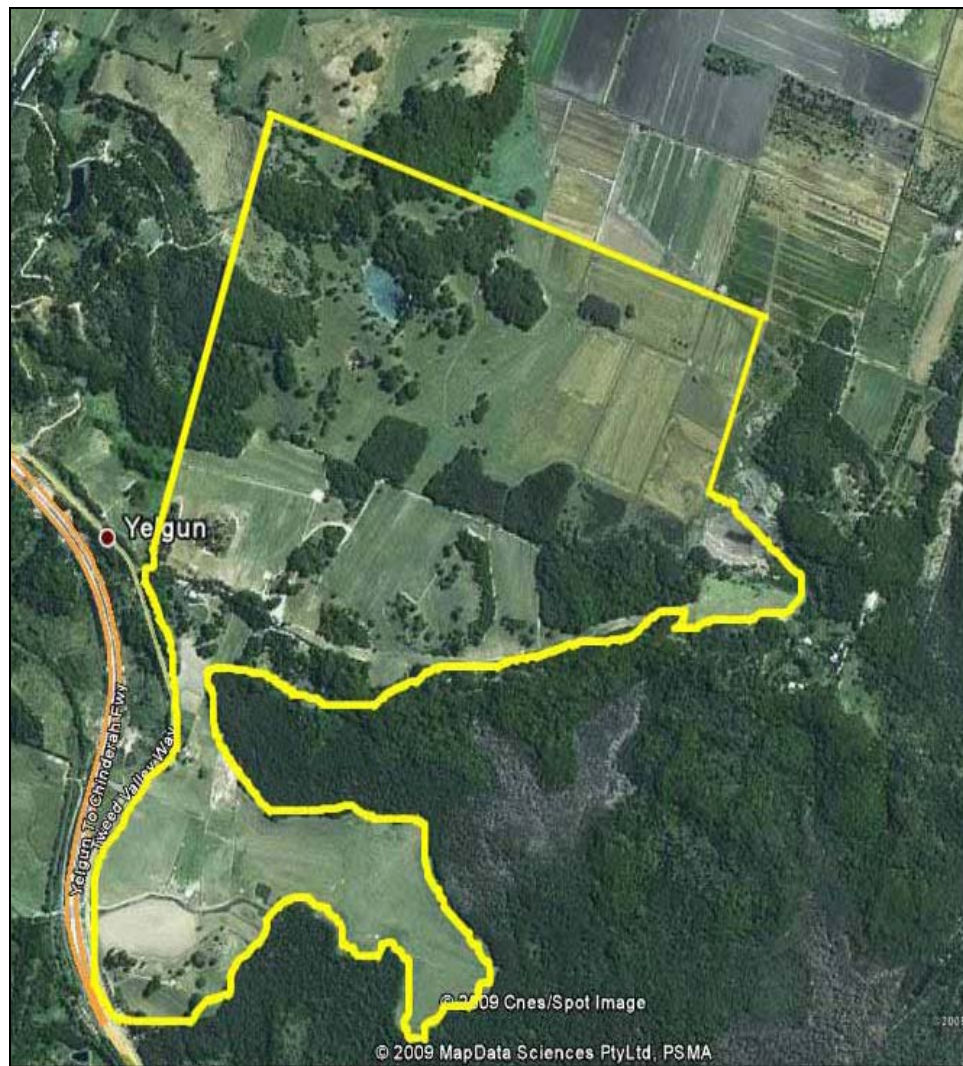


MODIFICATION REQUEST:
Cultural Events Site
Tweed Valley Way and Jones Road, Yelgun
MP 09_0028 MOD 1



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

December 2012

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1. BACKGROUND

This report is an assessment of a request to modify the Project Approval for Major Project 09_0028 – Cultural Events Site at Yelgun, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The site formally described as Lots 46, 402, 403, 404, 410 DP 755687; Lots 10, 12, 14 DP 875112; Lots 2, 12 DP 848618; Lot 101 DP 856767; Lots 30, 31 DP 880376; Lots 101, 102, 107 DP 1001878; and Lot 1 DP 1145020, Tweed Valley Way and Jones Road, Yelgun, in the Byron local government area.

A concept plan and project application for Stages 1 and 2 were granted approval by the Planning Assessment Commission (PAC) under delegation of the Minister for Planning and Infrastructure (the Minister) on 24 April 2012, in accordance with Part 3A of the EP&A Act.

Concept plan approval was granted for the following:

- Use of the site for cultural, educational and outdoor events with ancillary camping and car parking;
- Temporary event infrastructure;
- A spine road;
- A water treatment plant;
- A wastewater treatment plant;
- A cultural centre;
- A conference centre and associated accommodation; and
- A vegetation management plan.

