

ASSESSMENT REPORT

Section 75W Modification
Cultural Events Site, Tweed Valley Way and Jones Road, Yelgun – Byron Shire Local
Government Area
MP09_0028 MOD 3

1. BACKGROUND

This report is an assessment of a request to modify the Concept Plan and Project Approval (MP09_0028) for the Cultural Events Site located on Tweed Valley Way and Jones Road, Yelgun within the Byron local government area. The request has been lodged by Planners North on behalf of Billinudgel Property Pty Ltd pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

2. SUBJECT SITE

The site is located on Tweed Valley Way and Jones Road in the suburb of Yelgun within the Byron Shire Council area, and encompasses an area of approximately 256 hectares. There are several residential receivers in close proximity to the site, with the closest residential receiver located within one kilometre of the site on Jones Road. The site is effectively split in two by Marshalls Ridge which forms a natural barrier between the events site and the areas to the north. The site forms a natural amphitheatre comprising a low lying and level central plain surrounded by steep rising hillsides on the northern, western and southern sides of the site. The Billinudgel Nature Reserve is immediately south and west of the site. An indicative site location is shown in **Figure 1**.

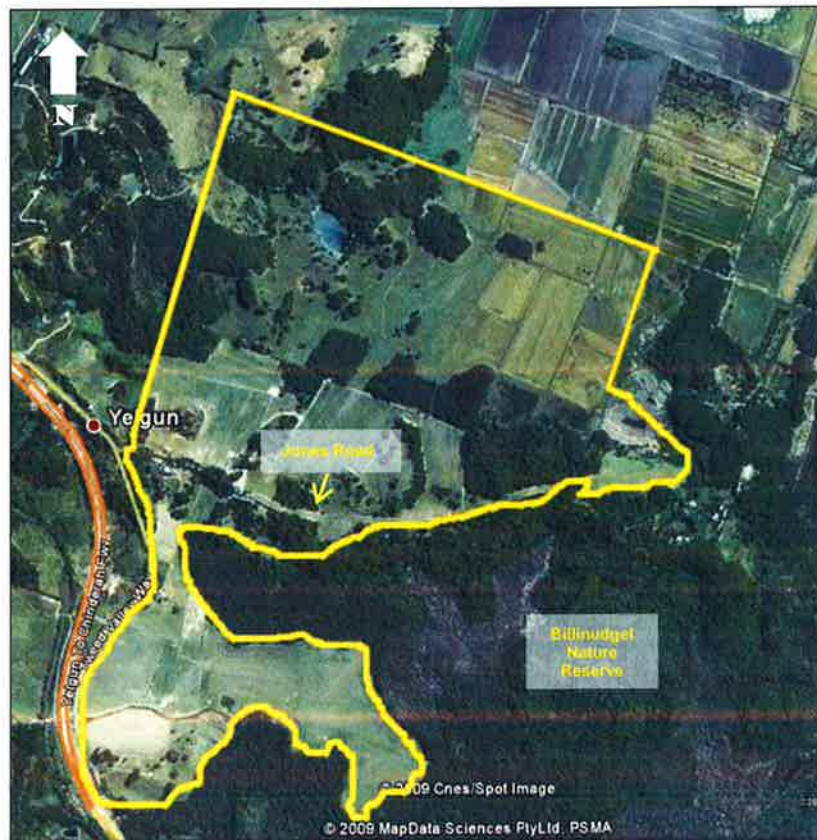


Figure 1: Site Location (Source: Google Earth)

3. SITE HISTORY

On 24 April 2012, the Planning Assessment Commission (the Commission) approved both the Concept Plan and Project Approval for a cultural events site at the North Byron Parklands, Yelgun as a five year trial (MP 09_0028). Since the approval, North Byron Parklands has held a number of events at the site, including three 'large trial events' (Splendour in the Grass) and two 'medium trial events' ('Falls Festival').

Prior to the Commission's approval, Byron Shire Council granted consent for the 2009 Splendour in the Grass Music Festival to be held at the site over a four day "trial" period. However, the validity of BSC's consent was challenged in the Land and Environment Court of NSW (L&E Court) on the basis that the proposal was prohibited and as such, considered that BSC's approval extended beyond its power to grant. The L&E Court subsequently ruled that BSC had granted consent to a prohibited development, which was characterised as a 'place of assembly' which is prohibited on part of the land on which the development is to be carried out under the *Byron Local Environmental Plan 1988*. As such, the approval was invalid and had no effect.

As a consequence of the decision, the festival remained at its previous site at Belongil Fields, just outside of the main town area of Byron Bay in 2009. In 2010 and 2011, Splendour in the Grass (SITG) events were held at Woodford, Queensland.

In 2009, an application was made to the Department of Planning and Environment (previously Department of Planning and Infrastructure) for Concept Plan and Project Approval for a cultural events site at North Byron Parklands, under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 24 April 2012, the Commission approved both the Concept Plan and Project Approval for a cultural events site at the North Byron Parklands, Yelgun as a five year trial (MP 09_0028).

Concept Approval was granted to provide permissibility for the site to be used for cultural, educational and outdoor events with associated camping/car parking and included:

- a cultural centre;
- a conference centre and associated accommodation;
- camping infrastructure and facilities; and
- a comprehensive vegetation management plan.

The Project Approval included approval of two stages. The key aspects of the Project Approval are depicted within **Figure 2**.

Stage 1 included:

- outdoor events until the end of 2017;
- construction for infrastructure including spine road, underpass, intersections, laneways, drain crossings; and
- vegetation management.

Stage 2 included:

- infrastructure, including:
 - construction and landscaping of an administration building;
 - construction of a water treatment plant; and
 - construction of a wastewater treatment plant.

Since the determination of the Project Approval, works have been completed on an access road, underpass, various intersections, laneways and drain crossing and there have been five events held at the site.

The approvals allow the Proponent to carry out three events per calendar year (a small, medium and large event) over a five year trial period to the end of 2017. Any events being held under the Project Approval are considered to be trial events with the intent being that each trial provides a benchmark for further monitoring, trend analysis and subsequent continuous improvement.

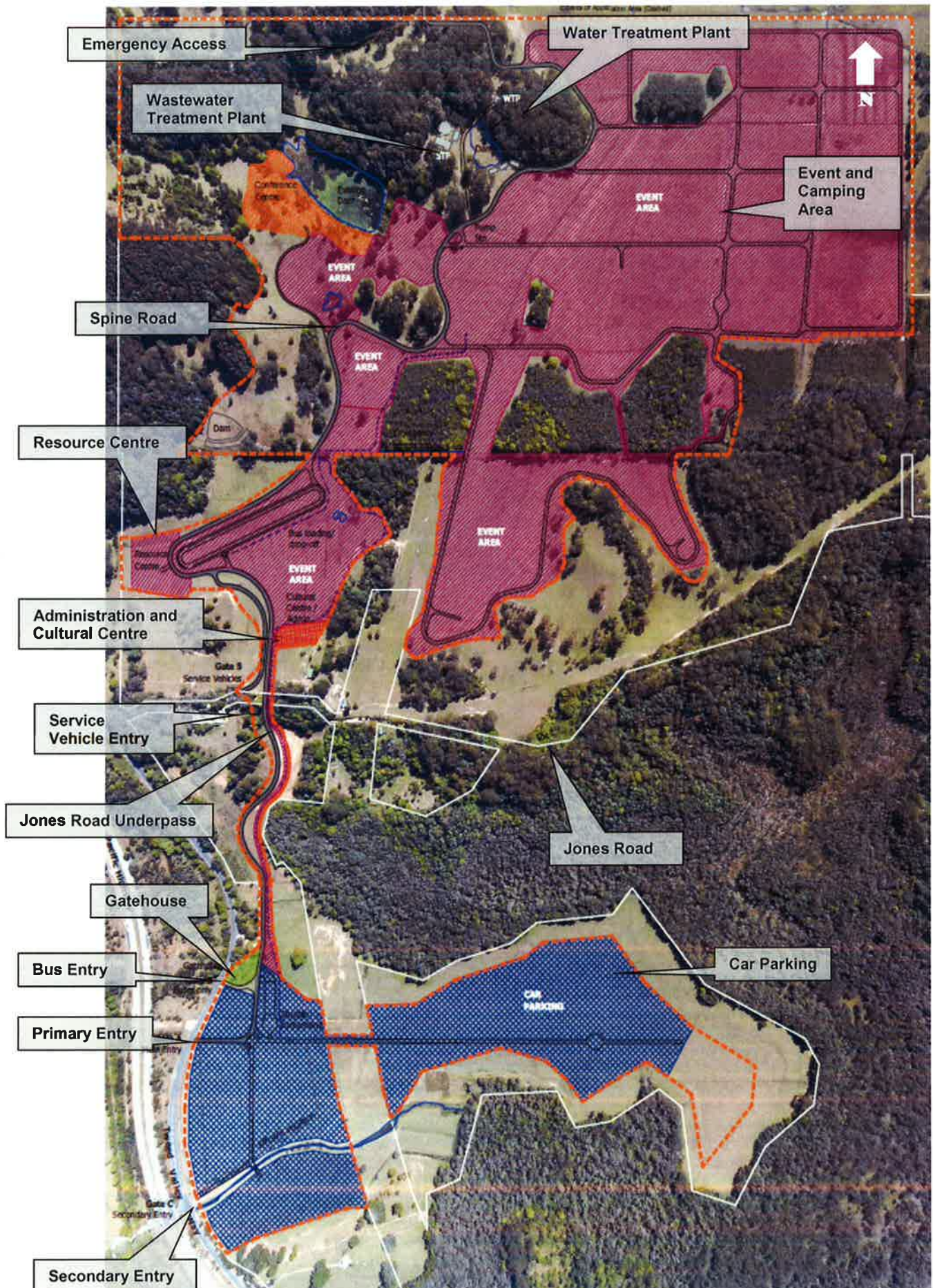


Figure 2: Cultural Events Site – Approved Project Layout (MP09_0028)

The Project Approval has been modified on two occasions. On 3 December 2012, the then Director – Metropolitan and Regional Projects North approved the first modification (MP 09_0028 MOD 1) for administrative amendments to two conditions of the Project Approval (B4 – Traffic management and car parking and E18 – Permanent Human Exclusion Fencing). On 29 January 2013, a second modification requesting an administrative amendment (correcting the naming of Yelgun Creek) was approved by the then Director – Metropolitan and Regional Projects North.

