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Our Ref: 2874/TGP/AvH/010411

1 April 2011

Attention: Jaclyn Burns
Oberon Council
PO Box 84
OBERON NSW 2787

Dear Ms Burns

**Re: Review of Noise Impact Assessment for DA 10.209.225.1
(2968 Shooters Hill Road, Oberon)**

We have reviewed the Noise Impact Assessment (NIA) report prepared by Renzo Tonin and Associates for the proposed development at 2968 Shooters Hill Road, Oberon and have found that the report is an adequate assessment for the development.

Based on the results of the NIA we believe there is no noise related reason why Oberon Council should not approve the development as long as appropriate conditions are in place to protect the amenity of the surrounding properties.

Please find following a brief review of the main development issues raised by the NIA and our recommended noise consent conditions for the Project.

Following standard practice for rural areas, the NIA assumes a Rating Background noise Level (RBL) of 30 dB(A). Following the NSW Industrial Noise Policy (INP) the NIA nominates the intrusiveness criteria, which is the RBL plus 5 dB, for the Project Specific Noise Level (PSNL). This gives the proposed development a PSNL of 35 dB(A). PSNL's are generally used to develop Noise Impact Assessment Criteria, that is noise levels that a project is to be held to, by planning authorities and DECCW.

The NIA finds the following impacts from the proposed motorcycle complex:

- the existing residences of Vallelonga and Bundella will have negligible impacts (below 35db(A));
- the approved development of Aitkinson will have minor impacts (36 dB(A)); and
- the proposed development of Lemmich/ Lawson will have minor impacts (36 dB(A)).

In addition to the above impacts documented in the NIA, we note there are additional impacts from the proposed motorcycle complex, as depicted in Appendix B of the NIA. We have summarised these potential impacts in **Table 1**. It should be noted that these impacts apply to the undeveloped areas of the properties and are likely to be at the lower end of the given range of values.

Table 1 - Predicted Noise Impact to Properties Neighbouring Proposed Motorcycle Complex

Property	Predicted Noise impact to property dB(A) Estimated from Appendix B of NIA	Project Specific Noise Level db(A)
Criberras	40 to 45	35
Aitkinson	35 to 40	35
Lemmich/ Lawson	35 to 40 (instances of 40 to 45 at boundary)	35
Canturi Investments	30 to 35 (instances of 35 to 40 at boundary)	35
Vallelonga	30 to 35 (instances of 35 to 40 at boundary)	35
Hoolihan	30 to 35 (instances of 35 to 40 at boundary)	35

The NSW Department of Planning notes that up to a 2 dB exceedance of a nominated PSNL is minor, a 3 to 5 dB exceedance is moderate and an exceedance of greater than 5 dB is significant. Using this as a guide, the NSW Department of Planning's contemporary approach to the implementation of the noise conditions in current consents is based on:

- the acquisition of significantly affected property(s) upon request (i.e. greater than 5dB(A) above the project specific noise levels);
- the implementation of additional noise mitigation measures upon request at any residence where noise monitoring shows that noise levels are moderately above the recommended noise criteria (i.e. 3 to 5dB(A) above the project specific noise levels);
- compliance with the recommended noise criteria (up to 2dB(A) above the project specific noise levels) at all other privately-owned properties;
- management of operations in accordance with best practice to minimise noise impacts on the surrounding area;
- monitoring the noise impacts of the operations to assess the acoustic performance of the operation; and
- acquisition of any properties upon request if subsequent monitoring shows that the operations are causing additional significant exceedances of the recommended noise criteria.


The above guidelines are based on measurements and modelling within 30 metres of existing dwellings. For vacant allotments that have building entitlement, the NSW Department of Planning uses the approach that if 25 per cent or more of the property is effected, to a level, by dust or noise from a project then the entire property is considered to be effected to that level by the dust/noise.

Based on the NSW Department of Planning approach it would be reasonable for Oberon Council to approve the development as long as appropriate conditions are in place to protect the amenity of the surrounding properties. It should be noted that the use of acquisition criteria, while commonplace for major projects in NSW, is rarely used in a local planning context. Oberon Council should consider if property acquisition clauses are suitable for this development or whether other planning controls would be more suitable in the context of the development in question.

