

PAC public meeting re proposed cultural events site at Yelgun

B40

Copy of presentation at Ocean Shore Primary School Hall by Richard Whitling (B.App.Sc. Coastal Resource Management)

2nd February 2012

Ms Campbell and Professor Sproats, I'd like to thank the Planning Assessment Commission for this opportunity to provide further comment on the proposed cultural events site at Yelgun.

My name is Richard Whitling and I am a resident of South Golden Beach and have been a resident of the Northern Rivers for some 30 years. I have a Degree in Applied Science (Coastal Resource Management) and have been involved in conservation and landuse planning since the mid 1970s having worked for various government and non-government agencies. I have had an active interest in the subject land for some 15 years and have presented my comments to the Cleland Inquiry in 1996 and the Byron Council's Local Environment Study regarding the subject site.

I have examined the Dept of Planning & Infrastructure's (DP&I) Assessment Report and I will outline my comments on the basis of that report. I am tabling a copy of my comments.

I will speak against the proposal as I believe, given the many uncertainties, and in the absence of convincing argument, it is not in the public interest to place large numbers of people and their belongings (eg vehicles) at risk within bush fire prone lands containing peat soils, over two flood plains in High Hazard Flood Zones, within a regionally significant wildlife corridor.

1. PAC's discretionary ability to apply the Byron LEP zone plan and the outcomes of the judicial system

The Director-General's Environmental Assessment Requirements compel the proponent and DP&I Report to consider environmental planning instruments (Part A: Concept Plan Application). This is detailed further in the DG's Requirements in Part B: Project Application where the project must be justified in terms of any inconsistencies with these planning strategies. Further, Attachment 2 of the DG's Requirements (point 5) states that a zoning plan must be provided which shows the existing zoning and relevant clauses from the Byron LEP. The DP&I Report acknowledges this requirement in Section 3.5 (Environmental Planning Instruments).

The Report considered the LEP zones in Appendix C but states, when considering the 7(k) (Habitat Zone), noted that project assessment, "... under Part 3A are not required to consider this clause, however, the proposed use is not considered to be inconsistent with the objectives of the zone". This is in direct contrast to the Land & Environment Court's ruling against the proponent, that found that the proposed use within this zone was not consistent with the objectives of the 7(k) zone.

Rather than applying legal argument, I will seek to apply logic thought.

If consideration of the Byron LEP zones were clearly legally *irrelevant* under Part 3A, then the Director General would not have placed emphasis on consideration of the LEP zones. Hence, the DPI Report should not have lightly dismissed the application of the 7K zone as not required under Part 3A (Appendix C) especially when that dismissal is diametrically opposed to the judicial ruling between the proponents and CONOS that saw Byron Council's approval nullified on the basis of the 7(k) zone objectives.

Given this apparent divergence of views between the Director General and the DPI Report, the Planning Commission appears to be left with discretion as to how much weight to put upon the Byron LEP zones and the outcomes of the Land & Environment Court findings. The question arises: What if the Commission chose to determine that Part 3A over-rides the requirements of the Byron LEP and a court ruling? Would this not create a precedent that significantly diminished the relevance of NSW planning instruments and the NSW judiciary system? Clearly this would be untenable. Hence, respectfully, the Planning Commission should and must respect the entrenched planning system and judiciary.

I suspect that the Planning Commission may be left with little option other than to determine that there is no other reasonable alternative than to reject the proposed use of the 7(k) zone as a road which is ancillary to the project and therefore reject the proposal in accordance with the court ruling.

2. Application of the Precautionary Principle.

In his Inquiry into the conflict between agricultural and wildlife values of the Jones Road area, Commissioner Cleland placed fundamental importance on the Precautionary Principle and stated that the Principle, "... requires caution and convincing argument where there is uncertainty as to whether or not activities will cause serious or irreversible environmental impacts." (pg ii). In applying the Principle to the Jones Road wildlife corridor Cleland concluded that expanding and continuing the current agricultural had the potential to cause serious impacts on the existing and potential wildlife corridor and he therefore placed landuse zones over the land that would protect the wildlife corridor at the expense of agricultural production (pg 52).

By contrast, Section 3.7 of the DP&I Report asks us to believe that holding a number of events annually on the same site will not cause serious environmental impacts. I would challenge the Report's conclusion that uncertainty has been dispelled by convincing argument provided by the environment assessment reports and government agencies reviews.

Clearly, Cleland's view that agricultural activities should be diminished in lieu of additional protection for the wildlife corridor is now challenged by the DP&I Report which sees multiple events with thousands of patrons as compatible landuse for the site. In this context it is a nonsense argument for the Report to describe the development as being in accord with the Precautionary Principle. In fact, I would say the same if the Report had only recommended a number of smaller scale events annually as, I believe, that would still be in excess of the agricultural impacts considered by Cleland.

Contrary to the Precautionary Principle, there is a great reliance on gaining data on critical aspects of the project, after approval, due to uncertainties and the lack of convincing argument. I will list, in point-form, examples of significant uncertainties that have not been dispelled by convincing arguments (or even assessed in some cases) and hence show that the Precautionary Principle has not been applied appropriately:

Fire:

- The NSW Rural Fire Service expressed concerns about large numbers of patrons occupying the "bush fire prone" site and the ability to evacuate these persons. In response the DP&I Report requires, as a condition of consent, that a Bushfire Emergency Management Plan be produced. The NSW RFS uncertainties should have been dispelled prior to, or during the DP&I assessment process, otherwise convincing argument is lacking at this critical assessment stage concerning this substantive issue. By contrast, additional flooding studies were undertaken prior to the DP&I Report.