Project approval for Stages 1 and 2 (refer condition A2) was granted for the following:

- Erection of temporary structures;
- Temporary camping ancillary to the events usage;
- Construction of an administration building;
- Construction of a gatehouse building;
- Temporary toilet and shower facilities;
- Temporary water and wastewater facilities;
- Construction of an internal spine road;
- Construction of a water treatment plant;
- Construction of a wastewater treatment plant;
- Upgrading of local public roads, creation of site access intersections and an underpass beneath Jones Road;
- Construction of event laneways, walkways, car parking areas, drainage improvements and associated works;
- Resource recovery centre and art installations; and
- Progressive implementation of a vegetation management plan.

Site Location and Surrounding Land Uses

The subject site is located on the New South Wales far north coast, approximately 22km north of the Byron Bay town centre and 35km south of Tweed Heads. The site is situated in a rural-residential locality in the far north-east of the Byron Shire.

Residential communities in proximity to the site include Brunswick Heads, Fern Beach, Billinudgel, and Ocean Shores to the south; Wooyung and Pottsville to the north; and Yelgun, Middle Pocket and Crabbes Creek to the west. The South Pacific Ocean is approximately 1km to the east.

The site is bound mostly by pasture and agricultural land uses. The Billinudgel Nature Reserve is located to the south and east, and the Pacific Highway and Tweed Valley Way are located immediately to the west. Entry to the site is from Tweed Valley Way located approximately 1km north of the Yelgun interchange. An extensive area of wetlands listed under State Environmental Planning Policy No. 14 – Coastal Wetlands borders the south-eastern site boundary (refer to map on cover page).

Existing Site Features

The site consists of two adjoining farms, which will continue to be used for grazing and agricultural purposes when events are not being carried out. The two farming areas are separated by an east-west orientated ridge (Marshalls Ridge) which rises to approximately 30m above sea level. Jones Road, which extends east-west off Tweed Valley Way, runs along this ridge and services a small number of existing residential dwellings.

Vegetation across the site is dominated by large areas of exotic pasture, remnant trees and fragmented forest blocks. An extensive area of Swamp Sclerophyll Forest and other forms of floodplain forests combine to form a fragmented vegetated peninsula extending east-west across the central-northern part of the site. An existing farm dam is located towards the northwest.

Approved Site Usage

Approval has been granted for the site to be used for cultural, educational and outdoor events with ancillary camping and car parking. The approval allows for the carrying out of three events per calendar year over a five year trial period – up to (and including) the year 2017. A total of 10 event days per calendar year is permitted, and may include a 'large', 'medium', and 'small' trial event. The 'large' event in the first year of operation may consist of a maximum of 25,000 patrons in the first year of operation; progressively increasing to a maximum of 35,000 patrons by the fifth year of operation. Concept approval has been granted for events beyond 2017; however, any future events will require approval under Part 4 of the EP&A Act, with the size and frequency of events subject to the satisfactory performance of the trial events.

2. PROPOSED MODIFICATION

2.1 Modification Description

On 28 August 2012, SJ Connelly CPP Pty Ltd on behalf of Billinudgel Property Pty Ltd (the proponent) submitted a section 75W modification request to the project approval MP 09_0028. The proposed modification involves administrative amendments to Conditions B4 and E18 to correct an anomaly between conditions B4 and C10 and an incorrect setback dimension, stated as 30m in condition E18, which should have been 10m. The conditions proposed to be modified are listed below:

“B4 Traffic management and car parking

- 1) *A minimum Level of Service C is to be maintained at the Yelgun interchange and along Tweed Valley Way.*
- 2) *Queue lengths on the link road between Tweed Valley Way and Yelgun interchange are to be limited to a maximum of 70m.*
- 3) *Queue lengths on the northbound off-ramp must not extend more than 210m from the Give Way yield line.*
- 4) *No car parking is to occur on land to the south of Yelgun Creek. Should this area be required for car parking in the future to accommodate larger events, the proponent must demonstrate that patrons can access vehicles south of the creek line in a risk free manner for events up to and including a 100 year ARI flood event for the Director General's approval.*
- 5) *The southern car park (south of Jones Road and north of Yelgun Creek) may only be used if the event is to cater for more than 20,000 patrons.*

E18 Permanent Human Exclusion Fencing

Details of all permanent human exclusion fencing closely bordering (within 10m (30m?) of) designated forest blocks and other native vegetation must be provided to the Certifying Authority. Human exclusion fencing in these locations must be “fauna-friendly”, incorporating a minimum 250mm continuous gap at the base of the fence or 250mm square gaps at 10m intervals along the base of the fence. “

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Approval of Project Application MP 09_0028 was granted in accordance with Part 3A under sections 75O and 75J of the EP&A Act. Section 75W of the EP&A Act provides for the modification of the Minister's approval.

