

Submission in Objection

Assessment Report

Section 75W Modification

Cultural events Site MP 09_0028 MOD 2 (Concept Plan) and MP 09_0028 MOD 4 (Project Approval)

Byron Environment Centre Inc. (BEC)

The BEC Objects to the Assessment Reports findings of granting Consent for the following reasons

1) The Report fails to provide a just and equitable assessment of the adverse impacts, instead it is based on a false premise that prejudicially interprets that this 5 Year Trial is to 'confirm .. procedures were in place'.

The Oxford English Dictionary definition of a Trial is "The action of testing or putting to the truth the fitness, truth, or other quality"

The Assessment Report Executive Summary states: "The Commission determined that a 5 year trial for outdoor events would be appropriate in order to *CONFIRM* (my italics) that a suitable operational and environmental management plans and procedures were in place to manage and minimise environmental impacts as a result of events at the site"

The prescribed Terms of this 5 Year Trial Consent, that this Trial is to 'confirm .. procedures were in place', prejudices the parameters of this Assessment Report and the capacity of this Report to provide an unbiased assessment. "Confirming" is not the action of Testing or assessing the Fitness, ^{dis}allows an unbiased capacity to Reject on an unbiased assessment of the Truth. Confirming, prejudicially, indicates continuing consent. "Confirming" is not compatible with an objective assessment of a Trial, and precludes any assessment that this development is inappropriate and should be rejected. Due to the prejudicial Terms of this Trial there has been a biased 'Terms of Reference' that has resulted in incomplete collection and biased assessment of adverse impact data on the Trials environmental, social, financial, Aboriginal heritage, and governance matters.

2) The proposed extension is in breach of Term C1 of the 5 year Trial Consent, and is also a prima facie criminal breach of Contempt of Court.

The effect of Term C1 in the 5 year Trial's PAC Consent, is that any outdoor events beyond 2017 would require a further development application to be made, considered and determined under Part 4 of the EP&A Act. The L&E Court has also handed down a judgement stating that a proposed modification, which sought to delete Term C1 WAS NOT A MODIFICATION within the meaning of section 75W, because it sought to remove an underlying part of the Concept Plan approval.

The BEC considers that the 5 Year Trial's Consent Term C1, enforced by the L&E Court Verdict, precludes a lawful Trial extension post 2017, and that the L&E Court Verdict is Fatal to any consideration of an Approval extension.

3) Demonstrated incapacity to fulfil Consent conditions

There have been numerous and significant individual Consent breaches at every single event, including traffic, overflowing sewerage, overflowing grey water, rubbish in waterways, and multiple breaches of both noise limits and maximum capacity limits at every event. There has been admitted failure of built run off pollution controls because of flood destroying them, and admitted failure of flood data collection devices because they were washed away by another flood. Due to the site experiencing High Hazard Flooding there can be no confidence that any storm water controls can prevent off site pollution, and there can be no confidence that environmental and patron flood safety data can be collected to be acted upon. Demonstrated non compliance with Consent conditions and the demonstrated failure of constructed pollution controls confirm that the development has not demonstrated that no environmental harm will take place. There is no basis for the Reports CONFIRMATION "that a suitable operational and environmental management plans and procedures were in place to manage and minimise environmental impacts as a result of events at the site"

4) Failure of Governance.

Due to the fact that the only formal compliance actions on development breaches have been initiated by the public, with noise breaches costing the public \$30,000 to prove, the PAC and the public can have no confidence that the DoP has appropriate Governance practices in place to ensure "that a suitable operational and environmental management plans and procedures were in place to manage and minimise environmental impacts as a result of events at the site".

5) The Report has failed to address the fundamental issue of this DA.

The fundamental issue of this DA is whether to EXTEND CONSENT ON THIS SITE. Any benefits of these events are irrelevant to the consideration of this DA for an extension, as the benefits can be enjoyed at another site (noting that these developers have demonstrated that they have previously held these events on another site in Byron Shire and at a site in Southern Queensland)

6) The Report has failed to address the fundamental issue of objectors

The fundamental issue of objectors is to the extension of current Consent ON THIS SITE, prior to the full data of impacts being compiled and assessed, and placed before the public, in the Assessment of the Permanent DA now before the DoP

7) Failure of assessment of Submissions in Support.

