MP09_0028 MOD 4 - Request for extension of trial period (Concept Plan and Project Approval)

I object to the 20-month extension that North Byron Parklands (NBP) is proposing. My reasons are:

1. The history of the development provides strong reasons for rejecting this proposal.

In 2009, the Land & Environment Court ruled against Billinudgel Property Trust (BPT) in a decision that stopped the development of NBP as a festival site (Conservation of North Ocean Shores Inc v Byron Shire Council & Ors [2009] NSWLEC 69). In response, the developers applied for and were granted Part 3A status, and that status allowed the PAC to bypass that Court decision. This aroused the resentment of many in the community and is an example of why Part 3A led to such widespread antagonism in NSW.

In 2011, Part 3A was revoked, but NBP was grandfathered in because the proposal was still under assessment.

In 2012, the PAC rejected NBP's proposal for permanent approval as a Part 3A development. Instead, the PAC restricted the development to a limited trial with numerous conditions. NBP has been critical of the PAC's restrictions, believing they ought to have been given permanent approval at the outset and ought to have been allowed much larger festivals (50,000 daily attendance) with more generous conditions.

Condition C1 of the PAC's Concept Plan Approval has been a particular sore point for NBP. That condition stipulates that at the end of 2017, approvals for any further festivals must be obtained from Byron Shire Council under Part 4 of the planning regulations and that a cap of 35,000 attendees will be in place. This condition gives some consideration to a community and a local council that did not want the development imposed, especially when they had no voice in the way the development was operated, monitored, or evaluated. At least C1 indicated that after five years, local control would be reinstated.

In 2016, NBP asked the Minister for Planning to delete Condition C1, grant them permanent approval without further ado, and give them the right to hold events at the scale they originally asked for. When the minister refused and NBP appealed to the Land & Environment Court for what they wanted, the Court ruled in favour of the Minister, stating that the "*concept of continuing in perpetuity does not form part of the approved concept plan*". The Court reiterated that despite what NBP wanted, the approved Concept Plan allows operation for only five years and cannot be modified by deleting Condition C1. The Court also pointed out that the original proposal is no longer relevant, having been replaced by the approval that the PAC granted in April 2012 (Billinudgel Property Pty Ltd v Minister for Planning [2016] NSWLEC 139).

The Court decision strongly indicates that an extension should not be allowed and that the Part 3A status of the development should be allowed to die its natural death at the end of 2017.

It should be noted that in its proposed extension document ("Trial Period Extension Modification"), NBP does not even mention that Byron Council must give approval for any events after the end of 2017. By omitting mention of this, NBP leaves the impression that the only way NBP can

continue operations is by having the extension (and later the SSD) approved by the Minister for Planning. This is untrue, and implying it is misleading.

To note: A festival site in Tyagarah, home to the music festival Bluesfest, has been operating successfully under Byron Council's authority for many years, and Splendour operated for many years under Byron Council's authority before the Part 3A approval in 2012. Byron Council is certainly capable of taking over as the consent authority.

2. An extension is not required for NBP's business certainty.

NBP say that their festival business requires this extension, claiming they need certainty regarding four upcoming festivals for which planning is now underway: Falls 2017, Splendour 2018, Falls 2018, Splendour 2019.

However, when the DOP was assessing NBP's Part 3A proposal in 2009-11, the festival operators took Splendour elsewhere and had two successful events in 2011 and 2012. They did not claim then that they had to have some kind of temporary permit because operating at Parklands was essential to their business success.

At the present time, Splendour and Falls are 51% owned by Live Nation, a U.S. company that bought controlling interest in the festivals but not the Parklands site. As controlling owners of the festivals, Live Nation can take them elsewhere.

At this point, Live Nation and the other owners should be looking for another venue that will provide them with certainty, or they should begin working with Byron Council to prepare for the expiration of the trial. The latter is the expected course of action under the current approval although the former is certainly an entirely viable option.