Flood:

- I have been a member of the Byron Shire Council's Marshalls Creek Floodplain Management Committee for over 10 years. The DP&I Report states that the proponent's Flood Risk Management Plan will reduce the chance of patrons being trapped on the High Hazard Flood

Zone site and that event staff will determine the flood response “trigger” levels and actions required. However, local experience shows that flood events in the Marshalls Creek Floodplain are very difficult to predict and hence local residential areas have been caught under-prepared on a number of occasions at significant economic cost. These experiences raise significant doubts about the ability of those with expertise (eg B.O.M. and flood hazard consultants) to adequately predict flood events, thus creating uncertainty about patron welfare and their belongings (eg vehicles).

- The on-site emergency assembly area contains no shelter to protect potentially thousands of patrons from the weather elements, creating uncertainty about patron welfare over an indeterminate timeframe.
- There is no consideration of how vehicles could be evacuated if, as expected, many owners are under the influence of alcohol or other substances; nor the impact of bogged or broken-down vehicles.

Fauna/ flora:

- DECCW have required the lodgement of a performance bond of \$25,000, “... to address unforeseen or otherwise unaddressed impacts upon the BNR...”. Clearly the Dept is concerned about uncertainties that have not been dispelled/ addressed.
- DECCW describes the project as having, “... many uncertainties... for biodiversity and its long term conservation” (DECCW project review letter to A/Director, Coastal Assessments, 19/11/10).
- DECCW notes that noise is “likely” to affect a number of species on site and within the BNR (DECCW project review letter to A/Director, Coastal Assessments, 19/11/10).
- Benwell and Scotts (2010) independent review of effects on wildlife at the site states, “At Yelgun, the sudden intrusion into the landscape of large concentrations of people, high levels of noise, artificial night lighting and other impacts are likely to act as an intense disturbance on a high proportion of species” (pg3). The DP&I Report substantially seeks to obtain the information to dispel this significant uncertainty subsequent to events being held, where the Precautionary Principle would require “convincing” argument first.

Artificial Wetland/ land fill:

- A late addition to the project is the proposal to source land fill from the site of the proposed artificial wetland. This excavation has not been assessed in terms of quantity, quality, depth, or acid sulfate soils.
- An indeterminate amount of land filling (road-base material) is expected (but not identified) below the 100 ARI for extensive parking access routes/tracks within the southern carpark area. There is no assessment of the landfill quantity nor the impact of floodplain landfilling on other residents of the floodplain. Notably, the Marshalls Creek Floodplain Plan prohibits filling on this site due to the potential to adversely affect other floodplain residents.

3. Existing measures to protect and enhance the wildlife corridor

The Cleland Inquiry put in place landuse zones in order to protect the existing and potential wildlife corridor and to limit agricultural activity. These measures were determined to be appropriate to protect and enhance the wildlife corridor on the basis of independent scientific submissions and government agencies submissions. Reducing human disturbance and enhancing habitat values were key elements of the Inquiry outcomes. It is illogical to now approve an activity that will introduce large-scale human disturbance and with its associated impacts.

4. Purported environmental benefits and the existing measures to rehabilitate

The identified environmental benefits of the proposal include rehabilitation of Yelgun Creek and the transference of lands for addition to the Reserve. However rehabilitation of Yelgun Creek is a pre-requirement unassociated with the project proposal as it originates from a court order to rehabilitate as a result of illegal riparian vegetation removal.

Further, the transference of 35ha of lands to the Reserve system, and that lands revegetation, results from a Heads of Agreement between the proponents and DECCW (signed in 2007) that is contingent upon the transferral of redundant RTA highway road reserve lands (southern car park) to the proponent upon government approval of the project (hence providing additional event site space).

Further, the construction of an artificial wetlands adjoining the Sepp 14 area of the BNR, in lieu of a more simple buffer zone, is little more than an effort to gain an unspecified amount of landfill for the southern carpark with little assessment of the impacts of excavation (eg the absence of geotechnical studies in a known acid sulfate soils zone).

Hence, it is misleading to suggest that these 'environmental benefits of the project' are purely designed to off-set the environmental impacts of the project.

5. Justification of the project

Section 1.1.5 and Section 2.3 of the Report describe the justification for the project. The Report states that there is a need for a purpose built cultural events site despite the existence of the Tyagarah Blues Festival site (which has long-term council approval for at least 25,000 patrons) and the new Byron Regional Sports and Cultural Complex. The only reason put forward for rejecting the Tyagarah site is the need for the construction of a highway off-ramp for patron numbers beyond 25,000. However, according to the Tyagarah event site owner's presentation to this public inquiry yesterday, an off-ramp is proposed for construction in the near future. Smaller events can easily be held at the Byron Sports and Cultural Site or elsewhere in the shire. The Report states that the establishment of another events site in Byron Shire will, "... add to Byron's iconic image as a centre for the arts, music, entertainment and culture." However, it is apparent that the proponent is seeking to benefit from the existing iconic image which includes numerous events which already crowd the Byron events calendar. In effect a new events site with numerous events will compete with the existing events in Byron Shire. Hence rather than adding to the iconic image, the Yelgun site is likely to partly redistribute visitor numbers from existing events and increase impacts within the shire through event timing conflict (eg place additional strain on existing infrastructure etc.). Currently, event organisers aim to avoid event timing conflicts in Byron Shire as evidenced by the shire's annual, cluttered but dispersed, events timetable.

The project is further justified on the basis of environmental benefits in terms of revegetation and rehabilitation which are largely refuted above.

The proponent desires to hold numerous events of varying size however there is no evidence of interest from parties other than Splendor In The Grass. This again calls into question the proponents speculation for the need/requirement for another large scale events site in Byron Shire.

Thankyou for your consideration.