Pursuant to section 75W(2) of the EP&A Act, the proponent may request the Minister to modify approval of a project. Any request is to be lodged with the Director-General. A copy of the proponent's modification request is included at **Appendix B**.

Section 75W(3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification. Given the modification request involves only administrative amendments, DGRs are not required.

Under section 75W(4) of the EP&A Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The following report outlines the department's assessment of the modification request.

3.2 Delegated Authority

Under the Instrument of Delegation dated 14 September 2011, the Minister has delegated his functions to determine section 75W modification requests to the Director, Metropolitan and Regional Projects North, whereby:

- the relevant local council has not made an objection to the proposal;

- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

Byron Shire Council (council) was not notified of the proposed changes due to their minor nature and therefore has made no submission on the proposal. Also no political disclosure statement has been made. As the modification request was not required to be publicly exhibited, no submissions in the nature of objections were received. The Director, Metropolitan and Regional Projects North, is therefore delegated to determine the modification request.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the Environmental Planning and Assessment Regulation 2000, the request for modification was made publicly available on the department's website.

Byron Shire Council

The modification request was not referred to council as the modification request is to correct minor discrepancies and an anomalous inconsistency in the conditions. This has been confirmed by the PAC secretariat.

Roads and Maritime Service Referral

The modification request was referred to Roads and Maritime Services (RMS) in order to clarify which of the conditions (B4 or C10) was correct. RMS responded to the department (via email) on 29 August 2012 concurring with the proposed modification. A copy of the RMS response is provided at **Appendix C**.

5. ASSESSMENT

The proponent seeks to amend two typographical errors under Conditions B4 and E18 of the project approval.

Condition B4

Clause (1) of Condition B4 – *Traffic management and car parking requires a minimum Level of Service (LoS) C to be maintained at the Yelgun interchange and along Tweed Valley Way*. The proponent has requested the condition be amended in order to maintain a LoS D along Tweed Valley Way. The amendment is sought in order to provide consistency with the conditions of approval, particularly as Condition C10 – *Traffic Control Plan* requires the level of service along Tweed Valley Way to not fall below a LoS D.

The department referred the modification request to RMS to confirm the inconsistency between Conditions B4 and C10 was an error. RMS did not raise any concern with the proposed modification and advised that an intersection delay not exceeding a LoS D along Tweed Valley Way during events was acceptable.

The department therefore supports the proposed amendment to Condition B4. However, clause (1) of Condition B4 has been reworded to ensure that a LoS C will

continue to be required for the Yelgun interchange, as was intended. The modified condition is to be re-worded as follows:

“B4 Traffic management and car parking

- 1) *A minimum Level of Service C is to be maintained at the Yelgun interchange and a **minimum Level of Service D is to be maintained** along Tweed Valley Way.*
- 2) *Queue lengths on the link road between Tweed Valley Way and Yelgun interchange are to be limited to a maximum of 70m.*
- 3) *Queue lengths on the northbound off-ramp must not extend more than 210m from the Give Way yield line.*
- 4) *No car parking is to occur on land to the south of Yelgun Creek. Should this area be required for car parking in the future to accommodate larger events, the proponent must demonstrate that patrons can access vehicles south of the creek line in a risk free manner for events up to and including a 100 year ARI flood event for the Director General's approval.*
- 5) *The southern car park (south of Jones Road and north of Yelgun Creek) may only be used if the event is to cater for more than 20,000 patrons.”*

Condition E18

Condition E18 – *Permanent Human Exclusion Fencing* contains a typographical error in reference to the required width of fencing bordering designated forest blocks and other native vegetation. The condition is to be amended to remove reference to a 30m width. The department has received confirmation from the PAC that the condition should in fact read ‘10m’ and not ‘30m’ – refer **Appendix D** for a copy of the PAC's correspondence. Since the amendment is also to correct this error or misdescription in condition E18, the department raises no concern with regard to the proposed amendment. The modified condition is to be re-worded as follows:

“E18 Permanent Human Exclusion Fencing

Details of all permanent human exclusion fencing closely bordering (within 10m of) designated forest blocks and other native vegetation must be provided to the Certifying Authority. Human exclusion fencing in these locations must be “fauna-friendly”, incorporating a minimum 250mm continuous gap at the base of the fence or 250mm square gaps at 10m intervals along the base of the fence.”

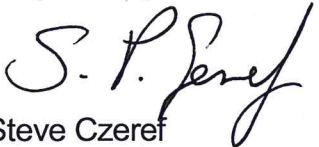
6. CONCLUSION

The department considers the proposal, as modified, achieves the same objectives as assessed under the original approval. The proposed modifications to the conditions of project approval do not alter the overall nature of the project, nor does it introduce any detrimental environmental, social or economic impacts upon the site or surrounding locality. The department therefore recommends the modification request be approved, subject to conditions.