The Report has failed to address the fundamental issue of whether Submissions in Support were for events on this particular site, or for events at any other site in the region. The Reports allegations and inference that Submissions in Support were for this site, are pure prejudicial allegation not informed by any examination of the Submissions

The Report states "Submissions supporting the modification cited the economic and cultural benefits of hosting such major events in the region". The Report has completely failed to differentiate whether submitters support is particular for an extension ON THIS SITE, or indeed whether in fact it is general support for events at any other site in the region, which for submitters in Support would provide exactly the same benefits for attendees and traders.

8) Unaddressed breaches of the EP&A Act and the Protection of the Environment Act.

The BEC considers that there have been gross unaddressed breaches of the EP&A Act and the Protection of the Environment Act, in relation to overflowing sewerage, overflowing grey water, rubbish in waterways, vehicle ground pollution, soil pollution from rubbish, ground water pollution that will enter the adjacent gazetted wetlands, Nature Reserve and the Brunswick River, noise pollution that has been assessed as unable to comply with noise guidelines on adjacent resident (and thus adjacent wildlife) receptors. There has been no investigation of the noise, rubbish, runoff and ground water pollution impacts off site in the adjacent environmentally protected areas, and this Report is unable to state that the development does not adversely affect adjacent Wetland and Nature Reserve flora and fauna. The site is now likely to be polluted and there will likely be decades of ground water pollution exiting this site into the adjacent Gazetted Wetlands, Nature Reserve and the Marine Park, which includes the Brunswick River which supports commercial oyster farming, recreational fishing and a popular kids river beach. Adverse impacts on the environment and on adjacent residents from the sites considerable dust pollution have not been assessed. The development has not demonstrated that there will be no environmental harm. An example of the un addressable pollution impacts is the widespread use of glitter. Glitter is made from aluminium and micro plastic that will pollute the ground and ground water, and wash off the site and be ingested by fish. The BEC notes that after the recent site flooding adjacent residents were subject to a stench of sewerage, and witnessed that sewerage containment tanks were washed off site.

9) Failure to assess Climate Change pollution

These events are associated with thousands of tonnes of carbon pollution. This pollution is contributing to the bleaching of the Great Barrier Reef and the subsequent loss of sea food resources, and the loss of a barrier that currently protects coastal development, rising sea levels that are projected to permanently inundate coastal development, increasing sea acidity leading to the potential loss of aquatic species including the sea algae that produces 50 - 60% of the earths oxygen. Carbon pollution causing global warming is causing deaths now. This Report has displayed a callous disregard of this developments' carbon pollution impacts that are causing deaths.

10) The financial benefits are inflated.

The sites two events are now majority owned by the American Corporation Live Nation, and profits and management employment will be going off shore. The off site accommodation providers are now being dominated by foreign Holiday Letting corporations such as Stays and Air B&B, with profits going off shore, and who pay minimal or no Australian Income tax, and who have lower establishment and management costs than authorised providers thus providing less regional accommodation revenue and lower regional employment.

11) Absence of assessment of adverse financial impacts.

The Report fails to identify or address the adverse financial impacts on the community. This development, that facilitates Shire use by a greater number of its customers than the number of Shire residents, has paid no developer contributions, unlike every other local developer, and every residential house builder, who has paid large development contributions to fund construction of the Shires infrastructure. The site pays an annual Council Business Rate of only 1.5 times a similar adjacent rural property, while the developments 35,000 attendees pay nothing. Peaks of over double the Shires population force the residents to subsidise this non contributing developments construction requirements of off site infrastructure, and forces the resident ratepayers to subsidise the cost of this developments impacts on off site infrastructure maintenance, and to subsidise the provision of off site electricity and water and sewerage usage, and basically to subsidise the entire \$M60 per year Council costs .

12) There is a complete failure of governance of this development.

The DoP has consistently failed to formally address breaches of conditions of consent, unless forced by formal complaints from the community, despite having officers on site witnessing the breaches, and despite having access to evidence of the breaches, such as the site and off site noise data loggers. The developers have given 10's of thousands of dollars of gifts and sponsorships to Councillors in prima facie breaches of NSW's anti corruption legislation that prohibits property developers donating to Councillors. There have been no Developer Declarations attached to any of this developments previous DA's or Amendments. This Application does not have a Developers Declaration attached, despite the evidence of Councillor Gift and Benefits Register declarations involving tens of thousands of dollars in donations from these developers to Councillors, and despite the evidence of Byron Shire Councillor Paul Spooner declaring a Pecuniary Conflict of Interest on the vote for a Council Submission to the PAC on this development, at the Byron Shire Council Meeting held last week on the 24 August. The Byron Mayor has received thousands of dollars in donations from these developers for himself and his wife, yet votes on Council issues involved in these DA's (and on members of this development group's separate Council DA's) and is a supposed community representative on the developments community panel. Ray Darney, who as the Councils Director of