3.1 Events Held To Date

To date, there have been five events held at the North Byron Parklands site; three 'large trial events' (Splendour in the Grass 2013, 2014 and 2015) and two 'medium trial events' (Falls Festival 2013/14 and 2014/15). The large trial events have been held in winter and the medium trial events have been held over the New Year's period in the middle of summer. The differences between the events (increased background noise levels due to insect activity in summer months versus the quieter background conditions in winter) and the actual type of music events are considerably different, with different sizes and run by two different companies. Whilst significant variation exists between these events, it is a requirement that all events held at the site comply with the Project Approval, particularly in relation to noise.

The Proponent has undertaken regular economic impact assessments of the events that have been held. The latest assessment (dated September 2015) covered the most recent large and medium trial events (Splendour in the Grass 2015 event and the Falls Festival 2014/15) and identified that the total economic output of these events was measured at \$107.8 million. This comprised the creation of 196 equivalent full time jobs, 28,995 room nights in accommodation within the Byron Shire and 7,721 room nights in other areas of Northern NSW (this does not include onsite camping), all over a period of eight days.

The conditions of the Project Approval require the Proponent to prepare a Performance Report at the conclusion of each year in which trial events are held. This report is to address the overall compliance with conditions of the Project Approval and the environmental criteria within the approved management plans. The Proponent has indicated within the Performance Reports that they have generally complied with key performance indicators and the conditions of the approval. All required management plans have been implemented for all events held to date at the site. The Performance Reports demonstrate that there are some areas that require ongoing management (i.e. noise and traffic).

3.2 Compliance Action

A number of non-compliances were identified during the first two trial events held at the site, (SITG 2013 and Falls Festival 2013/2014) primarily in relation to traffic management and noise. The Proponent sought measures to address these non-compliances prior to the SITG 2014 event. Measures included improvement in traffic management and traffic flows around the site and the revision of noise management at the site including, implementation of further onsite noise attenuation and comprehensive attended and unattended monitoring, both onsite and offsite, during the events.

The Department sent three officers to the SITG 2014 event to conduct a focussed compliance audit and to monitor noise. Overall, the findings of the compliance audit indicated that management practices employed during the event were satisfactory; however some matters of non-compliance were identified particularly in relation to the noise restrictions specified under Condition B3 of the Project Approval. The audit results were reviewed in conjunction with community feedback received during and following the event. A Penalty Infringement Notice (PIN) was issued to North Byron Parklands in accordance with the Department's *Compliance Policy* and *Breach Management Guidelines*.

Following assessment of the Proponent's Noise Impact Report (as requested by the Department in accordance with condition C52 of the Project Approval), a further PIN was issued in accordance with the Department's *Compliance Policy* and *Breach Management Guidelines*, for breaches of the noise restrictions during the SITG 2015 event, as presented within the Proponent's Noise Impact Report. The Department requested that the Proponent provide details of how the management of a number of other matters would be addressed for all future events.

3.3 Departmental Inspections

Following the compliance action taken at the site, a team of three Departmental officers attended the next event following SITG 2014, being Falls Festival 2014/15. The purpose of the attendance was to validate the implementation of the Department's recommendations of the previous compliance audit

and monitor the compliance with the Project Approval for a medium trial event. The outcome of the inspection was that the event generally complied with the Project Approval.

Given the differing seasonal and meteorological conditions, the Department conducted a follow up site inspection for the third large trial event – Splendour in the Grass 2015. The purpose of the site inspections was to monitor compliance and to undertake detailed noise monitoring within and immediately surrounding the site for consideration as part of the assessment of this modification request.

3.4 Proponent's Response to Breaches in the Project Approval

As a result of the exceedances in noise restrictions for the last two large events, the Proponent undertook additional analysis of the acoustic data collected to determine how best to manage sound emissions at future events, particularly those in winter where background noise is significantly lower. This analysis indicated that low frequency emissions (bass) are likely to be the cause of most of the disturbance from events. The Proponent subsequently endeavoured to address lower frequency sound emissions through the implementation of various management and mitigation measures including re-orientation of stages, parking trucks adjacent to stages to provide acoustic attenuation, placement of 500 kilogram hay bales around stages, and the use of innovative speaker arrays and drapes to contain sound and reduce levels from the front-of-house speaker arrays. In conjunction with these measures, the proponent engaged a Community Manager to educate the community about the propagation of music over distance, particularly the low frequency end of the spectrum and provide detail on how it is managed and controlled onsite.

Subsequently, the Proponent, in consultation with their acoustic consultant, determined that setting criteria for this unregulated part of the acoustic spectrum would improve the amenity for the surrounding community.

4. PROPOSED MODIFICATION

On 26 May 2015, Planners North on behalf of Billinudgel Property Pty Ltd (the Proponent) submitted a third Section 75W modification request to MP 09_0028.

The modification request proposes to:

- include criteria for lower frequency sound emissions;
- revise current noise criteria (i.e. one limit at all times for the duration of any event held during the trial period);
- allow minor community, non-music focussed events; and
- amend a number of conditions to remove ambiguity and duplication.

4.1 Modification Justification

Based on the trial events held at North Byron Parklands to date, the Proponent considers the carrying out of cultural events provide economic, social and environmental benefits to the broader area. The Proponent has indicated that cultural events are a significant contributor to the region's economy, workforce and the attraction of tourists from throughout the State, interstate and overseas. The request seeks the modifications to enable the progression of the site to becoming a premier event venue in the region.

Noise

The modification application indicates that the amendments to noise criteria would provide specific overall noise limits for the site, rather than individual noise levels for various receiver locations that are based on background levels. Using background levels to establish the noise criteria results in a significant difference between limits that apply between events held in summer and winter. The limits proposed are higher than those currently provided under the current noise regime. In addition, the Project Approval does not presently regulate bass frequency noise, rather just higher frequency or 'A-weighted' emissions.

Minor Community Events

The modification request also aims to provide for a broader range of permanent and temporary employment opportunities associated with the North Byron Parklands. The introduction of minor community focussed events would enable the site to be accessible to a broader range of the community and be used for a wider range of purposes. The Proponent states that the establishment of the North Byron Parklands as a host for minor community events would add to broaden Byron's iconic image as a centre for the arts, music, entertainment and culture.

5. STATUTORY CONTEXT

On 24 April 2012, the Planning Assessment Commission, as delegate for the Minister for Planning, granted a Concept Plan and Project Approval (MP 08_0200) under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In accordance with Clause 12 of Schedule 6A of the EP&A Act, Section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Under Section 75W of the Act, the Minister is obliged to be satisfied that what is proposed is indeed a modification of the original proposal, rather than being a new project in its own right.

The Department notes that the proposed modification is a change to the approved Cultural Events Site approval however, would not change the intent or purpose of the approved project. It is considered that the proposed modification is within the scope of Section 75W of the Act.

On 14 September 2011, the then Minister for Planning delegated functions under Section 75W of the EP&A Act to modify Part 3A approvals to the Planning Assessment Commission (the Commission) in cases where:

- council has made an objection in relation to the proposal; and/or
- more than 25 public submissions objecting to the proposal were received; and/or
- a reportable political donation has been made.

Neither Byron Shire Council nor Tweed Shire Council objected to the proposal and no political disclosure statements were received, however the modification request is being referred to the Commission for determination as over 25 public submissions objecting to the proposal were received. Accordingly, the Commission may determine the application in accordance with the Minister's delegation.

6. CONSULTATION

Under Section 75W of the EP&A Act, the Department is not required to notify or exhibit the modification application. However, following a review of the application, the Department:

- publicly exhibited the modification request for a period of 18 days from **Friday 5 June 2015** until **Monday 22 June 2015**;
 - on the Department's website;
 - at the Department of Planning and Environment's Information Centre (Sydney);
 - at the Byron Shire Council; and
 - at the Tweed Shire Council.
- advertised the public exhibition in the Byron Shire News, Byron Shire Echo and Tweed Daily News;
- consulted with Council and other relevant government agencies; and
- notified residents within approximately two kilometres of the site by letter.

The Department received a total of 1,473 submissions including seven (7) from government agencies, eight (8) from community groups and 1,458 from the general public. A summary of the issues raised in these submissions is provided within **Table 1** and they are discussed in further detail within **Section 7**.

Table 1: Breakdown of submissions by classification and respondent

Respondent	Support	Object	Comment	Total
Individual	1,394 (including 1,390 proforma)	62	2	1,458
Government Agencies			7	7
Community Groups	Byron Bay Runners	<ul style="list-style-type: none"> • South Golden Beach Community Association • Conservation of North Ocean Shores Inc (CONOS) • Wooyung Action Group (WAG) • North Coast Environment Council • Friends of the Koala Inc • Coalition for Festival Sanity 	Middle Pocket and Yelgun Progress Association	8

Respondent	Support	Object	Comment	Total
TOTAL	1,395	68	10	1,473

6.1 Government Agencies

The Department received seven (7) submissions from government agencies during the exhibition period. Submissions were received from:

- Byron Shire Council;
- Tweed Shire Council;
- Commonwealth Department of the Environment;
- Office of Environment and Heritage;
- Roads and Maritime Services;
- Department of Primary Industries; and
- NSW Trade and Investment – Division of Resources and Energy.

A summary of the issues raised by government agencies is provided in **Table 2**.

