

Addendum Report

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C 79C Evaluation

- (1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:
- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),that apply to the land to which the development application relates,
 - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
 - (c) the suitability of the site for the development,
 - (d) any submissions made in accordance with this Act or the regulations,
 - (e) the public interest.

Note: See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

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- (2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
 - (b) must not refuse the application on the ground that the development does not comply with those standards, and
 - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,
- and the discretion of the consent authority under this section and section 80 is limited accordingly.
- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
 - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.
- Note:** The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).
- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
 - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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a7 [PR-CM] Proposed Extension of Time for Trial Period at North Byron Parklands - Council Submission

SUBMITTED BY: Development Assessment and Compliance

Validms



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.2 Improve decision making by engaging stakeholders and taking into account community input
 - 1.2.1 Council will be underpinned by good governance and transparency in its decision making process
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SUMMARY OF REPORT:

In July 2009 the North Byron Parklands (NBP) project, located within the Byron Shire and adjoining the common boundary with Tweed Shire, was declared a major project to which Part 3A of the Environmental Planning & Assessment Act applied, under State Environmental Planning Policy (Major Development) 2005.

The proponent for this project sought approval for a Concept Plan and Project Application (Stages 1 and 2 only) for a cultural events site at Yelgun in September 2010.

The Concept Plan application included use of the site for cultural, educational and outdoor events with a maximum capacity of 50,000 patrons and associated camping; roads and parking; water and wastewater treatment infrastructure; cultural centre; conference centre with associated accommodation; and a comprehensive vegetation management plan.

The Project Application proposed two stages, with Stage 1 involving: event usage area of 97ha with associated camping and temporary structures; a 2.3km spine road; an admin and gatehouse building; and implementation of the Vegetation Management Plan. Stage 2 incorporated: on-site water harvesting, filtration and reticulation system; and an on-site wastewater treatment and management system.

A subsequent Stage 3 for the cultural centre and conference facility with associated accommodation was proposed to be the subject of a future development application.

Under delegation of the Minister for Planning & Infrastructure, the Planning Assessment Commission (PAC) granted approval to the Concept Plan and the Project Approval in April 2012.

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Taking a precautionary approach, the PAC granted approval to the Concept Plan, capping the maximum number of patrons at 35,000 per day, rather than 50,000.

The PAC granted approval to the Project Application, allowing the subject site to be used for cultural, educational and outdoor events with ancillary camping and car parking for three outdoor events per calendar year over a five year trial period concluding at the end of 2017. A total of 10 event days per calendar year were originally permitted, and could include a "large", "medium", and "small" trial outdoor event. The "large" outdoor event in the first year of operation could consist of a maximum of 25,000 patrons in the first year of operation, and this was to progressively increase up to a maximum of 35,000 patrons by the fifth year of operation, which was final year of the trial period.

Subsequent modifications to both the Concept Plan and Project Application have been approved.

North Byron Parklands has submitted a Preliminary Environmental Assessment to the Department of Planning & Environment approval for **ongoing events after 2017, including events with up to 50,000 patrons**. The proposal is classified as State Significant Development (SSD), and will be assessed under Part 4 of the Environmental Planning and Assessment Act 1979 (EP&A Act). On 18 January 2017, the Department issued Secretary's Environmental Assessment Requirements (SEARs) for the proposal. Tweed Council has provided comment on the SEARs.

To ensure the continuity of the *Splendour in the Grass* and *Falls Festival Byron* events in lieu of the assessment and determination of the SSD application, NBP is proposing to modify the existing Concept Plan and Project Approval. The modification request seeks to **extend the trial period for outdoor events of up to 35,000 patrons by a further 20 months to 31 August 2019**. Comments on this modification are due by 26 April 2017.

Council staff have undertaken a brief assessment of the proposed modification, taking into consideration issues raised to date by Councillors. The issues raised in Council's draft submission to the Department (see Attachment 1 to the report) relate to:

- Noise;
- Traffic;
- Flooding; and
- Ability to approve the Modification.

It is recommended that Council endorse a submission on the Modification.

RECOMMENDATION:

That Council endorse that the attached submission to this report, in respect to the public exhibition of the Modification 4 (Concept Plan & Project Approval) North Byron Parklands, be forwarded to the NSW Department of Planning.