Notwithstanding this where noise limits may be exceeded, an applicant can choose to negotiate a private amenity agreement with the effected party. Once a private agreement is in place the project specific noise criteria and potential exceedance of the criteria is no longer covered by a planning consent or DECCW EPL condition other than the recognition that the private agreement is in place.

If Oberon Council decide to approve the development application for the proposed motorcycle complex, we would recommend that the noise related conditions of consent, detailed in **Attachment 1**, should be included as part of the development consent. We advise Oberon Council to seek legal advice regarding the noise related conditions of consent, prior to any potential approval of the development.

Yours faithfully

A handwritten signature in black ink, appearing to read 'T. Procter', with a small dot at the end.

Tim Procter B.Eng
Manager, Engineering Services; Associate

**Attachment 1 - Recommended Conditions of Consent for DA 10.209.225.1
(2968 Shooters Hill Road, Oberon)**

Noise Impact Assessment Criteria

1. The Proponent shall ensure that the noise generated by the Project, including traffic noise generated on private access roads, does not exceed the noise impact assessment criteria in **Table 1**.

Table 1 - Noise Impact Assessment Criteria dB(A)

Location	Day	Evening	Night	
	LAeq, 15min	LAeq, 15min	LAeq, 15min	LA1, 1min
Residential dwellings that: <ul style="list-style-type: none"> exist at the date of this consent; and are situated within a 3km radius of the project boundary. 	35	35	35	45
Future residential dwellings that: <ul style="list-style-type: none"> are approved under residential development rights that apply to existing allotments at the date of this consent; and are situated within a 3km radius of the project boundary. 	35	35	35	45

Note 1: Daytime period is 7 am to 6 pm Monday to Saturday and 8 am to 6 pm Sundays and Public Holidays. Evening period is 6 pm to 10 pm. Night time period is 10 pm to 7 am Monday to Saturday and 10 pm to 8 am Sundays and Public Holidays.

Note 2: To determine compliance with the LAeq(15 minute) noise limit, noise from the Project is to be measured at the most affected point or within the residential boundary, or at the most affected point within 30 metres of a dwelling where the dwelling is more than 30 metres from the boundary. Where it can be demonstrated that direct measurement of noise from the Project is impractical, Oberon Council may accept alternative means of determining compliance (see Chapter 11 of the NSW Industrial Noise Policy). The modification factors in Section 4 of the NSW Industrial Noise Policy shall also be applied to the measured noise levels where applicable.

Note 3: To determine compliance with the LA1(1 minute) noise limits, noise from the Project is to be measured at 1 metre from the dwelling façade. Where it can be demonstrated that direct measurement of noise from the Project is impractical, Oberon Council may accept alternative means of determining compliance (see Chapter 11 of the NSW Industrial Noise Policy).

Note 4: The noise emission limits identified in the above table apply under meteorological conditions of:

- wind speeds of up to 3 m/s at 10 metres above ground level; or
- temperature inversion conditions of up to 3°C/100m, and wind speeds of up to 2 m/s at 10 metres above ground level.

Note 5: The Noise Impact Assessment Criteria is not intended to apply to future residential subdivision that has not been approved prior to the date of this consent.

However, if the Proponent has a written negotiated noise agreement with any landowner of the land listed in **Table 1**, and a copy of this agreement has been forwarded to Oberon Council, then the Proponent may exceed the noise limits of LAeq(15 minute) 35 dB(A) in accordance with the negotiated noise agreement.

Monitoring

2. If a landowner listed in **Table 1** considers the Project to be exceeding the noise impact assessment criteria in **Table 1** or where relevant the noise criteria that forms part of a negotiated noise agreement, then he/she may ask Oberon Council in writing for an independent review of the noise impacts of the Project on his/her land.