Table 2: Key issues raised by Council and Agencies

Agency	Key Issues
Byron Shire Council (BSC)	<ul style="list-style-type: none"> • BSC raised no objection to the modification request however noted that noise impacts associated with the event site are a key issue within the community. • BSC requested that the impact of the requested modifications upon the natural and built environment as well as the amenity of the locality be considered.
Tweed Shire Council (TSC)	<ul style="list-style-type: none"> • TSC raised no objection to the modification request. • TSC recommended that outdoor cinema events be defined as small trial events, due to their production of amplified sound. • TSC did not consider it appropriate to remove the requirement to consider background noise levels during the trial period and suggested further assessment in this regard including the introduction of low frequency monitoring to gain an understanding of the level of disturbance experienced by the community. • TSC requested further detail regarding noise and sleep disturbance and the relationship between complaints received and the noise exposure levels at the time. • TSC recommended that if the limits proposed are implemented for the remainder of the trial period, it should be "and" not "or" in 3(a) and (b) with the time measurement being 15 minutes, to reflect current standard practice.
Commonwealth Department of the Environment	<ul style="list-style-type: none"> • The Department of the Environment raised no objection however referred to the Non-Controlled Action Particular Manner (NCAPM) decision under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) that applies to the site. This decision specifies: <i>Noise levels must be continually monitored for the duration of events, at three points along the Jones Road boundary with the Billinudgel Nature Reserve...noise levels at these monitoring points must not exceed 65 dB(A).</i> • The Department of the Environment raised concern in regards to the 5dB tolerance proposed by the modification and sought clarification as to how this tolerance related to the limits specified.
Office of Environment and Heritage (OEH)	<ul style="list-style-type: none"> • OEH raised no objection however noted that whilst most of the proposed amendments appear minor, their accumulation results in the intensification of the existing approval and use of the site and the potential to increase direct and indirect impacts on biodiversity. • It was suggested that any approval for the proposed modification include conditions clarifying the requirements for the rehabilitation of the site and to ensure these works are appropriately implemented for the remainder of the trial period. • OEH recommended that an implementation schedule for all works associated with the Ecological Structure Plan and the current approval documents be developed in consultation with the Regulatory Working Group and OEH and that these works be completed at the end of the trial period (31 December 2017).
Roads and Maritime Services (RMS)	<ul style="list-style-type: none"> • RMS did not object to the modification request and support the change to the Level of Service performance criteria for the Tweed Valley Way and Brunswick Valley Way intersections, consistent with previous advice provided to North Byron Parklands. • RMS raised concerns with the request to have minor events of up to 3,000 patrons at the site as there is potential for this to impact upon the link road between the Yelgun Interchange and Tweed Valley Way. The RMS advised that the limited capacity of the intersection may see vehicles queuing and may impact on the interchange southbound off ramp. • RMS recommended that additional traffic analysis be undertaken to examine a series of event scenarios with a focus on peak hour traffic flows, event traffic profiles and conflict with background traffic.

Agency	Key Issues
Department of Primary Industries (DPI) (including NSW Office of Water and NSW Fisheries).	<ul style="list-style-type: none"> • NSW Fisheries advised that it had no comments in relation to the application. • The Department of Primary Industries and the NSW Office of Water did not provide submissions on the modification request.
NSW Trade and Investment – Division of Resources and Energy	<ul style="list-style-type: none"> • The Geological Survey of New South Wales advised that it had no comments in relation to the modification request.

6.2 Community Groups

The Department received eight (8) submissions from community groups during the exhibition period. Submissions were received from:

- Byron Bay Runners (support);
- Coalition for Festival Sanity (object);
- Conservation of North Ocean Shores (object);
- Friends of the Koala (object);
- Middle Pocket and Yelgun Progress Association (comment);
- North Coast Environment Council (object);
- South Golden Beach Community Association (object); and
- Wooyung Action Group (object).

A summary of the issues raised by local organisations is provided in **Table 3**.

Table 3: Key issues raised by local organisations

Agency	Key Issues
Byron Bay Runners (BBR)	<ul style="list-style-type: none"> • Byron Bay Runners (BBR) were supportive of the modification request for non-music events, particularly in regard to the potential for the site to be used for fun runs, inter-club competitions and training runs. • BBR highlighted that the use of the site for running events would have a minimal impact on the local environment, and would provide opportunities for new sporting events and safe training facilities within the region.
Coalition for Festival Sanity (CFS)	<p>Coalition for Festival Sanity objected to the modification request, specifically in relation to the proposed amendments to the noise levels. Matters raised included that:</p> <ul style="list-style-type: none"> ○ the proposed noise limits are too high; ○ the provision of a 5dB(A) weather tolerance is not reasonable; ○ the inclusion of dB(C) limits is supported, however these should be lowered from those requested; ○ lower noise limits have been requested by community representatives; ○ increased complaints received during events held at the North Byron Parklands when compared to other events make it difficult to compare this venue to other venues, particularly across NSW; ○ noise data collected and noise management measures implemented to date is considered to be inadequate; ○ the operation of the site until 2am on New Year's Eve is not supported; ○ the use of the southern car park for small to medium size trial events is not supported; ○ the proposed changes to the definitions of large and medium events are not supported; and ○ a more specific definition of 'small community events' and specific community consultation should be undertaken.
Conservation of North Ocean Shores (CONOS)	<p>Conservation of North Ocean Shores objected to the modification request, primarily in relation to the proposed amendments to noise levels and the introduction of smaller events. Matters raised included that:</p> <ul style="list-style-type: none"> ○ conditions should not be changed during the trial; ○ proposed changes will lead to negative impacts upon surrounding residences; ○ the proposed noise limits are too high; ○ the provision of a 5dB(A) weather tolerance is not reasonable; ○ the comparison of the modification's proposed changes to noise levels of the Blues Festival is not appropriate;

Agency	Key Issues
	<ul style="list-style-type: none"> ○ the removal of 'Condition B3 – Noise Restrictions' is not supported; ○ an independent expert be appointed to examine North Byron Parklands ecological assessments, prior to consideration of the proposed changes; ○ the EPBC approval be reviewed to encompass any change to noise levels (i.e. dB(C)); and ○ the introduction of small community events and the proposed changes to the Statement of Commitments are not supported.
Friends of the Koala	<p>Friends of the Koala objected to the modification request, specifically in relation to the proposed amendments to noise levels. Matters raised included:</p> <ul style="list-style-type: none"> ○ impacts of the noise of events upon wildlife within the Billinudgel Nature Reserve; and ○ that independent studies be carried out to ensure the proposed modification would not negatively impact upon local wildlife.
Middle Pocket and Yeilgun Progress Association (MPYPA)	<p>Middle Pocket and Yeilgun Progress Association objected to the modification request, primarily in relation to the proposed amendments to noise levels. Matters raised included:</p> <ul style="list-style-type: none"> ○ the ongoing noise issues with residents in the local area; ○ concerns regarding the potential impacts of the modifications requested upon amenity; and ○ discussion of the independent acoustic review of Splendour in the Grass 2014, as completed by AcousticWorks.
North Coast Environment Council (NCEC)	<p>North Coast Environment Council objected to the modification request, specifically in relation to the requests to increase noise and increase activities throughout the year. Matters raised included:</p> <ul style="list-style-type: none"> ○ concerns regarding the impacts (both direct and indirect) upon the Billinudgel Nature Reserve; ○ the cumulative impacts of the development as modified, upon threatened species and populations along the North Coast of NSW; and ○ that the location of a festival site adjacent to a nature reserve is inappropriate.
South Golden Beach Community Association	<p>South Golden Beach Community Association objected to the modification request, primarily in relation to the proposed modifications to the noise restrictions. Issues raised included that:</p> <ul style="list-style-type: none"> ○ conditions should not be changed during the trial period (i.e. up to 2017); ○ proposed changes will lead to negative impacts upon surrounding residences; ○ the inclusion of bass limits is supported, however these should be lowered from those requested; ○ increased complaints received during events held at the North Byron Parklands when compared to other events make it difficult to compare this venue to other venues, particularly across NSW ; ○ the operation of the site until 2am on New Year's Eve is not supported; ○ noise data collected and noise management measures implemented to date is considered to be inadequate; ○ noise monitoring should continue, even where agreements have been reached; ○ events held to date in winter have been disturbing, however noted that Falls 2014/15 (held in summer) was better controlled; ○ other occasional noise (ocean, vehicles) does not justify an increase in noise; ○ Regulatory Working Group (RWG) members have requested lower limits; ○ the use of the southern car park, removal of Condition B3 – Noise Restrictions and modifications to other noise conditions are not supported.
Wooyung Action Group (WAG)	<ul style="list-style-type: none"> • The Wooyung Action Group supported the aim to “better manage sound emissions from events held at the venue” however did not believe that the measures proposed within the modification would fulfill this aim. Requested inclusion of bass level dB(C) limits, however considered those requested to be too high. Generally, the Wooyung Action Group objected to: <ul style="list-style-type: none"> ○ increases in allowable dB(A) noise levels; ○ the introduction of small community events; ○ the removal of 'Condition B3 – Noise Restrictions' ○ the use of the southern car park for small to medium size trial events; ○ the increase in patron arrival days to the site; ○ changes relating to classification of events and the required compliance with various management plans; ○ changes to noise conditions including those relating to attenuation as these changes are considered to not be in the public interest; ○ amendments to conditions relating to bushfire risk and definitions; and ○ changes to the Statement of Commitments.

6.3 General Public

The Department received 1,458 submissions from the general public including 62 objections, 1,394 submissions of support (of which 1,390 were a pro-forma style template) and 2 submissions providing comments.

Objecting Submissions

Key issues raised within the submissions from individuals that objected to the requested modifications were noise, amenity and the impacts upon the sensitive ecological assets of the surrounding area. An indication of the proportion of submissions that raised particular issues within the objecting submissions is provided within **Figure 3**.

