



17 September 2019

**Modification Application - North Byron Parklands Cultural Events Site
(SSD 8169 MOD 1)**

1. INTRODUCTION

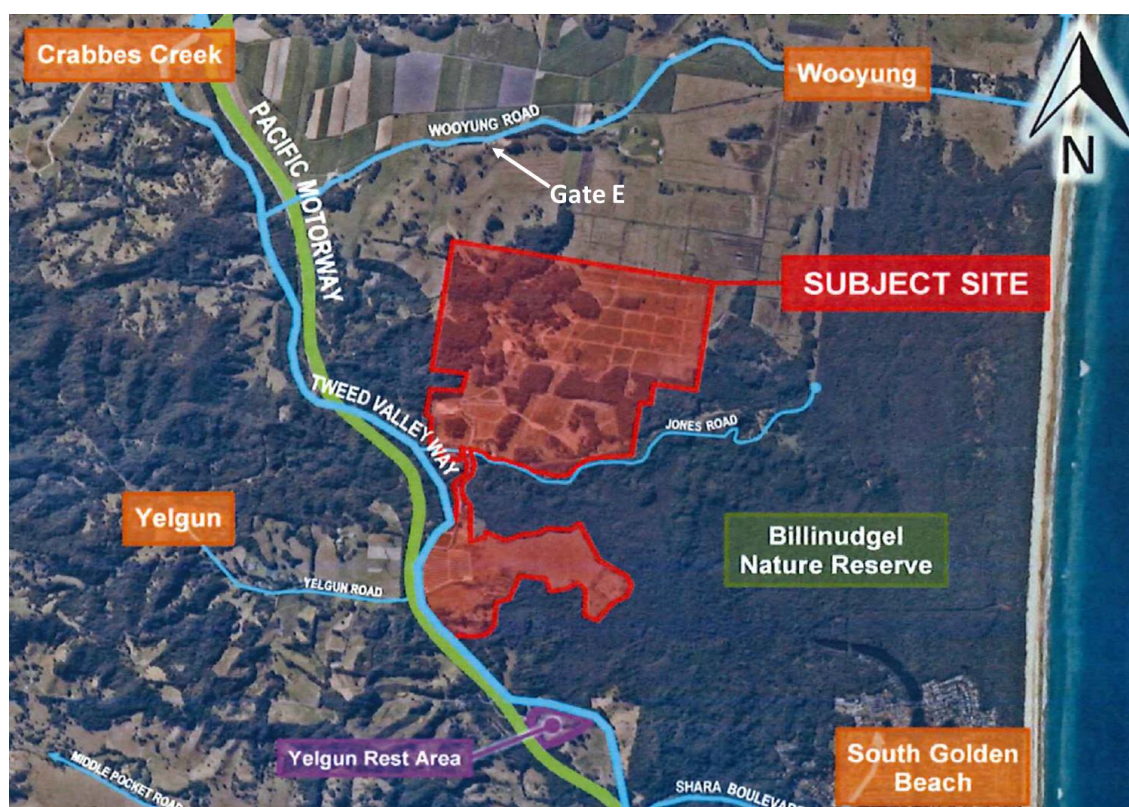
1. On 26 July 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning Industry and Environment (**Department**) a modification application (**Application**) under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* prepared by Billinudgel Property Pty Ltd (**Applicant**). The modification application seeks to modify the development consent SSD 8169 (**Original Approval**) for the North Byron Parklands Cultural Events Site, 126 Tweed Valley Way, Yelgun (**Site**), which approved the ongoing use of the Site for cultural, educational and outdoor events and the construction and operation of additional site infrastructure (**Project**).
2. The Commission notes the Department referred the modification application to the Commission for determination under the delegation granted to the Commission by the Minister for Planning (**Minister**), dated 14 September 2011. However, notwithstanding the Department's referral, the Commission considers it has the authority to determine this modification application as the consent authority (rather than as the delegate of the Minister), as summarised below.
3. The Commission considers it is the consent authority in respect of the Application under section 4.5(a) of the EP&A Act and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)*. This is because:
 - the Project constitutes State significant development (**SSD**) under SEPP SRD as the Project's capital investment value (**CIV**) is greater than \$30 million (being \$42 million) and therefore meets the criteria set out in clause 13(1)(e) of Schedule 1 of the SEPP SRD (Cultural recreation and tourist facilities); and
 - the Department received an objection from a council of the area in which the development is to be carried out, namely Tweed Shire Council (**TSC**).
4. Professor Mary O'Kane, AC, Chair of the Commission, nominated Professor Richard Mackay, AM (Chair) and Steve O'Connor, to constitute the Commission determining the Application.

