

To: Planning Assessment Commission
From: Denise Nessel, Ph.D.
Date: 29 August 2017
RE: MP09_0028 MOD 4 (Proposed Extension of 5-year Trial)

I've have been following this development closely since its inception and served for two years as a Council-appointed Community Representative on the Parklands Regulatory Working Group. I object to this proposal for these reasons:

1. The extension is not aligned with the current PAC approval.

The Assessment Report from the Department states that this extension "*is consistent with the intent of the PAC's approval of 2012*" (p 2). That contradicts the PAC's Final Determination Report of 2012, which states that after the end of the trial: "*a new application should be lodged with Council for events to continue*" (p 11).

This was an issue when the PAC was making its determination in 2012. As stated in the PAC's Final Determination Report, Parklands "*considered that this was unnecessary and noted that this view was shared by the Department*" (p 4). In other words, they didn't want to have to apply to Council for further approvals after 2017 and the Department agreed with them. Nevertheless, the PAC decided to require those further approvals, and that decision is reflected in Part C of the Concept Plan. The intent of the PAC was clearly to return control to local government, and Council is certainly capable of having that control.

Now, in its proposal, Parklands does not even mention this requirement. By leaving this important detail out, they imply that the only way they can continue operations is to have their Part 3A trial extended. That's misleading and runs counter to the current approval. The Department should have acknowledged that in its Assessment Report.

For the Department to have ignored this significant condition is all the more surprising in the face of Parklands' action last year. Parklands asked the Minister for Planning to remove that unwanted requirement from the Concept Plan and grant them permanent approval immediately. When the minister declined, Parklands took the matter to court. The Land & Environment Court ruled against Parklands, and the further-approvals requirement remained in effect.

This proposed extension appears to be another attempt on the part of Parklands to get around this condition.

A key reason that Part 3A was revoked in 2011 was the demand across the state for local councils to have control over developments in their jurisdiction. Six years after that revocation, we shouldn't still have Part 3A controlling what happens to us. It's time for the state to relinquish control of this development, as the PAC clearly intended.

2. Department oversight and enforcement has been lax.

At the beginning, the Department had no time for monitoring compliance at this site. They didn't send anyone from Compliance to the early events and accepted Parklands' seriously inadequate noise report from the first event without question. Then a community association sent them the noise report they had commissioned from another acoustical engineer as a check on Parklands' own noise monitoring at that first event. The community-funded noise report showed significant breaches of the noise limits. Although

the report came from a qualified acoustical engineer, the Department refused to consider it even though the Project Approval fully allowed them to, as indicated in Condition B2(3)(b).

That's when we knew we could not count on the Department to do a proper job of overseeing and enforcing the consent conditions.

The Department's current Assessment Report continues in this vein. On page 2, they state that "*there have been instances where community expectations have not been met*" but neglect to mention that close to 100 breaches of the consent conditions and other irregularities have occurred since the PAC granted its five-year approval. These are evident in the records kept by residents that are based on the minutes and tabled documents of Regulatory Working Group meetings, documents from government agencies, and Department reports, notices, and other correspondence. A few are also noted in Parklands' performance reports. If attentive community members can keep track of the breaches, as they have been doing, surely the Department can as well, especially since that's their responsibility.

The consistent breaches in patron numbers, recently unearthed by Australians for Animals, is yet another example of how the Department is failing in its responsibilities. They rely heavily on Parklands' self-monitoring and do not seem to have a full and accurate picture of what's going on. After the Department received the details of the AFA investigation, they acknowledged one breach of patron numbers (Falls 2016) and issued a \$15,000 fine. In the face of two other breaches, they issued two official cautions (Splendour 2015 and Splendour 2016) and then pointed out that the statute of limitations prevented them from doing anything about earlier noted breaches in patron numbers. The investigation that AFA did could easily have been carried by the Department at any point, and attendance was a particularly important requirement to keep track of. Parklands explained their reporting by claiming that they considered people with purchased tickets to be the only ones they needed to count, but the approval clearly states that a "patron" is anyone holding a ticket (regardless of how that ticket was obtained). Parklands should have done a better job of counting correctly from the beginning, and the Department should have done a better job of verifying the reported numbers and enforcing the relevant condition.