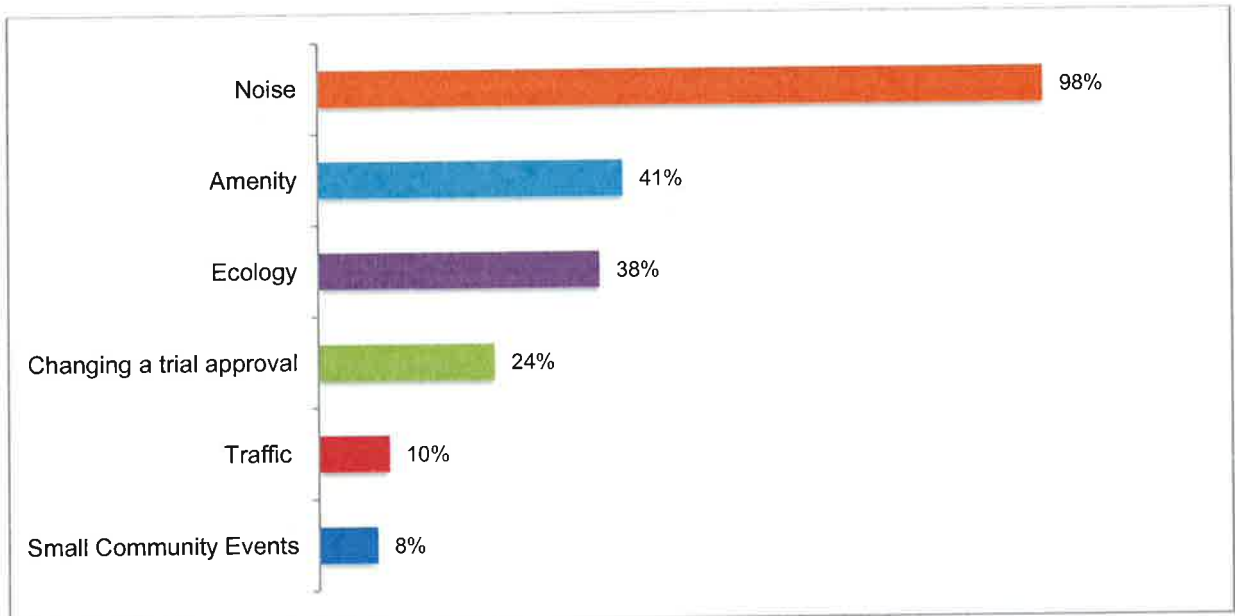


Figure 3: Key issues identified in objecting submissions and the proportion of objecting submissions that raised the issue.

The majority of public submissions raised objections to the modifications requested in relation to the changes proposed to the noise restrictions. Concerns were raised regarding amenity and ecological impacts that may arise from the proposed modification to the noise restrictions. Some individuals raised concerns with modifying the approval before the five year trial period has concluded. Several submissions also objected to the holding of minor community events at the site as they were concerned about the potential increase in impacts – particularly noise and traffic.

Submissions in Support

During the exhibition period, the Department received a large number of submissions in support of the application using a pro-forma style template. In total, 1390 individuals made a submission using this format. The main points raised in these submissions have been categorised and presented in **Figure 4**, which represents the proportion of responses made in support of each category as a percentage of the total number of supporting submissions received in this format.

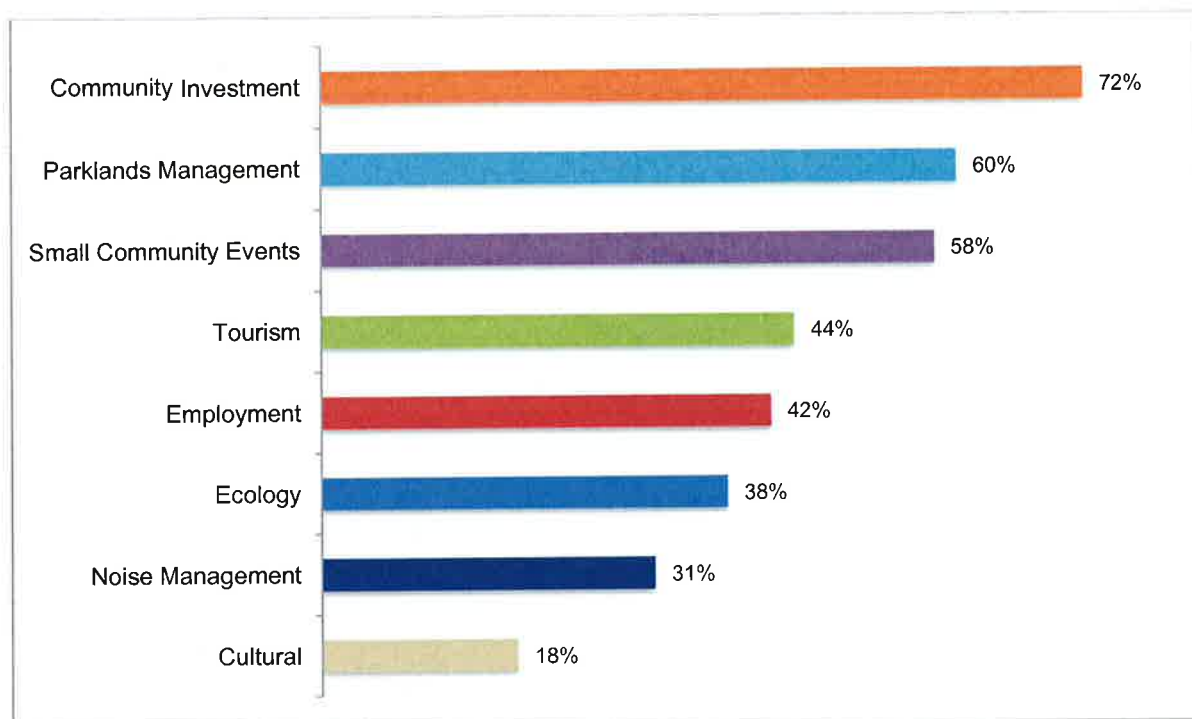


Figure 4: Key issues identified in supporting submissions and the proportion of supporting submissions that raised the issue.

The Department requested that the Proponent provide a Submissions Report to address the issues raised in the agency and public submissions.

6.4 Response to Submissions

The Proponent provided a Response to Submissions (RTS) on 28 October 2015. The RTS did not alter the overall scope of the proposed modification, however provided additional information and clarification around a number of issues raised within the submissions, particularly noise and traffic. The RTS refined the noise limits requested based on data from an additional event and included a zonal arrangement for the limits. In addition, further detail regarding traffic and the impact of minor community events was presented.

Noise

Subsequent to lodging the RTS, the Proponent held the third large trial event – Splendour in the Grass 2015 (SITG 2015), at the site. During this event, the noise consultants engaged by the Proponent undertook detailed analysis of previous event data in addition to some 296 attended noise readings across the surrounding areas during the event. As a result of this analysis and data collation as part of the RTS, the Proponent established noise ‘zones’ with the aim of increasing community amenity. The two zones (‘inner’ and ‘outer’) result in a reduction and refinement to the requested changes to the noise limits, particularly within the outer zone (approximately one kilometre from the site). The revised noise limits requested are as follows:

- Inner Zone
 - 11am –midnight - 65dB(A) LA_{eq} , 10-minutes; or
75dB(lin) L_{eq} , 10 minutes in the 63hertz 1/1 octave band; and
 - Midnight-2am - 55dB(A) LA_{eq} , 10-minutes; or
70dB(lin) L_{eq} , 10 minutes in the 63hertz 1/1 octave band.
- Outer Zone:
 - 11am –midnight - 60dB(A) LA_{eq} , 10-minutes; or
70dB(lin) L_{eq} , 10 minutes in the 63hertz 1/1 octave band; and
 - Midnight-2am 50dB(A) LA_{eq} , 10-minutes; or
65dB(lin) L_{eq} , 10 minutes in the 63hertz 1/1 octave band.

Traffic

At the request of RMS, the Proponent undertook additional traffic modelling. The additional modelling indicated that minor community events with defined start and finish times have the potential to result in queuing on the Pacific Motorway off ramps (and on-ramps) in some situations. As such, the Proponent committed to mitigating traffic impacts for events of up to 3,000 people by either:

- enforcing that 50% of patrons arrive by bus; or
- limiting patronage to 1,500 persons.

The Proponent also clarified other modification requests within the RTS including:

- the proposed definition of small community trial event;
- commitment to continued implementation of the Habitat Restoration Plan;
- justification regarding the increase in camper arrival days;
- evacuation and emergency management during events; and
- justification for the requested modification of a number of commitments.

The Department referred the RTS to Byron Shire Council, Tweed Shire Council, the Commonwealth Department of the Environment, Roads and Maritime Services, Office of Environment and Heritage in addition to publishing the RTS on the Department's website.

The Department received submissions from Tweed Shire Council (TSC), RMS and the Office of Environment and Heritage (OEH). One public submission was also received. These submissions are summarised as follows.

TSC were generally satisfied that the matters raised in their submission had been addressed.

RMS indicated that the mitigation proposed by the Proponent to alleviate potential traffic congestion during small community events by enforcing 50% of patrons arriving and departing by bus is unlikely to be economically viable. In addition, as small community events would be unlikely to require traffic control/s on the road network, reporting requirements would differ from that undertaken for the larger events. RMS have recommended that 'off-ramp queue length' be measured throughout small community events, to ensure that queue lengths remain within the stopping sight distance for 110 km/h speeds (approximately 210 metres). These matters are assessed in further detail within **Section 7.2 – Minor Community Events**.

OEH made some additional comments in relation to supplementary information that was provided to them following their comments on the modification request. These comments were in relation to the 'Ecological Structure Plan' and the potential intensification of the approval. These matters are assessed in further detail within **Section 7.3 - Ecology**.

One submission was provided by a member of the **general public** which raised the following concern with the Proponent's RTS:

- an increase in event arrival days has the potential to increase noise impacts upon the surrounding communities;
- inconsistencies in relation to information on noise;
- the potential impacts of absolute noise limits compared to 'background +' levels;
- the intrusiveness of C-weighted emissions (i.e. low frequency noise);
- concerns with the limits proposed for each zone, the noise measurement period and the proposed modification to the requirements for attenuation;
- the role of the RWG in requesting a lower noise limit; and
- reiteration of concerns raised in submissions and failure of the RTS to address these issues fully.