1.1 Site and locality

5. The Department's SSD Assessment Report (the **Department's AR**), dated 26 July 2019, outlines the site and locality.
6. The Site is situated in a rural-residential locality in the far north-east of the Byron Local government area (**LGA**), and partly within the boundary of the Tweed LGA. It is located between 1.5 km and 2 km away from local residential communities at South Golden Beach, Ocean Shores, Billinudgel, Wooyung, Yelgun and Crabbes Creek. The Site is immediately bounded by agricultural lands to the north, the Billinudgel Nature Reserve to the south and east, and the Pacific Motorway and Tweed Valley Way to the west (see Figure 1).

7. The Site comprises 259 hectare (**ha**) of flat cleared land, and a natural amphitheatre comprising a low lying and level central plan surrounded by steep rising hillsides on the northern, western and southern sides of the Site. The Site is physically divided into two main areas to the north and south of Jones Road. The closest sensitive receivers to the Site comprise a cluster of rural-residential properties located 1 km from the Site at Jones Road.
8. Access to the Site is primarily via Tweed Valley Way but during events, the Site can be accessed via five entry gates located on Tweed Valley Way, Jones Road and Wooyung Road. The northern access to the Site (off Wooyung Road) is known as Gate E (see Figure 1).

Figure 1 – The location of the Site (Base source Department’s AR)



1.2 Background to Development Application

9. The Department’s AR outlines the relevant planning history of the Site.
10. Since 2013 the Site has hosted two annual international music festivals, Splendor in the Grass (SITG) in July (winter) and the Falls Festival in December/January (summer). These events were previously operated under a trial project approval (MP 09_0028).
11. On 13 March 2019, the Commission granted development consent (SSD 8169) for the ongoing use of the Site for cultural, educational and outdoor events for up to 20 events days per year including:
 - two large events per year (i.e. a large winter event and a large summer event) over a maximum of five event days each for up to:
 - 35,000 patrons per event day for the large winter event, increasing to 42,500 patrons and then to 50,000 patrons subject to meeting key performance indicators (KPIs);

- 25,000 patrons per event day for the large summer event, increasing to 30,000 patrons and then to 35,000 patrons subject to meeting KPIs;
- 30,000 camping patrons at these events, arriving the day before and departing the day after the event;
- three medium event days per year up to 25,000 patrons per event day;
- five small (5,000 patrons) and two minor (1,500 patrons) one-day community events; and
- the construction of additional site infrastructure, including a conference centre, administrative building, event facilities, and on-site road and transport infrastructure.

1.2.1 Commencement of large events and staged expansion of patron capacity

12. The Commission notes the Original Approval includes conditions relating to the patron capacities of large events (Conditions A6, A7 and D9) and the potential for progressive expansion of large event patron capacities, subject to meeting progression requirements (Conditions D10-D15 and D17) and KPIs (Conditions D16).
13. Condition A6 limits the patron capacity of large scale events to Stage 1 capacities, except where approval is granted for the progressive expansion of patron capacities up the maximum Stage 3 capacities outlined in Condition D9 (**Table 1**).

Table 1 – Condition D9 progressive staging for large events (source Department’s AR)

Event	Maximum Number of Patrons		
	Stage 1	Stage 2	Stage 3
SITG	35,000 patrons	42,500 patrons	50,000 patrons
Falls Festival	25,000 patrons	30,000 patrons	35,000 patrons

14. Notwithstanding Condition A6, Condition A7 allows the large winter event (currently SITG) to commence at Stage 2 patron capacity (42,500 patrons), subject to meeting the following requirements summarised below:
 - a previous large winter event has been held at Stage 1 patron capacity;
 - requirements in conditions D16 and D17 have been met; and
 - the Planning Secretary has approved the request.
15. As noted above, Condition A7 only relates to the large winter event and does not apply to the large summer event (currently Falls Festival).