If Oberon Council is satisfied that an independent review is warranted, the Proponent shall within 3 months of Oberon Council advising in writing that an independent review is warranted:

- (a) consult with the landowner to determine his/her concerns;

(b) commission a suitably qualified, experienced and independent person, whose appointment has been approved by Oberon Council, to conduct noise monitoring on the land, to determine whether the Project is complying with the relevant noise impact assessment criteria, and identify the source(s) and scale of any impact on the land, and the Project's contribution to this impact; and

(c) give Oberon Council and the landowner a copy of the independent review.

If the Proponent or landowner disagrees with the findings of the independent noise investigation, then either party may refer the matter to Oberon Council for resolution. If the matter cannot be resolved within 21 days, Oberon Council shall refer the matter to an Independent Dispute Resolution Process.

Additional Noise Mitigation Measures

3. Upon receiving a written request from the owner of any residence listed in **Table 1** where subsequent operational noise monitoring shows the noise generated by the Project is greater than, $L_{Aeq}(15 \text{ minute}) 37 \text{ dB(A)}$, (except where a negotiated noise agreement is in place), as measured in accordance with the notes presented below **Table 1**, the Proponent shall implement additional noise mitigation measures.

Additional noise mitigation measures may include:

- source controls such as the installation of noise bunds or the limiting of the number of bikes allowed to operate at any one time; or
- receiver controls such as the installation of double glazing, insulation, and/or air conditioning at any residence on the land in consultation with the landowner.

These additional mitigation measures must be reasonable and feasible.

If within three months of receiving this request from the landowner, the Proponent and the landowner cannot agree on the measures to be implemented, or there is a dispute about the implementation of these measures, then either party may refer the matter to Oberon Council for resolution.

Land Acquisition Criteria

4. Upon receiving a written request from the owner of any residence listed in **Table 1** where subsequent operational noise monitoring shows the noise generated by the Project is greater than $L_{Aeq}(15 \text{ minute}) 40 \text{ dB(A)}$, (except where a negotiated noise agreement is in place), as measured in accordance with the notes presented below **Table 1**, the Proponent shall acquire the land in accordance with the procedures in condition 5.

Land Acquisition

5. Within three months of receiving a written request from a landowner with acquisition rights, the Proponent shall make a binding written offer to the landowner based on:

(a) the current market value of the landowner's interest in the property at the date of this written request, as if the property was unaffected by the Project (i.e. the subject of the project application), having regard to the:

- existing and permissible use of the land, in accordance with the applicable planning instruments at the date of the written request; and
- presence of improvements on the property and/or any approved building or structure which has been physically commenced at the date of the landowner's written request, and is due to be completed subsequent to that date, but excluding any improvements that have resulted from the implementation of the 'additional noise mitigation measures' in condition 3;

(b) the reasonable costs associated with:

- relocating within the Oberon local government area, or to any other local government area determined by Oberon Council;
- obtaining legal advice and expert advice for determining the acquisition price of the land, and the terms upon which it is required; and

(c) reasonable compensation for any disturbance caused by the land acquisition process.

However, if at the end of this period, the Proponent and landowner cannot agree on the acquisition price of the land, and/or the terms upon which the land is to be acquired, then either party may refer the matter to Oberon Council for resolution.

Upon receiving such a request, Oberon Council shall request the President of the NSW Division of the Australian Property Institute to appoint a qualified independent valuer or Fellow of the Institute, to consider submissions from both parties, and determine a fair and reasonable acquisition price for the land, and/or terms upon which the land is to be acquired.

Within 14 days of receiving the independent valuer's determination, the Proponent shall make a written offer to purchase the land at a price not less than the independent valuer's determination. If the landowner refuses to accept this offer within 6 months of the date of the Proponent's offer, the Proponent's obligations to acquire the land shall cease, unless otherwise agreed by Oberon Council.

The Proponent shall bear the costs of any valuation or survey assessment requested by the independent valuer, or Oberon Council and the costs of determination referred above.

If the Proponent and landowner agree that only part of the land shall be acquired, then the Proponent shall pay all reasonable costs associated with obtaining Council approval for any plan of subdivision (where permissible), and registration of the plan at the Office of the Registrar-General.