Generally, the Department is satisfied that issues raised in submissions received during the exhibition have been addressed, however has undertaken its assessment considering the matters raised both during the exhibition of the modification request and those received following receipt of the RTS. The Department has reviewed the matters raised and recommended a number of conditions and modifications to conditions to ensure minimal environmental impact. These are discussed in further detail within **Section 7**.

7. ASSESSMENT

In its assessment of the modification request, the Department has considered the following:

- the Commission's assessment reports for the original Concept Plan and Project Application approvals;
- the Proponent's modification request (see **Appendix A**);
- the submissions received by the Department (see **Appendix C**);
- the Proponent's RTS (see **Appendix D**); and
- the submissions received on the RTS.

The Department considers the key issues requiring further assessment to be:

- impacts as a result of modifying the existing noise limits (**Noise - Section 7.1**).
- impacts resulting from minor community events (**Minor Community Events - Section 7.2**); and
- impacts of the proposed modifications upon adjacent ecological assets (**Ecology - Section 7.3**).

The Department's assessment of other issues is provided in **Section 7.4 – Other Matters**.

7.1 Noise

The modification request seeks approval to:

- revise the current noise limits to provide consistency across events held at different times of the year through setting specific limits for all events (excluding minor community events);
- provide a zonal arrangement of noise limits to improve amenity for the broader community, setting specific limits within differing noise catchments; and
- regulate lower frequency (bass) noise levels by including a limit for bass sounds.

The approved noise limits, as established by the Commission, took into consideration the rural setting of the site and the impacts of noise upon sensitive receivers (including fauna and festival-goers). The Commission considered that a flexible approach to noise management was the preferred way to enable negotiation between the Proponent, residents and Council to establish a suitable outcome. At the time, the Commission did not consider the use of one overall noise limit to be the most appropriate in the circumstances. As such, the approved noise limits are as follows:

Condition B3 Noise Restrictions

- 1) *During trial events, all stages may operate from 11am but must be shut down at midnight.*
- 2) *Between 11am and midnight, noise levels at sensitive receivers must not exceed background plus 10dBA.*
- 3) *Music from bars, cafes and the dance floor must cease at 2am.*
- 4) *Between midnight and 2am, noise levels at sensitive receivers must not exceed background plus 5dBA when measured outside bedroom windows.*
- 5) *The Regulatory Working Group may make a recommendation to the Director- General that the noise limits imposed under this condition should be increased or decreased for future events after considering the Noise Impact Report referred to in Condition C52.*
- 6) *The Director- General may amend the noise limits imposed under this condition for future events after considering the advice of the Regulatory Working Group.*

The Department notes that there is opportunity for noise limits to be increased or decreased under Condition B3 and this has been raised by some members of the Regulatory Working Group during formal meetings (as noted within the minutes as provided on the Proponent's website). Whilst this is the case, the Department has not received a formal request from the Regulatory Working Group to amend the limits.

The proposed modification requests an altered noise management regime to enable consistent noise limits to all events at the site. The primary modification is to alter the 'background plus 5dBA' noise restriction within Condition B3(4). The proposed noise limits would stipulate different restrictions between the day/evening (11am – midnight) and night time (midnight – 2am) whilst also providing differing limits to residences further from the site. The modification request also proposes to regulate low frequency (i.e. bass) sound levels. The request to revise the noise restrictions is based on the Proponent's experience gathered from previous events, assessment of data collected during events and the feedback received from the community during events, particularly in relation to 'bass' sounds.

Department's Consideration

The Department has assessed the requested modifications to the current noise restrictions.

Consistent limits at all times of year

The current noise limits as specified within condition B3 of the Project Approval are derived from background levels. These types of limits represent the guidance provided by the NSW *Industrial Noise Policy* (INP). The INP is specifically aimed at large and complex industrial activities and recognises that large and complex industrial activities run for extended periods (often 24 hour operations), generating steady and continuous noise consistently throughout the year. As such, the Department does not consider the INP to be the most appropriate document to use when assessing music festival noise.

The Department acknowledges that there are limited guidelines and policies relating to large music festivals making it difficult to assign suitable noise criteria that minimise impacts upon the community, whilst also enabling a viable event to be held. Given that the Commission considered that there was a need to establish a suitable outcome regarding noise given the limited applicable guidelines, the Department recommends reconsideration of the use of the INP as the basis for noise restrictions. The request to revise noise limits is based on the performance of previous events and feedback from the community at different times of year.

The events held at the site to date have had markedly different limits for noise across winter and summer in accordance with the existing 'background +' conditions. The variation between seasons and events and noise generally, results in angst across the community (being exposed to different levels of noise) and makes it difficult for the Proponent to ensure all necessary mitigation and management measures are in place for all events. The Department considers that establishing a fixed noise limit for all events held at the site will result in a more informed community by setting clear expectations regarding their exposure to noise (i.e. short term). In addition, it is the opinion of the Department that a fixed noise limit would enable the Proponent to better manage noise by establishing all necessary noise management and mitigation measures for all events.

Different limits for residents further from the site.

In establishing the existing noise limits, the Commission noted that existing background noise varies significantly among the properties adjacent to the site depending on their location. As such, within the Commission's determination it was concluded that the previous criteria recommended of $65\text{dB}_{\text{LAeq}}$ before midnight and $60\text{dB}_{\text{LAeq}}$ after midnight would not be appropriate for all sensitive receivers. In addition, the Commission noted that there was no time specific period on these levels, thus potentially leading to disputes on measuring times. Whilst the Department agrees with the original conclusions of the Commission, the Department recognises the need to assess the suitability and performance of the noise levels from data gathered from the events held to date.

The five trial events held to date (two medium and three large trial events) have provided a greater understanding of the noise environment in the surrounds of the site. The Proponent has recognised that there is a need to provide different noise limits for areas increasing in distance from the site. As such, the modification seeks to provide defined limits for all times of the year across two zones (See **Figure 5**). Zone 1 comprises areas within 1 kilometre of the site, and Zone 2 includes all other areas.

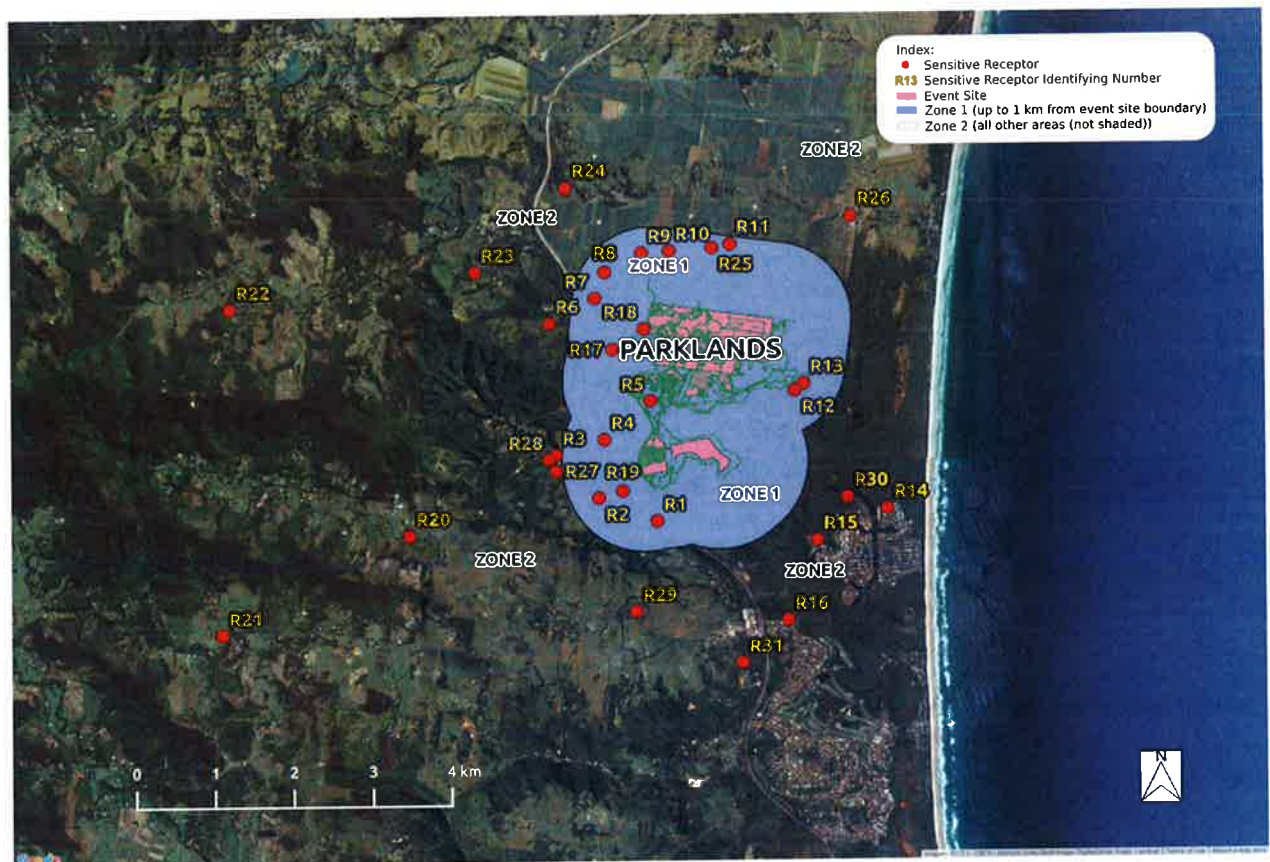


Figure 5: Map representing the NBP site (pink) and the two noise zones (Zone 1 (purple) and Zone 2).

The Department considered the requested noise limits and zones in conjunction with the submissions received by Byron Shire Council (BSC), Tweed Shire Council (TSC) and the general public during the exhibition. Whilst neither BSC nor TSC objected to the requested modifications, both Councils indicated that noise continues to be a key concern across the community. This was reinforced during the exhibition period by the proportion of submissions that raised noise as a key concern.