1.3 Summary of Application

16. The Application seeks approval to amend Condition A7 of the development consent to enable the large summer event to commence at a Stage 2 capacity of 30,000 patrons.
17. The Department’s AR confirms *“the Applicant does not propose to alter the large event progression requirements outlined in Conditions D10 to D15 of the consent and acknowledges it would still be required to meet traffic and noise KPIs (as per Condition D16) and the requirements of the PER (as per Condition D17) to be eligible to exercise Condition A7”*.

18. Condition A7 as proposed to be modified is reproduced below:

A7. Notwithstanding Condition A6, the Applicant may commence the large winter event at a capacity of 42,500 patrons, **and/or the large summer event at a capacity of 30,000 patrons**, subject to meeting the following requirements:

- (a) the Applicant has previously held an event at the site with a capacity of;
- 35,000 patrons **in relation to the large winter event; or**
 - **25,000 patrons in relation to the large summer event;**
- (b) the Applicant has met the requirements in conditions D16 and D17; and
- (c) the Planning Secretary has approved the Applicant's request to progress to the next stage as required by Condition D14.
19. During the Department's assessment of the modification application, NSW Health requested that Condition D45 be modified (see paragraph 20 for details) and the Applicant agreed to this modification. On 19 August 2019, at its meeting with the Commission, the Applicant requested that an amendment of Condition D45 also be considered as part of the current Application. The Commission's consideration of the proposed amendment of Condition D45 is provided at paragraphs 40 to 43.
20. Condition D45 is proposed to be deleted and replaced with the following condition:

D45. Prior to the first outdoor event, the Applicant must prepare a Drinking Water Assurance Program to be implemented for the life of the development. The Applicant must:

- (a) ensure the Quality Assurance Program complies with the Public Health Regulations 2012;**
- (b) comply with its Quality Assurance Program;**
- (c) provide a copy of the Quality Assurance Program, and any subsequent amendments, to NSW Health (North Coast Public Health Unit); and**
- (d) address any feedback provided by NSW Health on its Quality Assurance Program.**

A copy of the Quality Assurance Program, and any subsequent amendments, must also be submitted to the Planning Secretary.

1.4 Stated need for modification

21. The Applicant's Statement of Environmental Effects (**SEE**) states: *"In acknowledgement that existing events have already been undertaken at the Stage 1 capacities, Condition A7 expressly provides that the large winter (SITG) event may commence at a (Stage 2) capacity... However, Condition A7 does not include reference to the large summer (Falls Festival) event, despite Existing Falls Festival events being undertaken at the Stage 1 capacity..."*
22. With regard to the inclusion of amendments to Condition D45, the Department's AR states *"NSW Health advised the Applicant it has no role in endorsing the plan and requested that Condition D45 be amended to align with NSW Health guidelines and the Public Health Regulations 2012"*.

2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

2.1 Key steps in Department's consideration of the Application

23. The Department's AR states, in accordance with Clause 117(3B) of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* notification requirements do not apply to SSD applications under section 4.55(1A) and the Department therefore did not notify or advertise the Application.

24. Notwithstanding, the Department's AR confirms the application was made publicly available on its website and was referred to Byron Shire Council (BSC) and TSC, Roads and Maritime Services (RMS) and NSW Police for comment.
25. The Department received four submissions, one from each of the government agencies and councils from which it had sought feedback. BSC and RMS did not object and NSW Police supported to the proposal. TSC objected to the proposal on the basis of traffic impacts.
26. NSW Health provided a late submission requesting that Condition D45 be amended.