Perhaps the Department is unaware of the extent of non-compliance because this development is so low on the Compliance priority list. It is mentioned only three times, briefly, in the Department's monthly compliance reports that were issued from January 2014 through June 2017, and only one compliance report has been issued so far, in October 2014.

But the community has been paying closer attention. We know that our expectations have not been met, and we know that the expectations of the PAC, as the body that gave the consent and set the conditions, have also not been met.

Granting a 20-month extension will allow the lax oversight and inadequate enforcement of the consent conditions to continue. And that will further weaken the community's confidence in the state's planning, approval, monitoring, and enforcement processes.

I am repeatedly frustrated to see the Department treat Parklands' reports as if they were accurate and impartial. They are not, yet the Department is claiming that generating still more of them is a good idea.

3. Parklands management is inadequate.

• *Traffic.* After the traffic fiascos in 2013, Parklands claimed that they had solved the traffic problems, but area residents continue to be affected by festival traffic. Also, at Splendour 2016, internal traffic management was so bad that Facebook erupted in fury as festival goers waited for hours in the cold and dark for transportation that never came. The media gave extensive coverage to the chaos two nights in a row and then again on the last day of the event, when people were stuck in their cars for hours, unable to get off the site.

That's a recent example of what we've learned about this development: You never know when something is going to go seriously wrong at Parklands. The crowd crush at Falls in Lorne this year, which brought about a class-action lawsuit against the same festival owners, has made locals even more leery of what might happen at Parklands.

• *Noise.* Noise has been an ongoing issue. Noise breaches were common until the PAC increased the noise limits last year, much to the frustration of many residents. That approval didn't help the community, but it made compliance easier for Parklands.

Yet breaches still occurred after that, and many people continue to be disturbed by festival noise. So for the Department to now say that "*residual impacts are being managed*" (p 2) does not accurately represent the situation. Breaches continue to occur, measured by Parklands' acoustical engineers and community-hired acoustical engineers, and residents who are supposed to have received mitigation have not received it. The Department appears to be unaware of these issues. Or perhaps they are aware but are unconcerned.

As one who lives near the site, I am sometimes disturbed and sometimes not, depending on weather conditions. Some of my neighbours are usually unable to sleep and are not at all happy about that. Friends who live closer to Parklands than me are subjected to days of disturbing noise, and others who live farther than me have been severely rattled by it. What we've learned is that when a festival is on, a large number of people will be disturbed. The only question is who it will be. The site is in the wrong place for large outdoor music festivals. It's in the middle of an area of very quiet residential neighborhoods. It is simply too close to too many dwellings that are inhabited by people who do not want the intrusive noise.

• *Environmental Impact.* The Department's assurance on page 2 that "*the site can continue to operate with minimal impact on the environment...*" also does not represent the situation accurately, nor does the Department's statement on that page that any ecological impacts "*are temporary and reversible, and that the cumulative impacts on ecology are negligible*".

I am surprised at the Department's assertion that the OEH "*did not raise any concerns about the ecological data presented*" because, in fact, the ecological monitoring has been too inadequate to allow for valid conclusions to be drawn about the impacts of the project on the ecology of the site and of the nearby Wildlife Corridor and Nature Reserve. The OEH must be too busy with other matters to be able to attend to this because they surely have the expertise to understand the issues.

For whatever reason, the Department does not appear to be aware of the inadequacies of the monitoring program or to be interested in learning about them. They have accepted the reports submitted by Parklands, which are based on flawed methodology and which

draw conclusions that are not warranted by the data, even though they have received other perspectives, offered through the official channels, that clearly point up the inadequacies and flaws of the monitoring program. Those issues are not reflected in the Department's assessment and have not informed their recommendations, so I have no confidence in the thoroughness and astuteness of their assessment.

