

29 April 2019

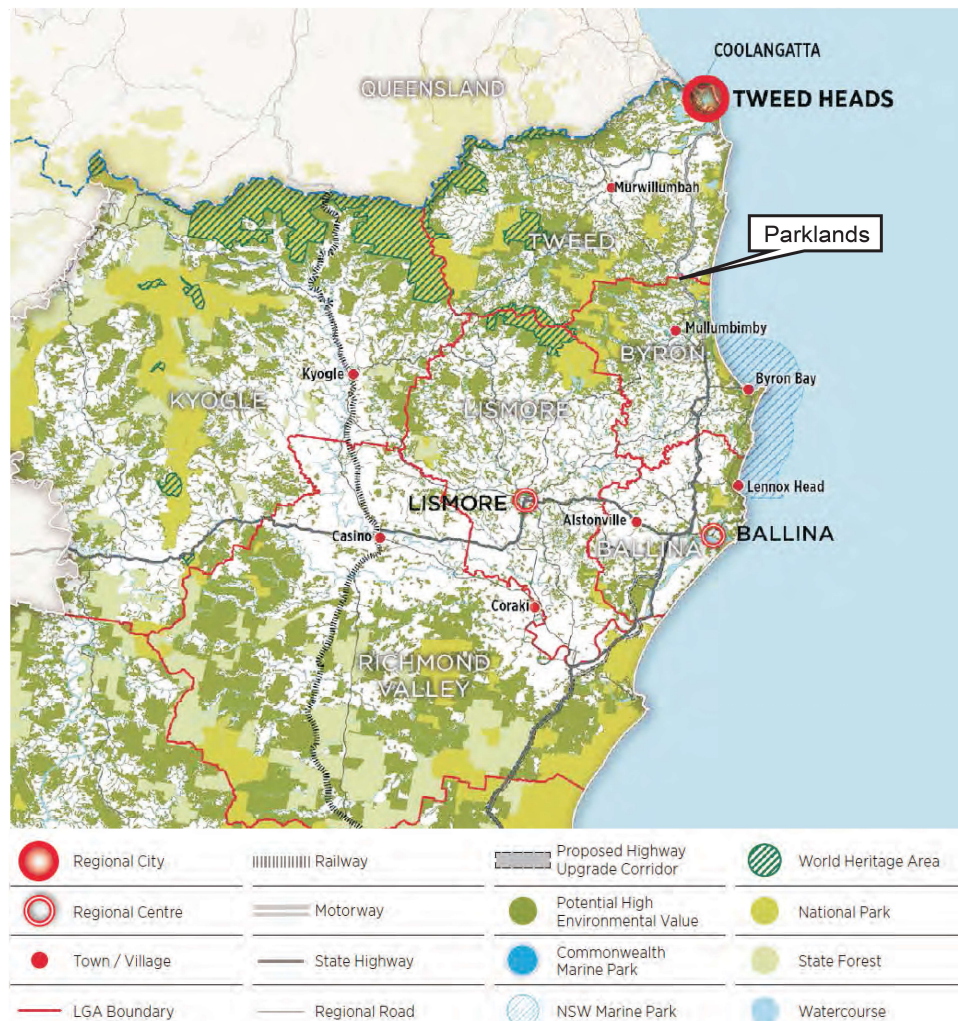
Chris Ritchie  
Director Industry Assessment  
Department of Planning & Environment  
23-33 Bridge Street  
SYDNEY NSW 2000

Dear Chris,

## **NORTH BYRON PARKLANDS CULTURAL EVENTS SITE (SSD 8169) – SECTION 4.55 MODIFICATION (MOD 1) – STATEMENT OF ENVIRONMENTAL EFFECTS**

### **1 Introduction**

North Byron Parklands (Parklands)<sup>1</sup> operates a 259 hectare cultural events site at Yelgun, approximately 22 kilometres north of Byron Bay on the North Coast of NSW (see **Figure 1**).



**Figure 1: Regional Location Plan (Source: Department of Planning & Environment)**

<sup>1</sup> North Byron Parklands is the trading name for Billinudgel Property Pty Limited.



The Parklands site is home to two of Australia's most iconic annual international cultural music festivals, Splendour in the Grass (Splendour) and Falls Festival Byron (Falls Festival).

The cultural events site operates under a concept plan approval granted by the former Planning Assessment Commission in 2012 (MP 09\_0028). Until recently, it also operated under a project approval which allowed cultural events to be undertaken on the site on a trial basis.