2.2 The Department's Assessment Report

27. The Department's AR identified the environmental impacts of amendments to Conditions A7 as the key impact associated with this application.
28. The Department's AR concluded:
 - *"the amendment to Condition A7 will not result in any additional environmental impacts or material change beyond the approved development;*
 - *any request made by the Applicant to increase the capacity of the large events, including Falls Festival, is subject to meeting consent conditions, including performance monitoring requirements and requires the Planning Secretary's approval; and*
 - *the development will facilitate tourism opportunities in the North Coast region".*

3. THE COMMISSION'S MEETINGS AND SITE VISIT

29. As part of its determination process, on 19 August 2019 the Commission met with the Applicant as set out in paragraph 33. The meeting transcript was made available on the Commission's website on 21 August 2019.
30. The Commission decided not to conduct any other meetings.
31. There is no statutory requirement for the Commission to conduct a site inspection or locality tour when determining an application as per the Commission's *Site Inspection and Locality Tour Guidelines*.
32. In accordance with the guidelines, the Panel decided not to undertake a site inspection on the basis that it was unlikely to assist them in assessing or understanding the nature of the likely impacts of the Application.

3.1 Briefing from the Applicant

33. The key points of discussion raised during the briefing on 19 August 2019 are summarised below:
 - the Applicant provided a brief overview of the development's history in relation to the Original Approval and the ability for the Applicant to expand patron numbers for large events via a staged progression.
 - the Applicant advised during the Department's and the Commission's assessment of the Original Approval it had requested that Condition A7 include the ability for the large summer event to commence at Stage 2 patron capacity levels (like the large winter event). However, this was not included within the Original Approval.
 - the Applicant confirmed that it requests that the modification application be amended so that it also includes the amendment of Condition D45 Potable Water.
 - the Applicant confirmed that there was a total of 42,500 patrons at this year's SITG

- event (2019). In addition, as the result of implementation of transport management measures, despite the 2019 SITG event being the largest held, it had the least traffic impact.
- the Applicant confirmed Gate E (northern entrance) was in use at the 2019 SITG event, and it was used by service vehicles, Ubers and taxis. Traffic monitoring confirmed that there was some localised congestion in Pottsville on Monday 22 July. However, that only occurred during the off-peak period and had a minimal impact.
 - to address previous traffic impacts, the Applicant revised its traffic management arrangements for the 2019 SITG event so that patrons (non-campers):
 - were not allowed to be dropped off by private vehicles; and
 - had to arrive by bus, Uber, taxi or by buying a car-pass and this removed approximately 1,500 vehicle movements.
 - the Applicant confirmed it would provide the Commission with a copy of the Performance Evaluation Report being prepared for the 2019 SITG.
 - the Applicant advised that the traffic modelling indicates that the maximum large summer event capacity (Stage 3) of 35,000 patrons would have a lesser impact than the large winter event at current (Stage 2) capacity of 42,500 patrons.

4. ADDITIONAL INFORMATION

34. On 5 August 2019, the Applicant provided additional traffic advice from INGEN Consulting in relation to matters raised in the TSC submission.
35. On 14 August 2019, the Applicant provided a copy of the Traffic Evaluation Report relating to the SITG progression from 42,500 to 50,000 patrons.
36. The above information is available to view on the Commission's website.

5. THE COMMISSION'S CONSIDERATION

5.1 Material considered by the Commission

37. In this determination, the Commission has carefully considered the following material (**material**):
 - the Original Approval
 - the Application
 - the Statement of Environmental Effects prepared by PJEP Environmental Planning and dated 29 April 2019;
 - additional Information prepared by PJEP Environmental Planning and dated 11 June 2019;
 - submission by TSC on the modification application and dated 7 June 2019;
 - submission by NSW Health on the modification application dated 9 July 2019;
 - submissions by BSC, RMS and NSW Police received in May and June 2019;
 - the Department's AR prepared by the Department and dated July 2019;
 - the Department's recommended modification of development consent;
 - traffic impact letter prepared by INGEN Consulting and dated 5 August 2019; and
 - Splendour in the Grass Traffic Evaluation Report, prepared by INGEN Consulting dated 14 August 2019.

5.2 Other considerations

38. The Commission is satisfied that the Application is substantially the same development as the development for which the consent was originally granted.
39. The Commission has considered the scope of the Application and is satisfied that the

proposed modification is of minimal environmental impact and accepts the Department's assessment that the Application is within the scope of section 4.55 (1A) of the EP&A Act because it minor in nature, does not change the use of the Original Approval and would not give rise to substantive additional impacts.