Planning provided the Council Trial Consent Report that was overturned in the L&E Court, is also an alleged community rep on the developments community panel. The PAC has been advised at previous PAC hearings that the developer has failed to provide a Developer Declaration while giving donations to Councillors, but in breach of ICCAC guidelines for Consent authorities to act on reported acts of corruption, have failed to act to address this prima facie breach of the law. Last weeks Echo Newspaper and Website advertised that the development was going ahead, with tickets advertised for sale prior to this PAC meeting that was suppose to decide on the developers application. The PAC officer David advised me that the PAC knew that the developers were going to publicly advertise that the Trial would be extended, before the public had considered whether to even register to address the PAC on development, and that the developers had advised the PAC that they would advertise sales of tickets before ~~before~~ the PAC had considered the DA. The PAC is presently subject to legal action by the Environmental Defenders Office for a similar alleged collusion with a gasfield developer prior to the PAC receiving objections to that development.

13) Absence of Data

The Report fails to report, assess or provide the data on the number of deaths, physical assaults, sexual assaults, physical injuries, drug overdoses, and criminal drug convictions that have occurred at this development Trial, and fails to assess the broader social impact on the repeated instances of the local hospital's lack of capacity to manage the developments deaths, injuries and overdoses.

14) Failure of providing 3 events per year for assessment.

There is no basis to support an extension of this Trial, as the Trial Consent parameters, which prescribe an assessment of 3 events per year for five years to inform a permanent DA of 3 events per year, has not been fulfilled. Due to the developers only providing two events per year, the Report is unable to make an informed assessment on the very reason for this Trial : the assessment of the potential cumulative impacts, specific seasonal environmental impacts, potential public costs of provision of off site infrastructure and maintenance, potential capacity of off site garbage and sewerage dispersal public facilities, and the potential cumulative impact on residents, and the Shire Council's, capacity to host the permanent DA's proposed increased number of events. As such there is no useful information to be gained by extending this Trial.

15) Both Byron Shire Council and Tweed Council Oppose extension of the Trial, except for the completion and pull down of the 2017 New Years Eve event.

MINUTES OF THE BYRON SHIRE COUNCIL ORDINARY MEETING HELD ON THURSDAY, 24 AUGUST 2017

Prior to the debate on Urgency Motion No 1, Cr Spooner declared a pecuniary interest in the subject of North Byron Parklands. The nature of the interest being that his employer Byron Bay Community Association receives a donation from the Falls Festival for the Soul Street and First Sun events that the association manage. Cr

Spooner elected to leave the Chamber and did not participate in the discussion and the vote.

No. 1 Matter of Urgency - North Byron Parklands

Cr Spooner declared a pecuniary interest in this matter. As such, he left the Chamber, did not participate in discussion and vote.

17-376

Resolved that Council:

1. Note that Condition C1 of the Planning Assessment Commission determination and Concept Plan for the Parklands trial approval states that Byron Shire Council is to give further approvals for any events on the site after the end of 2017 and that Council reserves that right;
2. Notify the Planning Assessment Commission that Council will support an extension of the approval for the North Byron Parklands to enable the Falls Festival to take place;
3. Convey to the PAC that Council believes it is unfortunate that the organiser for the Falls Festival 2017/2018 is releasing tickets for sale on the day that the PAC is holding a community public meeting as part of the assessment process;
4. Express concerns, as conveyed by the Tweed Local Area Police Command, that the site could not be evacuated within 8 hours in the event of an emergency such as a fire, flood or terror attack; and
5. Advise the PAC of the many breaches by event organisers of conditions of consent and the lack of responsiveness to community concerns in rectifying those breaches.
6. Note the lack of resolution on attenuation and other issues impacting on 'affected receivers' as required by the initial approval.

(Cameron/Coorey)

PROCEDURAL MOTION

17-377 **Resolved** that that the meeting be extended past 9.30pm to 9.40pm to complete this item.

(Richardson/Cameron)

The motion was put to the vote and declared carried.

The motion (Cameron/Coorey) was put to the vote and declared carried.

Crs Richardson and Martin voted against the motion.