On 13 March 2019, the NSW Independent Planning Commission (the Commission) approved a development application from Parklands under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), for the ongoing use and development of the cultural events site (SSD 8169).

Amongst other things, the new development consent allows Parklands to undertake outdoor cultural events on the site for up to 20 event days per year, including:

- 2 large events over up to 5 event days each, including:
  - a large winter event (ie. Splendour), with up to 50,000 patrons per day; and
  - a large summer event (ie. Falls), with up to 35,000 patrons per day;
- 3 medium event days, with up to 25,000 patrons per day;
- 5 small event days, with up to 5,000 patrons per day; and
- 2 minor community event days, with up to 1,500 patrons per day.

Condition D9 of the consent provides for the staged increase in patronage for the large winter event and large summer event, as outlined in the following table.

**Table 1: Progressive Staging for Large Events**

<b>Event</b>	<b>Maximum Number of Patrons</b>		
	<b>Stage 1</b>	<b>Stage 2</b>	<b>Stage 3</b>
Large Winter Event	35,000 patrons	42,500 patrons	50,000 patrons
Large Summer Event	25,000 patrons	30,000 patrons	35,000 patrons

Conditions D10 to D15 further outline the requirements for progression to the next stage for both the large winter event and large summer event. In summary, progression to the next stage requires Parklands to demonstrate that an event at the previous stage capacity has been successfully managed to the satisfaction of the Planning Secretary of the Department of Planning & Environment (the Department). To demonstrate this, the conditions require Parklands to prepare and submit a Performance Evaluation Report (PER) to the Secretary that considers, amongst other things, a number of key performance indicators (KPIs). The conditions outline a similar progression process for both the large winter event and large summer event.

Condition A6 further provides that the large winter event and large summer event are to commence at the Stage 1 capacities outlined in Table 1 above, except in accordance with a staged approval from the Secretary provided in accordance with Conditions D9 to D15.

In acknowledgement that existing events have already been undertaken at the Stage 1 capacities, Condition A7 expressly provides that the large winter event may commence at a capacity of 42,500 patrons, subject to meeting the following requirements:

- Parklands has previously held an event at the site with a capacity of 35,000 patrons;
- Parklands has met the KPIs and other PER requirements; and
- the Secretary has approved Parklands' request for progression to the next stage.



However, Condition A7 does not include reference to the large summer event, despite existing Falls Festival events being undertaken at the Stage 1 capacity.

It is understood that this omission is an oversight in the condition, given that:

- all other conditions provide for the progression of the large summer event in a similar manner as the large winter event;
- the Department's assessment report and the Commission's statement of reasons report do not provide any consideration regarding the restriction on the large summer event in this manner;
- the original application from Parklands did not propose any such restriction on the large summer event (indeed, the original application did not propose any staged progression for the large summer event); and
- there are no environmental impacts associated with the large summer event that would warrant restriction in this manner (see Section 4).

It is noted that Parklands made requests (in writing and in discussions) to the consent authority during the assessment of the application to allow the large summer event to progress in a similar manner as the large winter event, but this request appears to have not been considered in the wider assessment. It is also noted that the last two Falls Festival events have been undertaken at the Stage 1 capacity (ie. 25,000 patrons), and that both of these events have complied with the applicable KPIs (as indicated in applicable Performance Reports)<sup>2</sup>.

Consequently, Parklands is proposing to modify the development consent (SSD 8169) to expressly include reference to the large summer event in Condition A7. No other modifications to the development consent, or to the concept plan (MP 09\_0028), are required.

This Statement of Environmental Effects (SEE) has been prepared by PJEP Environmental Planning Pty Ltd (PJEP) to support the modification application for the proposed change under Section 4.55(1A) of the EP&A Act.

## 2 Proposed Modification

Parklands proposes to modify Condition A7 of the development consent for the North Byron Cultural Events Site (SSD 8169) to include express reference to the staged progression of the large summer event in a similar manner as the large winter event.

It is proposed to modify Condition A7 to the following, or similar (changes shown in bold):

- 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.*

<sup>2</sup> A total of 8 events, including Falls and Splendour events, have been undertaken at capacities at or exceeding 25,000 patrons.



As outlined above, all other applicable conditions of the development consent already provide for the staged progression of the large summer event in a similar manner as the large winter event. Consequently, no other modifications to the development consent are required. Further, no changes to the approved concept plan are required.