40. In determining this Application, the Commission has considered the Applicant's request that amendments to Condition D45 form part of this Application.
41. Clause 55 of the EP&A Regulation states that a "*development application may be amended or varied by the applicant (but only with the agreement of the consent authority) at any time before the application is determined*".
42. The Commission considers the proposed amendment to Condition D45 to be administrative and minor in nature, would not alter the objective or intention of the original condition and is of a nature that would not warrant further consultation with relevant government authorities or the public.
43. The Commission agrees to accept the inclusion of the amendment Condition D45 as part of the Application.

5.3 Likely impacts of the development on both natural and built environments

44. The Commission considers the key matters to be considered for this Application are:
 - the commencement of large summer event at Stage 2 patron capacity; and
 - amendment of potable water requirements and endorsement.

5.3.1 The commencement of large summer event at Stage 2 patron capacity

45. Pursuant to Condition A7 of the Original Approval, the Applicant is currently allowed to commence the large winter event at Stage 2 patron capacity (42,500 patrons) instead of Stage 1 patron capacity (35,000 patrons), subject to meeting additional requirements indicated at paragraph 14.
46. Condition A7 does not include reference to the large summer event and therefore this event is not permitted to commence at Stage 2 patron capacity (30,000 patrons) via the same pathway afforded to the large winter event (above).
47. This Application seeks to address the above matter by amending Condition A7 (paragraph 18) to include reference to the large summer event and thereby allowing it to commence at Stage 2 patron capacity (30,000 patrons), subject to meeting the requirements of Condition A7.

TSC's objection

48. TSC has objected to the traffic impact of the Application resulting from the use of Gate E as an exit/entry point during events, and has submitted that this arrangement has not been trialled during a large event. TSC also mentioned there have been adverse traffic impacts during previous events at the site.

Applicant's consideration

49. At its meeting with the Commission the Applicant confirmed the last three Falls Festival events have been undertaken at the Stage 1 patron capacity (25,000 patrons), and that these events have complied with applicable requirements and KPIs.

50. The Applicant's SEE confirms that the proposed modification does not involve any change to the maximum capacity of events on the site, nor would it result in any material change to environmental impacts associated with the approved development. The Applicant considers that there is no adverse impact that warrants restricting the large summer event from commencing at Stage 2 patron capacity.
51. In response to TSC's concerns the Applicant's additional information and comments during its meeting with the Commission confirmed:
- that Gate E access was used for trial events in 2014 and 2015, and the 2019 SITG event;
 - this Application does not propose any changes to the use of the Gate E access or overall maximum patron capacities that were approved as part of the Original Approval;
 - traffic monitoring results of the 2019 SITG event show that there were times of short-term congestion in Pottsville on Monday 22 July during the departure of campers. However, this was outside of peak periods and was minor in nature; and
 - the altered traffic management arrangements that prevent private drop off and require patrons to take alternative modes of transport has addressed previous traffic impacts.

Department's consideration

52. The Department's AR states that *"the modification only relates to the initial commencement capacity for the Falls Festival and does not involve any change to the maximum capacity of events held on-site... large outdoor events have already been assessed at the maximum capacity... As such, the proposed modification would not result in additional environmental impacts or intensification beyond what was assessed under the original application"*.
53. The Department's AR also states *"Condition A7 does not automatically enable the Applicant to commence a large outdoor event at a larger capacity, without the Applicant first demonstrating that it has adequately met the large event progression requirements"*. In addition, *"the Planning Secretary is required to consult with relevant government authorities including TSC and will consider the findings of the PER when reviewing any written request from the Applicant to progress either the Falls or the SITG to the next stage."*
54. The Department's AR concludes *"it reasonable to amend Condition A7 to include reference to the Falls Festival... the proposed modification is minor in nature and would not result in any material changes to the approved development"*.