7. RECOMMENDATION

It is recommended that the Director, Metropolitan and Regional Projects North, as delegate for the Minister, under section 75W of the EP&A Act approve the proposed modifications to MP 09_0028, as detailed in **Section 2.0** of this report; and vary the conditions of approval as set out in the modifying instrument included at **Appendix A**.

Prepared by:

 30/11/2012
Steve Czeref
Planner
Assessment Streamlining

Endorsed by:

 30/11/12
Peter McManus
A/Team Leader
Metropolitan and Regional Projects North

Approved by:

 31/12/12
Heather Warton
Director
Metropolitan and Regional Projects North

APPENDIX A MODIFYING INSTRUMENT – MP 09_0028 MOD 1

APPENDIX B MODIFICATION REQUEST

Also refer the Department's website at:

<http://majorprojects.planning.nsw.gov.au/>

APPENDIX C ROADS AND MARITIME SERVICES CORRESPONDECE

Steve Czeref - RE: Level of Service - Tweed Valley Way, Yelgun (Cultural EventsSite)

From: Steve Czeref
To: Brent Devine
Date: 11/30/2012 11:56 AM
Subject: RE: Level of Service - Tweed Valley Way, Yelgun (Cultural EventsSite)
CC: Development Northern

Brent

Delay not exceeding Los D on Tweed Valley Way during events will be acceptable.

Thanks Mike

From: Brent Devine [mailto:Brent.Devine@planning.nsw.gov.au]
Sent: Wednesday, 29 August 2012 9:44 AM
To: BELL David
Cc: BALDWIN Michael J
Subject: Level of Service - Tweed Valley Way, Yelgun (Cultural Events Site)

Hi David,

The Department has received a modification request for the Cultural Events Site at Yelgun, in the Byron LGA (MP 09_0028 MOD 1).

The modification is sought to amend typographical errors within the conditions of approval.

Condition B4 - *Traffic management and car parking* currently requires a Level of Service (LoS) C be maintained at the Yelgun interchange and along Tweed Valley Way. The proponent has requested as part of the modification that a LoS D be maintained along Tweed Valley Way, to be consistent with the requirements of Condition C10 - *Traffic Control Plan* (it is noted that a LoS C will continue to be required for the Yelgun interchange).

The proponent has mentioned in their modification request (see attached) that in recent meetings with the RMS, it was opined that a LoS C along Tweed Valley Way, as mentioned in Condition B4, is a typographical error.

For the purpose of finalising this modification request in a timely manner, could you please advise the Department whether a LoS D is considered acceptable along Tweed Valley Way whilst events are being carried out at the site.

Regards,

Brent Devine
Environmental Planner
Metropolitan and Regional Projects North

NSW Department of Planning and Infrastructure



t: 02 9228 6328 | f: 02 9228 6540 | e: brent.devine@planning.nsw.gov.au

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**APPENDIX D PLANNING ASSESSMENT COMMISSION
CORRESPONDECE**

Brent Devine - Re: Amendment to Condition E18 - Cultural Events Site, Yelgun (09_0028)

From: Paula Poon
To: Brent Devine
Date: 8/31/2012 11:47 AM
Subject: Re: Amendment to Condition E18 - Cultural Events Site, Yelgun (09_0028)

Hi Brent,

First I would like to put it on record that I did not call Matt Morrison to tell him the typo in Condition E18. He called me and asked me the question.

I've checked with the Commission members and they agreed that E18 should be "within 10m".

Paula

>>> Brent Devine 8/29/2012 11:40 am >>>
Hi Paula,

The proponent for the Cultural Events Site at Yelgun (approved by the PAC on 24 April 2012) has lodged a modification request to amend a few administrative errors within the approval documents (modification request attached).

Approved Condition E18 - *Permanent Human Exclusion Fencing* currently reads:

Details of all permanent human exclusion fencing closely bordering (within 10m (30m?) of) designated forest blocks and other native vegetation must be provided to the Certifying Authority. Human exclusion fencing in these locations must be "fauna-friendly", incorporating a minimum 250mm continuous gap at the base of the fence or 250mm square gaps at 10m intervals along the base of the fence.

The proponent seeks to amend the condition by deleting the reference "(30m?)".

Can you please confirm that the condition the PAC's condition should read 10m and not 30m.
Regards,

Brent Devine
Environmental Planner
Metropolitan and Regional Projects North

NSW Department of Planning and Infrastructure



**Planning &
Infrastructure**

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APPENDIX E CONSOLIDATED INSTRUMENT – MP 09_0028