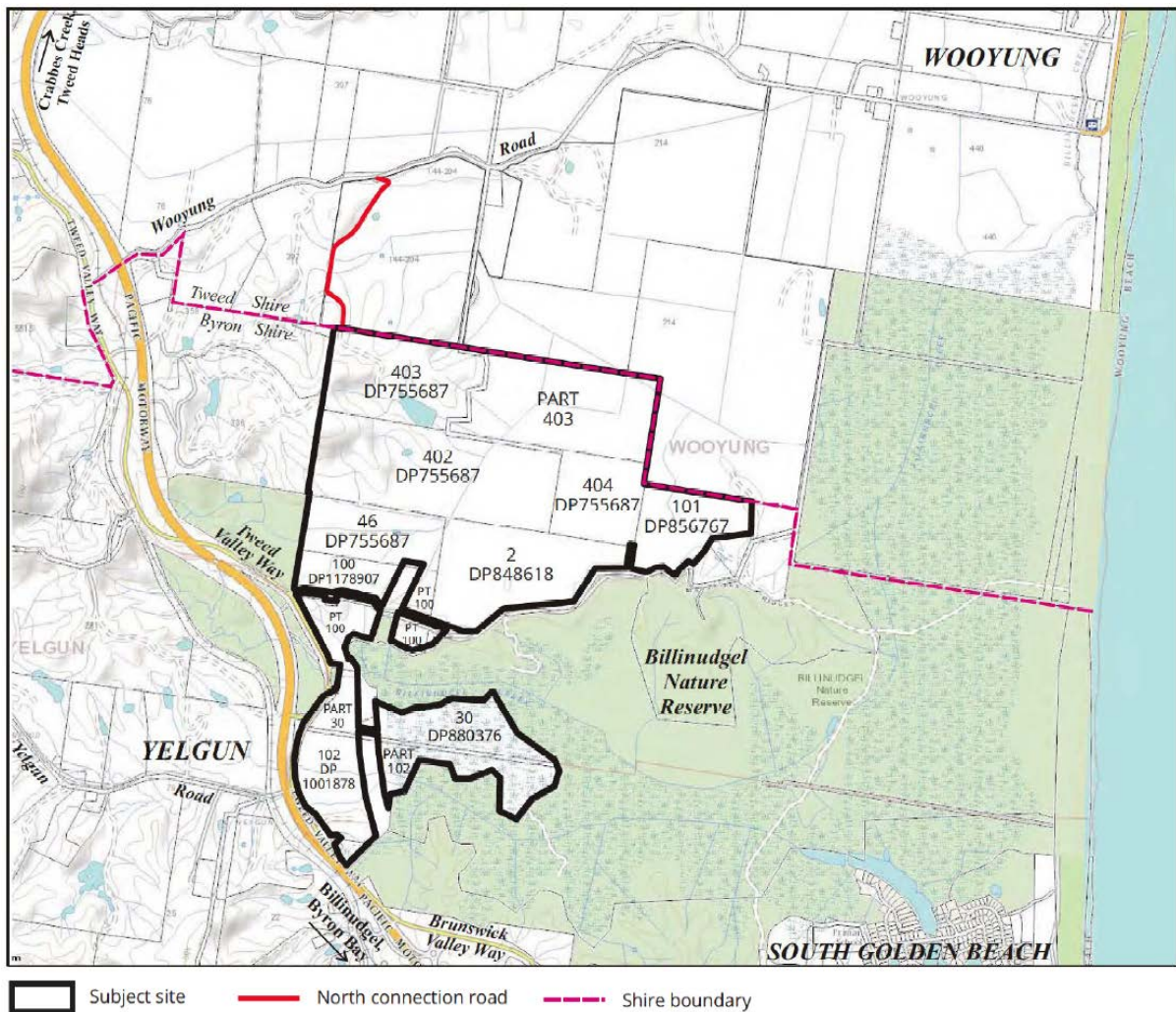
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REPORT:

Background

In July 2009 the North Byron Parklands (NBP) project was declared a major project to which Part 3A of the Environmental Planning & Assessment Act applied, under State Environmental Planning Policy (Major Development) 2005.

The proponent sought approval for a Concept Plan and Project Application (Stages 1 and 2 only) for a cultural events site at Yelgun in September 2010.



The Concept Plan application included use of the site for cultural, educational and outdoor events with a maximum capacity of 50,000 patrons and associated camping; roads and parking; water and wastewater treatment infrastructure; cultural centre; conference centre with associated accommodation; and a comprehensive vegetation management plan.

The Project Application proposed two stages, with Stage 1 involving: event usage area of 97ha with associated camping and temporary structures; a 2.3km spine road; an admin and gatehouse building; and implementation of the Vegetation Management Plan. Stage 2

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incorporated: on-site water harvesting, filtration and reticulation system; and an on-site wastewater treatment and management system.

A subsequent Stage 3 for the cultural centre and conference facility with associated accommodation was proposed to be the subject of a future development application.

Original Approval Planning Assessment Commission (PAC)

Under delegation of the Minister for Planning & Infrastructure, the Planning Assessment Commission (PAC) granted approval to the Concept Plan and the Project Approval in April 2012.

Taking a precautionary approach, the PAC granted approval to the Concept Plan, capping the maximum number of patrons at 35,000 per day, rather than 50,000.

