed modification is contrary to the EPBC requirement that **NO** parking was permitted south of Jones Road and east of the old road corridor during the ‘Trial’ event in order to protect the adjacent SEPP 14 Wetlands.

### **B5 Timing and duration of trial events**

We do not support the modification outlined in B5 1), however, we appreciate that the changes in B5 3) may be necessary.



**b) Part C- Conditions that apply to the trial – CONOS Inc review of proposed changes.**

C7 (1) We do not support small events.

**C16 Noise Management Plan** - CONOS objects to the proposed changes to clause 3 and the inclusion of the 4 sub clauses a. b. c. & d. We support the retention of the current clause as seen in the project Approval and which does NOT include the following brackets( at the property boundary). Parklands have NOT justified nor identified this change. NBP have made a **MISTAKE** here in changing the numbering in this clause from (a) (b) (c) to 1. 2. 3. etc. so they don't marry up with the original document, thereby creating confusion.

CONOS Inc. supports PAC's original Noise Restrictions in consent condition B3 which protects identified sensitive receivers. We wish to point out that the PAC approved a 5 year 'Trial' so that NBP could demonstrate that they could comply with the conditions attached to the approval. Noise restrictions were given serious consideration by the PAC given the State significance of the Marshalls Ridge (Jones Road) wildlife corridor and the surrounding Billinudgel Nature Reserve. The PAC were also concerned regarding the potential impacts that festival noise could have on sensitive receivers and the quiet neighbouring communities. The PAC Noise Restrictions outlined in B3 are of the upmost importance and must be retained throughout the 'Trial' period. It is our understanding that Parklands have failed to carry out attenuation to several sensitive receivers despite being instructed by the DoPE to do so before the first festival was held on site.

Clearly, we do not support the inclusions of 3(a-d) as outlined in our submission.

**Acoustic Monitoring Program** - The proponent has not numbered the Acoustic Monitoring Program. It should be numbered C17 in line with the Project Approval. This **MISTAKE** has altered ALL the remaining clauses in this section from C17 to C58 i.e. they do not align with the clauses in the Project Approval. This is unprofessional. The modification should be withdrawn so that ALL **MISTAKES** can be rectified.

**C17 (should read C18) Noise Mitigation** - CONOS does not support the inclusion "over more than two consecutive events;" into the consent condition. Parklands have breached the noise levels at ALL 4 events seriously impacting sensitive receivers, neighbours and the larger community. Weather conditions are a natural occurring event and should not be used as an excuse by Parklands not to meet the noise requirements at each event. To expect neighbours to put up with intolerable noise levels is NOT reasonable.

**C39 (should read C40) Noise Management** - CONOS does not support the removal of "condition B3" which is in keeping with our earlier comments that consent condition B3 of the Project Approval must remain in tact. North Byron Parklands comment is that "B3 is no longer required as C16 contains all the operative noise controls." It appears that Parklands are dictating their own consent conditions, yet we were of the understanding that the PAC is the determining authority. We strongly object to these changes.

**c) STATEMENT OF COMMITMENTS - Schedule 3 (p 79)- CONOS Inc review of proposed changes.**

CONOS objects to **ALL** the proposed changes in the following Statement of Commitments. With the exception of small grammatical changes. We support that the PAC's current Consent Conditions and SoC's remain for the duration of the 'Trial' event as the Proponent has not had a good track record in upholding the PAC's requirements and in particular the conditions surrounding NOISE.

**A2** Capped Event Usage

**A11** Ecological Impact review,

**C3** Managing Demand on emergency and local services,

**C8** Transport and Traffic Management

## **12. General Background**

Conservation of North Ocean Shores Inc. (CONOS Inc) is a long-term member of the umbrella groups Nature Conservation Council NSW and the North Coast Environment Council.

CONOS Inc. was formed in the late 1980s in response to the need to protect the outstanding environmental and Aboriginal heritage values of the North Ocean Shores/ Yelgun NSW locality. Over the last 25 years our activities towards conserving this locality have involved court actions; participation in three government inquiries into the conservation of this locality; submissions on numerous development applications; lobbying state and local politicians; dissemination of information and direct action; .

Our FaceBook page (CONOS Inc page) provides detailed information about the significance of the environment; history of 25 years of conservation efforts; quotes from numerous experts; submissions to various government inquiries etc. Further, we have commissioned (at our own expense) a number of professional studies including: A 50 page review of literature about the effects of excessive noise upon wildlife and in particular the likely effects upon the site in question; and, a number of sound monitoring studies.

The outstanding environmental and Aboriginal heritage values of the site are beyond question. The trial festival site is part of the locality which is the one of NSW most biologically diverse natural environments. The site encompasses a state significant wildlife corridor which is the last major connection on the far north coast NSW between the hinterland forests, including the World Heritage Wollumbin (Mt Warning) rainforests, and the coastal lowland forests. Over 50 threatened species have been recorded in the locality, plus Ecologically Endangered Communities. The ridgelines that follow the wildlife corridor contain numerous Aboriginal artifacts, while the near locality contains scared trees, and one of the last double bora grounds in NSW. These values are documented and acknowledged by government agencies including the NPWS.

Two NSW State government Commissions of Inquiry (Simpson and Clelland) have investigated the locality. The Clelland Inquiry found that much the Jones Road/ Marshalls Ridges wildlife corridor should be zoned for environmental protection regardless on the fact the land was privately owned and zoned for agricultural use. These Inquiries took evidence from a number of professional environmental scientists/ researchers. The state government has previously placed Interim Protection Orders (IPOs) over the site to protect the wildlife corridor from a particular rampant developer (some 15 years ago). Prior to these IPOs, CONOS Inc members prevented a different rampant developer (some 25 years ago) from bulldozing a very significant Aboriginal bora grounds. More recently, the state government spent over \$4 million re-aligning the upgrade/ construction of the Pacific highway; creating a wildlife overpass, and constructing numerous wildlife underpasses. Subsequently the government changed the planning law (the infamous part 3A) allowing the state government to take planning power and project assessment away from local government, and they then approved this current 5 years trial.

## **References**

- Acousticworks, 2014 Noise monitoring Splendour In The Grass 2014 Yelgun Acoustic Report.  
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Geolink, 2014. Statement of Environmental Effects Community Events Facility Tyagarah, Appendix C Acoustic Assessment  
NSW WorkCover 2011: Managing Noise and Preventing Hearing Loss at Work. Code of Practice. NSW Gvt Publ.