At the most recent festival (Splendour 2017), plastic glitter was all the rage, and 50 kilograms of the stuff were sold on the site. The tiny plastic bits flaked off bodies and entered the ground and water at Parklands. Such carelessness so close to a prime Wildlife Corridor and Nature Reserve is inexcusable, and the extra plastic pollution was not welcome elsewhere in the shire as the glitter-covered festival goers returned to their accommodations, visited our towns and beaches, and washed and scraped the stuff off in showers, rivers, and ocean. It's another example of a negative impact on the environment that was allowed to happen through the poor foresight and management of the site owners. It will no doubt be dismissed by the Department as unworthy of their consideration. This sort of irresponsible activity, enabled by Parklands and apparently condoned by the Department, will just continue if this extension is allowed.

• *Police concerns.* The NSW Police sent the Department a report on Splendour 2016, detailing concerns about on-site safety, emergency evacuation, and more, raising grave concerns about festivals at Parklands that must not be ignored by planning authorities. The Department apparently did not consider any of these still-unresolved issues in their assessment, as they are not mentioned in the Assessment Report, yet the issues will persist if an extension is allowed.

For the Department to recommend an extension in the face of all of the above is astounding. It shows how out of touch Sydney is with the issues of this development that most concern the people who are most affected by the festivals.

4. Parklands does not need more monitoring time.

The Assessment Report says "*importantly the extension of the trial period would provide an opportunity for the Proponent to continue to gather data as part of its ongoing process of refining its operation*" (p 2). That's ridiculous. Parklands has had five years to "refine" their operations, and the Department has had five years to assess their performance. That's enough time.

More important, community-funded monitoring and first-hand observations have repeatedly revealed irregularities in Parklands' monitoring programs and reported data, and those who have been watching the process have no confidence that they will improve during the requested extension.

It has been particularly frustrating to see the Department repeatedly treat reports prepared by Parklands and for Parklands as if they were independent assessments and ignore other perspectives on what has been going on there. I have no confidence in the Department or their Assessment Report because of this.

5. The extension is not needed to satisfy the festivals' need for certainty.

Parklands say that the festivals require this extension because of their need for certainty, an assertion that the Department appears to agree with. However, before the current approval was obtained, the festivals went elsewhere and had successful events in

2011 and 2012. The promoters did not claim then that operating at Parklands was essential to their business success. The current majority owner of Splendour and Falls, the U.S. conglomerate Live Nation, was apparently happy to purchase 51% interest in the festivals without being certain that Parklands could be used as a site. (As far as I know they don't have that certainty, but maybe they do.) It would seem that they can take the festivals elsewhere and so are not dependent on Parklands to provide a venue.

The Department considers the availability of another site to be "*not relevant to this modification request*" (p 26). I disagree. The fact that another site exists in this shire, that has approvals for large music festivals, and that has been used successfully for years, is entirely relevant. There are other sites in the state, as well, that would not pose the challenges and serious difficulties that this site poses. That fact considerably weakens Parklands' claims that they must have this extension, on this site, for their festivals to be successful in future.

6. The proposal to extend the trial should be kept completely separate from the proposal to become a State Significant Development.

Parklands' MOD4 proposal conflates the proposed 20-month extension with their desire to be granted status as a State Significant Development, and the Department agrees, asserting that the site should continue operations "*as it seeks to obtain a permanent site for outdoor events through a separate State significant development application*" (p 27).

That statement strongly suggests that Parklands has already received assurance from the Department that the granting of SSD status is a certainty and that this extension will simply ease the way until that's achieved. The expiration of the trial appears to be seen as a minor stumbling block on the pathway to permanent approval. In my mind, that is yet another reason to question the integrity of this process.

Parklands' aspiration to be granted permanent approval is not a good reason for them now to be granted an extension to the current approval, and the Department should have recognised that.