The PAC granted approval to the Project Application, allowing the subject site to be used for cultural, educational and outdoor events with ancillary camping and car parking for three outdoor events per calendar year over a five year trial period concluding at the end of 2017. A total of 10 event days per calendar year were originally permitted, and could include a "large", "medium", and "small" trial outdoor event. The "large" outdoor event in the first year of operation could consist of a maximum of 25,000 patrons in the first year of operation, and this was to progressively increase up to a maximum of 35,000 patrons by the fifth year of operation, which was final year of the trial period.

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Figure 2.2: Approved Land Use Structure Plan (Source: Parklands)

Mod 1 & Mod 2 (Project Application)

Mod 1 and 2 related to administrative amendments to correct anomalies/topographical errors. Tweed Shire Council was not involved in these assessments.

Mod 3 (Concept Plan & Project Approval)

Mod 3 primarily involved 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. The modification also proposed the ability for the Proponent to host minor community events (non-music events of up to 3,000 patrons) during the trial period.

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Tweed Shire Council provided the Department with comments in relation to the proposed increase to noise limits, low frequency noise control and minor community events.

Following consultation with the Department of Planning & Environment, Byron Shire Council, Tweed Shire Council and a Public Meeting, the PAC approved Mod 3 to amend noise management measures and to allow small community events.

State Significant Development Application

North Byron Parklands has submitted a Preliminary Environmental Assessment to the Department of Planning & Environment approval for **ongoing events after 2017, including events with up to 50,000 patrons**. The proposal is classified as State Significant Development (SSD), and will be assessed under Part 4 of the Environmental Planning and Assessment Act 1979 (EP&A Act). On 18 January 2017, the Department issued Secretary's Environmental Assessment Requirements (SEARs) for the proposal.

The SEARs outline a comprehensive framework of environmental assessment requirements for the proposal. In order to fully respond to the SEAR's, NBP will need to undertake detailed expert analysis and assessment of a wide range of technical matters, including consultation with key stakeholders and the broader community. It is envisaged that the assessment and approval timelines for the SSD application will extend well beyond the expiration of the trial period.

Council provided SEAR's feedback to the Department, as summarised below:

- Traffic - a detailed traffic impact and management report for all of the impacts on arterial roads (Pacific Highway and Tweed Valley Way) is required, as well as Wooyung Road, Tweed Coast Road (particularly through Pottsville) and any proposed emergency access through Wooyung Road. Management of pedestrian traffic should be included;
- Noise - an acoustic management plan will need to be prepared, which addresses all aspects of the proposed development, including low frequency noise and sleep disturbance upon surrounding properties. It will need to demonstrate that the proposed development will comply with the provisions of the NSW Industrial Noise Policy;
- Storage and use of chemicals onsite;
- Solid waste management inclusive of litter control and solid waste storage;
- Liquid waste management – sewerage management, wastewater management from sources such as swimming pools, food vans, showers etc;
- Fire Control Measures;
- Emergency Management inclusive of evacuation management; and
- Illegal camping.

Mod 4 (Concept Plan & Project Approval) – Current Application

To ensure the continuity of the *Splendour in the Grass* and *Falls Festival Byron* events in lieu of the assessment and determination of the SSD application, NBP is proposing to modify the existing Concept Plan and Project Approval. The modification request seeks to

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extend the trial period for outdoor events of up to 35,000 patrons by a further 20 months to 31 August 2019.

No other changes to either the Concept Plan or Project Approval are sought. Specifically, event days and patron numbers would remain the same as currently approved, as well as all other existing consent conditions. The **only change would be the trial period dates**, to extend the trial period by an additional 20 months, which translates into 14 event days based on the current medium/large events.

As noted by the proponent, the **key environmental issues** associated with the cultural events site include: *traffic; noise; biodiversity; flooding and hazards; water and wastewater management; community issues (including anti-social behaviour, littering, trespass and illegal camping); and socio-economics.*

The proponent has also noted that the proposed modification would not increase the nature or extent of these environmental impacts, although it would increase the duration of these impacts over the extended trial period.

Council staff have undertaken a brief assessment of the proposed modification, taking into consideration issues raised to date by Councillors. The issues raised in Council's submission to the Department (see Attachment 1) relate to:

- Noise;
- Traffic;
- Flooding; and
- Ability to approve the Mod.

OPTIONS:

That Council:

1. Endorses the attached draft submission; or
2. Endorses changes to the attached draft submission.

Option 1 is recommended.

CONCLUSION:

Council has previously raised concerns for the proposed intensification of use of the original concept plan and project application approval of the North Byron Parklands. It is considered appropriate to reiterate these concerns to the Department through a formal submission on Modification 4.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

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b. Budget/Long Term Financial Plan:

Not Applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Draft Submission Modification 4 (Concept Plan & Project Approval) North Byron Parklands (ECM 4488576)