Commission's consideration

55. The Commission notes the purpose of the Application is to create a pathway for the large summer event to commence at Stage 2 patron capacity (30,000 patrons). In addition, the:
- Application does not propose to alter the large event progression requirements outlined in conditions of the development consent;
 - Applicant would be required to meet the relevant requirements in conditions of the development consent, including obtaining approval from the Planning Secretary, before being able to commence at Stage 2 patron capacity; and
 - Original Approval considered the environmental impacts of the large summer event up to a maximum of 35,000 patrons and concluded those impacts will be acceptable, subject to conditions.
56. The Commission notes that during previous large events there were traffic issues associated with the pick-up/drop-off of patrons. However, in response to this, the Applicant has amended its traffic management arrangements so that now patrons (non-campers) are

only allowed to arrive by bus, Uber, taxi or by buying a car-pass, as set out in paragraph [33]. The revised arrangements were trailed at the 2019 SITG event and the Traffic Evaluation Report for the 2019 SITG event (available on the Commission's website) confirms this trial was successful.

57. The Commission notes that Gate E was used during the 2019 SITG event, as set out in paragraph [51]. The Commission is satisfied that the Applicant has adequately demonstrated that the traffic impact associated with the use of that exit can be appropriately managed because the traffic monitoring program described in the Traffic Evaluation Report noted in paragraph [35] establishes that congestion impacts were minor and the changes made to drop off arrangements have successfully addressed previous congestion problems.
58. Based on the material, the Commission finds that the amendment of Condition A7 to include reference to the large summer event, subject to the proposed conditions of the development consent, including requirements to demonstrate compliance with conditions D16 and D17 and seek approval from the Planning Secretary, would not result in any additional environmental impacts beyond what has already been assessed and approved and is therefore acceptable.

5.3.2 Amendment of potable water requirements and endorsement

59. Condition D45 requires the Applicant to prepare a Potable Water Management Plan (PWMP), including a Quality Assurance Program (QAP), for the endorsement of NSW Health.

Department's consideration

60. The Department's AR indicates that during the assessment of the Application NSW Health requested that Condition D45 be amended, to remove NSW Health's role in endorsing the PWMP and to update the condition to reflect NSW Health's guidelines and Public Health Regulation 2012.
61. The Department's AR states "*NSW Health advised it has no formal responsibility to endorse the PWMP, including the QAP where the plan relates to private drinking water*". In addition, "*Condition D45 cannot be complied with given NSW Health's advice on the matter*".

Commission's consideration

62. The Commission notes that NSW Health's submission suggests a revised condition D45 and the Applicant and the Department have both agreed to the wording of this condition.
63. The Commission agrees with the Department that the amendment of Condition D45 is necessary to ensure that this Condition can be met.
64. The Commission finds that the modification of Condition D45 would not change the intent of the condition and would facilitate its effective implementation, and is therefore acceptable.

6. THE COMMISSION'S FINDINGS AND DETERMINATION

65. The Commission has carefully considered the Material before it.
66. For the reasons at Paragraph 2 and 3 the Commission considers it is the consent authority

in respect of the Application under section 4.5(a) of the EP&A Act and clause 8A of the SEPP SRD.

67. For the reasons at paragraphs 38 to 39 the Commission considers that the Application is minimal environmental impact and is substantially the same development as the development for which the consent was originally granted, and therefore falls within the scope of section 4.55 (1A) of the EP&A Act.
68. For the reasons at paragraphs 40 to 43 the Commission agrees to accept the inclusion of the amendment to Condition D45 as part of the Application.
69. For the reasons at paragraph 57 the Commission finds that TSC's concerns about traffic impacts have been addressed.
70. For the reasons at paragraphs 58 the Commission finds that the amendment of Condition A7 is acceptable and would not result in any additional environmental impacts.
71. For the reasons at paragraphs 64 the Commission finds the amendment of Condition D45 would not change the intent of the condition and is therefore acceptable.
72. The Commission has determined, for the reasons set out in paragraphs 65 to 71, that consent for the Application should be granted subject to conditions. These conditions are designed to:
 - prevent and minimise adverse environmental impacts; and
 - set and update standards and performance measures for acceptable environmental performance.
73. The reasons for the Decision are given in this Statement of Reasons for Decision dated **17 September 2019**.



Prof Richard Mackay, AM (Chair)
Member of the Commission



Steve O'Connor
Member of the Commission