With the benefit of data and observations made over several events representing a range of weather conditions and seasonal variations, the Department has been better able to understand the generation, propagation and management of sound levels generated by the site. Together with a review of sound level objectives adopted for similar events in other jurisdictions (both domestically and internationally) the Department is of the view that specific noise limits across the two delineated zones would provide greater certainty (See section 'Conclusion' for recommended limits).

Specific limits would be consistent across all events held at the site. These set levels would:

- enable the Proponent to better manage noise year round by establishing permanent controls that ensure the levels can be achieved;
- set the expectation amongst the community for each event; and
- provide clear limits that the Department can measure and enforce, as necessary.

Low frequency noise levels

The existing approval that applies to trial events at the site does not provide low frequency noise limits. The Commission, in its review of the original application, noted that noise limits for some events in Sydney are both A-weighted (range of sound detected by the human ear) and C-weighted (sometimes used in the entertainment industry to detect the transmission of lower frequency (bass) sounds). The Commission then stated that it was not clear why these types of criteria were not appropriate for the site. This matter was not fully addressed in the Department's original recommendation, nor within the Commission's determination report.

The compliance investigations and detailed monitoring undertaken by both the Department and the Proponent following the last two large trial events has highlighted that there have been some issues of non-compliance with the existing A-weighted frequency noise at the site. The Proponent

acknowledges that this is the case however is of the firm view that it is the lower frequency sound that is causing much of the disturbance within the surrounding community. In the Proponent's analysis of feedback received by the community during events, a high proportion of complaints from the community mention 'bass' noise.

The Proponent undertook analysis of noise monitoring data collected during the SITG14 event. This analysis indicated that the voluntary C-weighted low frequency noise levels (as set by the Proponent) were exceeded both during the day time and night-time periods. Vehicles and ocean noise are contributors to low frequency noise, so the presence of these sounds has the potential to skew noise measurements. As noises within the environment (such as the ocean and traffic) are outside of the control of the venue, the use of an overall C-weighted limit was not considered the most accurate measure of the contribution of the site to noise levels in the surrounding areas. The Proponent's further analysis of data collected from SITG14 and SITG15 (within the RTS) indicated that the low frequency influence that could be attributed to the event was predominantly within the 63 hertz octave band. This noise frequency was considered to capture most drum and bass beat signals.

Given the ongoing disturbance of bass sounds upon the adjoining community as a result of events held at the site (as evidenced by the number of complaints received specifically referencing the 'bass'), the Department supports the inclusion of low frequency noise limits. The high volume of vehicle traffic near the site (Pacific Motorway) in addition to the close proximity of the site to the ocean, suggest that the application of an overall C-weighted noise limit would not provide an accurate representation of the contribution of event noise to the noise environment. Setting specific criteria in the 63 hertz acoustic bandwidth (within the C-weighted noise spectrum) is considered by the Department to provide a limit on the more disturbing components of event noise upon the community.

Conclusion

The Department acknowledges that since the commencement of the trial, the Proponent has endeavoured to improve noise emissions from its events. Specifically, since the completion of the Department's compliance review (Splendour in the Grass 2014 – Compliance Report) and the subsequent inspections of Falls Festival 2014/15 and SITG 2015, the Proponent has implemented a range of additional management and mitigation measures as a means of trying to reduce noise impacts. These have included:

- the installation of heavy drapes on the rear and sides of flown speakers and roof sheeting at the rear of scaffolding to reduce noise spill in these directions;
- placement of 500 kilogram hay bales (one deep and two high) surrounding the rear and sides of stages to maximise attenuation of low frequency emissions;
- re-orientation of stages based on noise results and feedback received during events;
- use of innovative technologies including end-fire sub arrays and delay towers (speaker systems aiming to direct sound within the site, rather than outside the site and distributing sound reducing sound from the front-of-house system); and
- the increased presence of acoustic engineers that constantly monitor noise (in the event, at sensitive receivers and at residences of persons that have called the community hotline regarding noise) and facilitating the direct contact between the acoustic engineers and stage managers to refine music levels in specific frequencies.

In considering the merits of the project, the Department needs to balance the provision of events at the site while minimising impacts upon the surrounding community. This becomes more difficult when seasonal differences alter the noise criteria required for each event. Moreover, it is noted that the Commissions' approval recognised that there would likely need to be adjustments to the limits once a body of empirical data was collected and available to be analysed. The Department considers that this modification is consistent with the approach of the Commission's approval of the trial events.

Consequently, the Department supports the revision of noise limits within the existing approval and the application of these specific limits to a zonal arrangement, considering sensitive receivers both close to and further away from the site. In addition, the Department considers the inclusion of low frequency limits to be a benefit to the community as they will allow better management of the more annoying characteristics of event music.

In assessing the project, the Department has considered music levels set for events both domestically (including 'A Day on the Green' (various locations) and the Sydney Festival) and internationally (particularly in the United Kingdom, including Glastonbury) along with submissions received by the general public and community groups. Whilst the music level objectives proposed by North Byron

Parklands are generally consistent with acceptable levels for similar events, the Department believes that levels set for receivers, particularly those in nearby suburbs including Ocean Shores, can be further reduced. Consequently, the Department has recommended performance based levels that, when combined with continued implementation of best practice noise mitigation measures, will be both achievable, and provide an acceptable acoustic amenity for the majority of surrounding residences considering the limited period of time.

As such, the Department has generally recommended reduced limits to those requested by the Proponent. In addition, the Department has considered the information provided by both the Proponent and within submissions in relation to limits imposed on other facilities. As was concluded by the Commission, there remain no guidelines that apply to this type of development, being a festival that is short-term (3-5 days) and intermittent (up to three times per year).

In considering the information available, the Department recommends the following modification to *Condition B3 – Noise Restrictions*:

Condition B3 Noise Restrictions

- 1) *During trial events, all stages may operate from 11am but must be shut down at midnight, excluding New Year's Eve, where stages may operate until 1am.*
- 2) *Between 11am and midnight, noise levels at sensitive receivers must not exceed the following noise criteria:*
 - a. *For Zone 1 (shown in Schedule 4 of this approval):*
 - i. *Between 11am and midnight amplified entertainment noise from the event at sensitive receivers must not exceed 60dB(A) LAeq, 10-minutes or 70dB(lin) Leq, 10-minutes in the 63 hertz 1/1 octave band; and*
 - ii. *Between midnight and 2am, amplified entertainment noise from the event at sensitive receivers must not exceed 45dB(A) LAeq 10-minutes or 60dB(lin) Leq, 10-minutes in the 63 hertz 1/1 octave band.*
 - b. *For Zone 2 (as shown in Schedule 4 of this approval):*
 - i. *Between 11am and midnight amplified entertainment noise from the event at sensitive receivers must not exceed 55dB(A) LAeq, 10-minutes or 65dB(lin) Leq, 10-minutes in the 63 hertz 1/1 octave band; and*
 - ii. *Between midnight and 2am, amplified entertainment noise from the event at sensitive receivers must not exceed 45dB(A) LAeq 10-minutes or 55dB(lin) Leq, 10-minutes in the 63 hertz 1/1 octave band.*
- 3) *Amplified music from bars, cafes and the dance floor must cease at 2am.*
- 4) *The Regulatory Working Group may make a recommendation to the Secretary that noise limits imposed under this condition should be increased or decreased for future events after considering the Noise Impact Report referred to in Condition C52.*
- 5) *The Secretary may amend the noise limits imposed under this condition for specific future events after considering the results as presented within Noise Impact Report referred to in Condition C52.*

The Department's assessment concludes that the revised noise restrictions would result in improved management of noise from events by providing a more consistent noise management regime and through the addition of specific criteria to manage 'bass' sounds.

The Department has also revised condition 'C18 – Noise Mitigation' of the Project Approval. The purpose of the proposed modifications to this condition is to ensure that where compliance with the proposed noise limits is not achieved at sensitive receivers within Zone 1, a process for the implementation of reasonable and feasible mitigation measures will be effected.

7.2 Minor Community Events

In addition to the three trial events permitted at the site per calendar year, the modification request seeks approval to host non-music focussed, community events of up to 3,000 patrons at the site every year. The restrictions on events are presented within *Condition B2 – Trial period for outdoor events* which states:

- 1) *There shall be a trial period for outdoor events up to the end of 2017. The Director-General may approve up to 3 trial events each calendar year of the trial period, being one large trial event, one medium trial event and one small trial event. The Director-General may also approve additional small or medium events in place of a larger trial event during any calendar year so long as the number of trial events for the year does not exceed 3.*
- 2) *The maximum number of patrons that may be approved for each large, medium or small trial event depends on the number of trials that have been held for events in that class, as set out in the Table below.*

Number of trial	Large trial event	Medium trial event	Small trial event
First trial	<i>Up to 25,000 patrons</i>	<i>Up to 15,000 patrons</i>	<i>Up to 10,000 patrons</i>
Second trial	<i>Up to 27,500 patrons</i>	<i>Up to 17,500 patrons</i>	<i>Up to 12,000 patrons</i>
Third trial	<i>Up to 30,000 patrons</i>	<i>Up to 20,000 patrons</i>	<i>Up to 13,000 patrons</i>
Fourth trial	<i>Up to 32,500 patrons</i>	<i>Up to 22,500 patrons</i>	<i>Up to 14,000 patrons</i>
Fifth trial	<i>Up to 35,000 patrons</i>	<i>Up to 25,000 patrons</i>	<i>Up to 15,000 patrons</i>

Furthermore, *Condition B5 – Timing and duration of trial events* stipulates:

- 1) *The total event days each calendar year must not exceed 10 days.*
- 2) *A trial event must not exceed 4 event days.*
- 3) *The bump in period must not exceed 21 days and the bump out period must not exceed 7 days.*
- 4) *The Director-General must consult with the Department of Roads & Maritime Services and the Council before approving the dates for any trial event.*
- 5) *The site must not cater for more than one event at any time.*

The Proponent recognises that hosting three music-focussed events of at least 10,000 patrons per year would have some short-term impacts on some members of the local community. The Proponent not only works to mitigate these impacts directly (implementation of sound barriers (i.e. 500 kilogram hay bales), rotating stages, bush regeneration) but also aims to mitigate these impacts indirectly through the provision of benefits to the local community (employment during events, Community Grant Fund – grants provided every year to local charities and community groups).