3. Numerous breaches of the PAC's consent conditions have occurred, and operational problems have been ongoing.

A number of consent-condition breaches are on record. (See NBP's performance reports, the minutes of NBP's Regulatory Working Group meetings, documents from resident groups, and Department of Planning notices.) The proposal's claim that there have been only "minor and temporary non-conformances" is not accurate if all aspects of compliance are looked at.

In addition, NBP has had numerous problems through the years with off-site and on-site traffic management, off-site impacts on residents' amenity, ecological monitoring, and more. Noise has been an ongoing issue. Noise breaches were common early on until an increase in the noise limits was allowed, making compliance easier. But breaches have still occurred and many people continue to be disturbed by festival noise.

The fact that complaint numbers have decreased is in part because people feel they must endure being disturbed. Complaining to NBP, the only recourse they have, doesn't do any good. NBP employees regularly tell individuals that they are the only ones who have complained and that the noise is within allowable limits. Residents are quite sure that the DOP cares very little about their amenity, will not be responsive to their concerns, and probably don't even know the level of disturbance they are experiencing. The Parklands claim, in the current proposal, that "none of the non-conformances have led to significant or unacceptable environmental impacts" will come as a

surprise to those who have been regularly disturbed, imposed upon, and frustrated by this development.

The NSW Police recently submitted a report on Splendour 2016 to the DOP, detailing concerns about on-site safety, emergency evacuation, and more, raising grave concerns about festivals at NBP that must not be ignored by the Minister.

Allowing an extension in the face of all this is unsupportable.

4. Water and sewage issues are not resolved.

NBP claims (section 5.8.2) to have signed an agreement with Byron Shire Council in 2014 concerning water and sewage and says that this has resolved all the water and sewage issues. However, in commenting to the Department of Planning on NBP's proposal to become a State Significant Development, Byron Council wrote on 11 Jan 2017:

> Effluent Disposal
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> The proposed development must address the issue of effluent disposal. It should not be assumed that either Tweed Shire or Byron Shire will have the capacity to accept the effluent loads of 50,000 patrons, camping areas and food stalls.
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> Council is concerned in regards to the long term feasibility of off-site effluent disposal for the proposal and it is recommended that the applicant investigate all options for on-site treatment or other alternatives including connection to reticulated sewer.
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> Water Supply
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> The site is not provided with Reticulated Water and relies upon water being transported by tankers. Reticulated water is located at North Ocean Shores, and it is recommended that the applicant consider the extension of the water mains to the site. This is of importance for a range of reasons including domestic supply for campers, commercial supply for the food shops, dust suppression and fire fighting purposes.
>
> With a view to avoiding cross contamination between storm water, potable water and waste water, Council suggests that the installation of permanent plumbing infrastructure form part of the assessment process.

This statement from Council suggests that the water and sewage issues have not yet been resolved. Until they are, neither an extension nor the permanent approval NBP wants is warranted.

5. NBP does not need more monitoring time.

NBP claims that an extension will allow them more time for monitoring, but they have had five years to monitor their operations, and the DOP has had five years to assess their performance. That has been plenty of time. They do not need an additional 20 months for still more monitoring.

6. The desired extension should be kept separate from the proposal to become a State Significant Development.

NBP's MOD4 proposal conflates the proposed 20-month extension with their desire to be granted status as a State Significant Development. They even state *"the assessment and approval timelines for the SSD application will extend well beyond the expiration of the trial period."* This implies that the

desired SSD approval will undoubtedly be granted even though NBP is still working on the first step (the Secretary's Environmental Assessment Requirements).

Has NBP received assurance from the government that the granting of SSD status is a certainty? If so, then the process is corrupt. If not, then they should be referring to "assessment and determination timelines" rather than "assessment and approval timelines". Even more important, they should not be presenting their case as if the expiration of the trial is a small stumbling block on the pathway to a guaranteed permanent approval.

In short, NBP's aspiration to be granted permanent approval is not a good reason for them now to be granted an extension to an approval that expires on 31 Dec 2017.