What's needed now is for the trial to end, as the PAC intended, and for Byron Council to become the consent authority.

What is also needed is a thorough, independent audit of the performance of the trial. That audit should include independent, critical reviews of the documents submitted by Parklands and the data on which those documents were based. It should also include direct, unfiltered input from the residents, community groups, ecologists, and others who have been raising concerns about this development since the beginning and who have a wealth of relevant data that are essential to a proper audit.

7. Unwarranted changes to consent conditions.

The Assessment Report specifically states in section 7.3: "*The Department notes that the modification does not seek to alter the operation of events and as such the management measures and monitoring required within the existing Project Approval would continue to apply*" and further that "*the Department considers the existing monitoring conditions adequately identify and manage potential ecological impacts at the site and the monitoring program can continue to provide suitable data to inform management decisions*". In other words, Parklands and the Department have presented

this proposal to the public as a modification that will change nothing except for the duration of the trial.

However, in contradiction that assurance, the Department is recommending changes to Condition C20 of the Project Approval. These are listed in the *Modification of Minister's Approval* that was prepared for the PAC's signature.

The Office of Environment and Heritage, which is now part of the Department, asked for changes that would clarify details of plantings and a promised land swap and land dedication, changes that are acknowledged in the Assessment Report. But additional changes are not mentioned in the Assessment Report, raising still further concerns about the integrity of this modification process.

These are the unwarranted changes. The italicised words come from the relevant documents: C20 of the existing approval and the recommended C20:

- Removal of the requirement to *implement* a Flora and Fauna Rehabilitation Program. The recommended new requirement is only to *monitor, assess, and specify management and rehabilitation requirements*.
- Removal of the requirement to monitor and assess impacts *within and adjacent to the site*. The recommended new requirement is to monitor and assess only *at the site*. If that change is approved, Billinudgel Nature Reserve would not be included in any monitoring and assessment of impacts, as it has been before, despite it being immediately adjacent to the site and a prime area of important biodiversity that was acknowledged as such in the original approval.
- Changed definition of "baseline condition" from *prior to the commencement of the Project Approval* to *prior to the commencement of trial events*. If this change is approved, Parklands would not have to report the impacts of the creation of the tunnel, which bisected the Wildlife Corridor, or the impacts of the roadbuilding and other earthworks done on the site between the commencement of the Project Approval in April 2012 and the commencement of trial events in July 2013. This will allow them to effectively ignore the impacts of those major infrastructure works on the ecological conditions within and adjacent to the site.
- Removal of the requirement to *detail the impacts of events on flora and fauna*. If this change is approved, Parklands will only have to *detail the changes that have occurred in flora and fauna*. That means they will now officially be allowed to say that whatever changes have occurred, or will occur, are simply changes but are not attributable to the operation of the project. They have been asserting this all along, without good evidence. Approving this change will condone and encourage those assertions.
- Removal of the requirement to monitor *before, during, and after each medium and large event*. Instead, if this change is approved, Parklands will have to monitor only *twice a year, once in cooler months and once in warmer months*. That would considerably reduce the amount of monitoring that would be done although the Department claims that the 20-month extension will allow Parklands more valuable time for monitoring.

All of these changes, if approved, will allow more lenient ecological monitoring and more lenient terms of assessing impacts on flora and fauna. They will make the ecological monitoring, which already has significant problems, still worse. That should not be allowed, and it is worth the PAC investigating just how those changes ended up in the *Modification of Minister's Approval*.

For all of these reasons, I urge the PAC to reject this proposed extension. It's time to face the serious issues that this site presents, instead of being assuaged by the smooth assurances from Parklands and the Department that everything is going well and will continue to go well.

As so many have said for so long, the problem is not the festivals; it's allowing them to operate on this site. It was never a suitable site, despite Parklands assurances that they could manage everything.

I have a very different view of this and implore you to pay attention to it.