To further mitigate the impacts of up to three large music-focussed events, the Proponent is seeking to introduce minor community focussed events at the site. These events would broaden the types of events held at the site and increase the accessibility and availability of the site to the wider community. The types of events may include school sporting events and charity event days.

The Proponent notes that whilst hosting minor events would predominantly benefit the broader community, measures would need to be implemented to regulate the operational parameters of these community events to ensure potential impacts on nearby residents are adequately managed. The Proponent proposes these community events be:

- Non-music focussed;
- small enough to result in minimal impact upon the surrounding public roads without external traffic management (i.e. up to 3,000 patrons with 50% arriving by bus or 1,500 patrons); and
- comply with applicable North Byron Parklands general consent conditions.

Department's Consideration

The Department has assessed the request to permit the hosting of minor, community-focussed events at the site.

In its assessment of the original project, the Commission concluded that the site is suitable for outdoor events for cultural and educational purposes however took a precautionary approach and limited the maximum number of patrons to 35,000 patrons per day, with up to 25,000 campers to reduce daily traffic generation and reduce potential off site impacts. The Commission's intent with the existing approval is that current limits on events provide for the incremental usage of the site to allow for the monitoring of the impacts of these events. The Commission noted that large outdoor events should be able to be carried out without significant impacts upon the community if effective environmental management plans are implemented and performance consistently monitored. Following the discussions with the Proponent and the public meeting, the Commission's assessment became focussed upon large outdoor events (as approved under condition B2 of the Project Approval).

In its original recommendation to the Commission, the Department concluded that the hosting of minor events (up to 300 patrons), would have minimal environmental impact upon the community and as such, supported the inclusion of unlimited days per annum would be acceptable for minor events. The minimal environmental impacts of minor and community focussed events in addition to the potential community benefits provide endorsement for minor events. Furthermore, the site has been recognised as being suitable for cultural and educational purposes.

In collating the modification request, the Proponent has drawn upon its experience with events to date and identified constraints and management requirements that would effectively manage minor community focussed events. In doing so, the Proponent requests further consideration of minor events

of up to 1,500 patrons (or 3,000, with 50% arriving via bus) as events of this size would have minimal impact upon sensitive receivers and the ecological reserve.

During the exhibition of the modification request, over 800 submissions were received which supported the implementation of minor community events at the site on the basis that they would provide benefits to the broader community. The Roads and Maritime Services (RMS) raised some concerns relating to capacity of the surrounding road network for events of up to 3,000 patrons. RMS noted that the Yelgun Interchange has limited capacity before queuing impacts upon the southbound off ramp (See **Figure 6**).



Figure 6: Yelgun Interchange (Source: NBP Response to Submissions, 2015)

RMS noted that traffic generated by single day events would vary depending on the activity and would have different traffic profiles to the larger, multiple day events. Economically, it is unlikely that small events would utilise traffic controls or buses to manage traffic flow or demand so it is necessary to ensure there is adequate capacity to accommodate the traffic flow for the number of patrons requested. Detailed traffic data was not provided as part of the application and as such, the Proponent was required to address capacity of the surrounding intersections based on traffic data from previous events.

In the RTS, the Proponent undertook further consultation with the RMS and completed additional traffic modelling of the Yelgun Interchange. The revised modelling indicated that the capacity of the road network and key intersections would be adequate to handle an event with a maximum of 1,500 patrons arriving at the site within an hour. For events with a more staggered arrival, there would likely be capacity for up to 3,000 persons. RMS did not support the mitigation proposed by the Proponent of enforcing 50% of patrons attending minor events arriving and departing by bus as RMS considered this would not be viable or enforceable. Further, RMS highlighted that the traffic reporting requirements would differ from those for the larger events and have recommended that 'off-ramp queue length' be measured throughout community events. RMS recommends that the length of these queues should not extend more than 210 metres, the stopping sight distance for 110 km/h speeds.

Conclusion

The Department is of the view that the impacts of minor community events of up to 1,500 patrons could be managed within the confines of the site, however given the concerns raised, particularly by RMS and from the performance of previous events, the Department proposes that the approval of minor community events be based on the performance of the first year's minor community events. In light of the issues raised by RMS, the Department has recommended that minor community events be limited to 1,500 patrons and has restricted operating times to 9:00am to 10:30pm. The Department recommends that a detailed performance report be completed after the first year of up to five minor community events. If the minor community events comply with the consent conditions and performance indicators, the Proponent may request unlimited minor community event days until the end of 2017 when the existing Project Approval currently expires.

The Department supports the view of RMS and has recommended that a traffic monitoring and reporting program be developed and implemented for the first five minor community trial events. At the end of this time, all data from the five events is to be collated and reviewed to inform traffic restrictions and patron numbers for subsequent minor community events. This traffic review should be provided to RMS for approval.

The Department is generally supportive of the increased utilisation of the site for minor community focussed events as these types of events would have minimal environmental impact, benefit the broader community and potentially increase economic growth in the area. Notwithstanding, the difference in character of the minor community events compared to the large, music-focussed events, has resulted in the Department recommending a number of conditions that specifically apply to this category of event.

The Department notes that the management requirements of minor community events differ to the management requirements of the larger scale events presently approved. As such the Department recommends the implementation of a Minor Community Event Management Plan specifically for the minor events.

This plan is to include:

- detail of all site features, designated areas for types of events/structures, and car parking specific to minor events;
- include a copy of relevant Bushfire and Flood Emergency Evacuation Plans;
- detail emergency assembly areas throughout the site;
- details of traffic and noise management and monitoring that will be undertaken during each minor community event;
- provide requirements for lighting of the event areas;
- provide a map of all firefighting facilities throughout the site;
- detail the infrastructure that would be implemented for minor events including type, number and location of toilet facilities; and
- a copy all other approvals that are to be relied upon to carry out an event.

7.3 Ecology

The North Byron Parklands site is located within an area of significant ecological values with the Billinudgel Nature Reserve located immediately to the east of the site, the presence of *State Environmental Planning Policy 14 – Coastal Wetlands* (SEPP 14) wetlands to the east and south-east and the Marshalls Ridge wildlife corridor extending through the central portion of the site.

The potential impacts of carrying out events at the North Byron Parklands site on ecological values include:

- increased human presence;
- trampling and edge effects;
- disturbance to foraging activities;
- increased traffic generation;
- amplified music; and
- artificial lighting.

In the annual Performance Report detailing the event specific ecological monitoring, field work and other educational programs, the Proponent has highlighted that a number of environmental performance goals have been met and the impacts upon flora and fauna have been minimised. Event

Impact Monitoring (EIM) has been undertaken for major events held at the site. EIM and overall flora and fauna monitoring in the third year of operations at the site recorded that there have been no significant adverse impacts upon flora or fauna across the site as a result of events held to date. In addition, no koalas have been sighted during the detailed monitoring and surveys.

In its determination of the project, the Commission noted that it was difficult to forecast the cumulative impacts of events upon ecology of the area. The Commission agreed with OEH's initial recommendation that a trial and monitor approach be implemented to determine the effectiveness of the Proponent's management plans on ecological values on and around the site, and specifically on koalas. The Commission also identified the potential environmental benefits the proposal would bring as a result of proposed revegetation works required by the existing approval (as proposed under the ecological structure plan). As a result, the existing Project Approval requires the rehabilitation of cleared lands, rehabilitation of existing native vegetation areas and dedication of lands to OEH for inclusion to the National Park estate. These areas are depicted within the existing Ecological Structure Plan (See **Figure 7**). The Proponent acknowledges that it is on track to undertake the balance of the restoration works within the timeframes originally committed to (approximately ten years).

The modification request does not include any significant amendments to the ecology conditions as set by the Commission, however the requested modifications to noise limits and the inclusion of minor community events has the potential to indirectly impact upon the ecology of the site and the surrounding area. The potential impact of the requested modifications upon ecological assets was raised in over a third of objecting submissions as well as by the OEH. The OEH noted that whilst matters requested within the modification appear to be minor, the accumulation of the proposed modifications would result in an intensification of the use of the site. It further indicated that intensification is likely to result in an increase in both direct and indirect impacts upon the ecological values of the site.

The Proponent highlighted in its RTS that the works implemented to date under the Habitat Restoration Plan have significantly improved habitat values across key areas of the site and considered rehabilitation to be well documented in the annual habitat restoration reports.

OEH provided further comment on the RTS supporting the conclusion that some works in relation to the Habitat Restoration Plan have been implemented to date, however these works have not been sufficiently documented to enable auditing. OEH requested that all works undertaken to date and into the future be clearly documented to enable auditing. In addition, OEH recommended an increase in rehabilitation at the site to absorb the potential biodiversity impacts associated with the intensification of use of the site.

The Commonwealth Department of the Environment also raised concern in relation to the potential impacts of the modification request on the Billinudgel Nature Reserve, specifically in relation to the proposed 5 dB tolerance and its relationship to the monitoring points along the Jones Road boundary with the Billinudgel Nature Reserve. In its RTS, the Proponent highlighted that whilst a tolerance of 5dB(A) is proposed under certain circumstances with respect to "sensitive receivers", the three monitoring points along the Jones Road Boundary are not included within the request. In addition, the Department did not consider a noise tolerance level to be appropriate as there is not instantaneous detailed weather data being collected at the site.



All of Lot 101 DP 856767 to be dedicated to DECC



North Byron Parklands

0 100m



Legend:

- The Site
- Existing vegetation to be protected
- Proposed new habitat area
- Proposed new 'managed parklands'
- Land proposed to be dedicated to DECC
- New habitat with constructed wetlands
- Spine Road

3:000 (08/13)

IMPORTANT NOTE
 Cadastral information is subject to survey. The alignment of the aerial photography and vectorial overlays is approximate only.

Prepared by Geospatial Solutions

Revised by Geospatial Solutions

Revised Ecological Structure Plan

North Byron Parklands | Toward Valley Way & James Road

Source: Aerial Photography: 08/13 (2008) | Cadastre: Aerial Photos (2008) | Ecological Values: North Byron (2008)

Figure 7: Approved Ecological Structure Plan (Source: NBP Reply to Submissions and Preferred Project Report, 2011)

Department's Consideration

Whilst the Department recognises the progress and works undertaken by the Proponent in the rehabilitation of the site, the proposed modifications to the noise restrictions and addition of minor community events will result in an intensification of the use of the site, and consequently potential ecological impacts on the site and surrounding area. In its determination, the Commission noted that it was difficult to forecast the cumulative impacts of such events on the ecology of the area.

The Department notes that within the Proponent's Statement of Commitments, the Proponent committed to the implementation of an 'Ecological Structure Plan' which requires the rehabilitation of the site and ultimate dedication of some land parcels to OEH. OEH have noted that the requirement to implement this plan is within the 'Statement of Commitments' (within Schedule 3 of the existing approval). These commitments are intended to apply to construction phase works. Noting the importance of the ecological restoration plan in ensuring that appropriate rehabilitation occurs, the Department has recommended a requirement that this form a condition within Schedule 2 of the approval. As part of this recommendation, this plan is required to be prepared and implemented within three months of the date of the approval of this modification and is required to include sufficient detail to enable auditing of the progress of the rehabilitation. The plan must also include a schedule for the complete implementation of these works prior to the expiration of the trial Project Approval, being 31 December 2017.

The Department acknowledges that the accumulation of the minor community events would result in an increased use of the site. The Department supports the position of the OEH and recommends that an implementation schedule for the Ecological Structure Plan be developed in consultation with the Regulatory Working Group and OEH. This should detail the progressive milestones of rehabilitation and dedication of the land parcels to OEH. The Department recommends that Condition C20 of the trial Project Approval be amended from a 'Flora and Fauna Monitoring Program' to a 'Flora and Fauna Rehabilitation Program' that requires the Proponent to implement the 'Ecological Structure Plan' by the conclusion of the trial period.

The Department notes that the Proponent also wishes to amend Condition C21 of the trial Project Approval to require an updated Koala Plan of Management in the event that a koala population becomes established on the site. The Department sought clarification on this from the Proponent. The Proponent detailed in the RTS that five 'whole of property' koala surveys had been undertaken since 2007, along with the flora and fauna monitoring programs undertaken in conjunction with events held at the site. No koalas have been sighted during any of these monitoring events. As such, the Department supports the proposed amendment to Condition C21 of the trial Project Approval.

With the revised implementation schedule and plan for the 'Ecological Structure Plan', the Department's assessment concludes that impacts upon biodiversity as a result of the intensification of the use of the site will be minimised.

7.4 Other Matters

The Department's assessment of other issues relevant to the modification application are discussed in **Table 4**.

Table 4: Assessment of other issues

Issue	Assessment	Condition
Traffic – 'Level of Service' and consultation requirements	<ul style="list-style-type: none">The Proponent has undertaken a traffic assessment and consulted with RMS in relation to the performance criteria of Tweed Valley Way.The RMS reviewed the traffic data and supports the clarification around modifying the Level of Service performance criteria for Tweed Valley Way from Level of Service 'C' to Level of Service 'D'.The Department generally supports the position of the Proponent to alter the approval and consultation requirements in relation to the traffic control plan and speed changes.The Department's assessment concludes that modification of the approval authorities within conditions C10 (the Traffic Control Plan) and	<p>The Department has modified the submission and consultation requirements for the Traffic Control Plans for each of the large, medium and small trial events in relation to Council and the RMS.</p> <p>The Department has modified Condition C15 to indicate that Council's approval of any temporary changes speed on local roads be submitted to RMS.</p>

Issue	Assessment	Condition
	C15 (Speed Changes) of the approval are acceptable. (It should be noted that condition B4 regarding the Level of Service was modified as part of the Modification 1 approval).	
Noise - Meteorological Conditions	<ul style="list-style-type: none"> • The Proponent has requested an additional 5dB tolerance during adverse weather conditions. • The Department notes that adverse weather conditions are outside the control of the Proponent, however this is a concession typically provided to constant, permanent noise sources. • A significant proportion of the objecting submissions were opposed to this request. • The Department considered the request for the additional 5dB tolerance on the noise restrictions in adverse weather. • The <i>Industrial Noise Policy</i> provides this provision for sites to which this policy applies. • Given that the existing operation is not a large and complex industrial activity running for extended periods (i.e. a site which the <i>Industrial Noise Policy</i> would apply), the Department does not support the inclusion of any additional tolerance in the conditions. 	No modifications to the Project Approval are recommended.
Other amenity and local impacts	<ul style="list-style-type: none"> • The Proponent has assessed the impacts upon amenity of the area as a result of altered noise regime and the introduction of minor community events at the site. • Over 40% of the objections received on the modification request raised the impacts upon the community as a key concern. • Furthermore, over 70% of submissions received in support of the application indicated that they were supportive of the Proponent and its general environmental management practices. • In addition, these submissions in support indicated that the investment in the community and employment generated by the events at the site were key benefits of the modifications requested. • The Department notes that a number of matters were raised in the submissions which the Department does not have current jurisdiction (rubbish, illegal camping, inconvenience, interference with employment). A number of these matters have been brought to the attention of the Department previously and recommendations have been subsequently provided to the Proponent to assist in managing these matters at future trial events. • The Department is supportive of the economic benefits to the community during the events held at the site and is of the opinion that the increase in accessibility to the site will likely result in greater community benefit. • The Department concludes that some matters impacting on the amenity of the area (e.g. illegal camping, over-patronising of caravan parks, littering outside of the site) are beyond the direct control of North Byron Parklands, however suggests that North Byron Parklands work with the RWG and relevant stakeholders to bring about improvements to these matters where possible. 	No modifications to the Project Approval are considered necessary.
Administrative amendments to consent	<ul style="list-style-type: none"> • The Proponent has requested a number of administrative modifications to various elements of the Project Approval (clarification and 	The Department recommends the following amendments to the Project Approval conditions:

Issue	Assessment	Condition
conditions	<p>consistency in definition, amendment to the distribution of emergency evacuation plans and increasing the days for 'bump-out'.</p> <ul style="list-style-type: none"> • The Proponent has concluded that no adverse or material impact is likely a consequence of the proposed amendments and alterations. • Submissions received in the nature of objection considered modifications to conditions during the trial period to be unacceptable. • The Department considered the information presented by the Proponent in addition to the comments received from agencies, community groups and the general public during the exhibition. • Whilst the Proponent is of the opinion that the amendments requested would be unlikely to result in impacts to the environment, the Department does not support all requested amendments as insufficient supporting documentation was provided. • The Department concludes that administrative amendments or modifications that have negligible environmental impact to the Project Approval are acceptable during the trial period. 	<ul style="list-style-type: none"> • additional definitions to provide clarification; • deletion of Condition C42 to minimize duplication in relation to noise management requirements (as is covered in Conditions C16 and C17); • reference to the 'Proposed Noise Limits Zones' Plan; • clarification on distribution of the Emergency Evacuation Plans; and • increase in days for the removal of temporary structures.
Amendments to Statement of Commitments	<ul style="list-style-type: none"> • The Proponent has requested a number of modifications to various elements of the Statement of Commitments. • The Proponent has concluded that no adverse or material impact is likely a consequence of the proposed amendments and alterations. • Submissions received in the nature of objection considered modifications to conditions (of which the Statement of Commitments forms a part) during the trial period to be unacceptable. • The Department considered the information presented by the Proponent in addition to the comments received from agencies, community groups and the general public during the exhibition. • There are a significant number of amendments to the Proponent's Statement of Commitments requested as part of the modification. • The Department does not support the requested amendments as these are the commitments made by the Proponent as part of the Project Approval. • As such, the Department does not support these changes. 	No modifications to the Project Approval are considered necessary.

8. CONCLUSION

In its assessment of the modification request, the Department reviewed the environmental assessment, submissions received from government agencies, community groups and the general public as well as the Proponent's Response to Submissions. The Department has concluded that, with the implementation of the Proponent's mitigation measures, in addition to the Department's recommended conditions, the site can continue to operate on a trial basis with minimal impact upon the environment.

The Department supports the modifications to noise restrictions that will result in a zonal arrangement of noise catchments that considers sensitive receivers both close to and further away from the site. In addition, set limits and the addition of a low frequency limit will likely provide a benefit to the community and the proponent through the provision of specific limits year round, setting clear expectations and management measures around these limits. The Department acknowledges that the Proponent has endeavoured to improve noise emissions from events through the implementation of a range of mitigation measures and recommends the continued implementation of best practice noise mitigation measures.

It has also found that the increased utilisation of the site for minor community events would have minimal environmental impact and would likely benefit the broader community.

It is considered that the modification should be approved, subject to conditions which include:

- altered noise restrictions and noise limit regime;
- trialling minor community events, prior to approval for the duration of the trial period (to the end of 2017); and
- revision to the ecological restoration at the site to enable progressive auditing and address the impacts of the increased use of the site.

9. RECOMMENDATION

It is recommended that the Planning Assessment Commission, as the delegate of the Minister for Planning:

- **consider** the findings and recommendations of this report;
- **approve** the development application under Section 75W of the EP&A Act; and
- **sign** the attached Instruments of Modification to the Project Approval and Concept Plan (**Appendix B**).

R. Sommer
Senior Planner


Chris Ritchie 22/11/16.
Director
Industry Assessments


David Gainsford 25/11/16.
Executive Director
Priority Projects Assessments

APPENDIX A: MODIFICATION REQUEST MP09_0028 MOD 3

Refer to http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6789