### **3 Planning Context**

#### ***State Significant Development***

The North Byron Cultural Events Site is classified as State Significant Development under Part 4, Division 4.7 of the EP&A Act, as it involves development for the purposes of cultural, recreation and tourist facilities<sup>3</sup> with a capital investment value of more than \$30 million, and therefore triggers the criteria in Clause 3 of Schedule 1 of *State Environmental Planning Policy (State and Regional Development) 2011*.

The Independent Planning Commission was the consent authority for the original development application, as Byron Shire Council and Tweed Shire Council initially objected to the proposal, and more than 25 public submissions objected to the proposal. It is understood that the Department is able to determine the modification application under delegated authority.

#### ***Section 4.55 of the EP&A Act***

Under Section 4.55(1A) of the EP&A Act, a consent authority may modify a development consent if it:

- (a) is satisfied that the proposed modification is of minimal environmental impact;
- (b) is satisfied that the development as modified is substantially the same development as the development as originally granted;
- (c) has notified the application in accordance with the regulations or a development control plan, if required; and
- (d) has considered any submissions made concerning the proposed modification.

It is considered that the proposal represents a minor modification of the development as originally approved, as it:

- does not affect the approved use of the North Byron Cultural Events Site project;
- does not involve any change to the layout of the project;
- does not involve any change to the maximum capacity of the approved project or the approved events;
- does not involve any change to the approved number of event days;
- does not affect the development's consistency with any environmental planning instrument (see below); and
- would not result in any material change to the environmental effects of the approved development (see Section 4).

Consequently, it is considered that the development as modified is substantially the same development as that originally granted, and can be considered and determined as a minor modification under Section 4.55(1A) of the EP&A Act.

It is noted that the regulations do not require the application to be notified, nor does any development control plan.

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<sup>3</sup> As an entertainment facility and/or recreation facility (major).



### ***Environmental Planning Instruments***

The proposed modification does not alter the approved development's consistency with any environmental planning instrument, and it is considered that the development as modified is able to be undertaken in a manner that is generally consistent with all of the applicable instruments. Consideration of the applicable instruments is presented in the following table.

***Table 2: Consideration of Environmental Planning Instruments***

<b><i>Instrument</i></b>	<b><i>Consideration</i></b>
<b><i>State Environmental Planning Policy (SEPP) No.33 – Hazardous and Offensive Development</i></b>	<p>SEPP 33 provides definitions for hazardous and offensive industry to enable decisions on developments to be made on the basis of merit, rather than on industry type per se.</p> <p>The approved Parklands development did not constitute a 'potentially hazardous industry' or 'potentially offensive industry', and the development is able to be conducted in a manner that is consistent with the aims, objectives and provisions of SEPP 33.</p> <p>The proposed modification does not involve any change to approved dangerous goods or hazardous material storage or use on the site.</p>
<b><i>SEPP No.44 – Koala Habitat Protection</i></b>	<p>SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.</p> <p>Clause 7 of the SEPP requires a consent authority to consider whether applicable land subject to development is 'potential koala habitat', meaning that it contains the requisite density of koala feed tree species. If so, then the authority is required to consider whether the land is 'core koala habitat', meaning that it has a resident population of koalas, as evidenced by sightings and historical records of a koala population on the land.</p> <p>As outlined in the EIS for the approved development, there is some koala habitat in the vicinity of the site, however this would not be affected by the approved project. The proposed modification does not involve any change to the layout or approved maximum capacity of the events on site, and is not expected to result in any change to koala habitat.</p> <p>Condition D39 of the development consent requires Parklands to update and maintain a Koala Plan of Management (KPoM) for the site.</p>
<b><i>SEPP No.55 – Remediation of Land</i></b>	<p>SEPP 55 aims to provide for a statewide planning approach to the remediation of contaminated land, and in particular, to promote the remediation of contaminated land for the purpose of reducing risk of harm to human health or any other aspect of the environment.</p> <p>Clause 7 of the SEPP requires a consent authority to consider whether the land to which a proposal relates is contaminated, and if the land is contaminated, to be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation), prior to granting consent.</p>



<i><b>Instrument</b></i>	<i><b>Consideration</b></i>
	<p>The potential for contamination within the site was assessed as part of the approved development, which found that the site was not contaminated and is suitable for its cultural events use.</p> <p>The proposed modification does not involve any change to the approved layout of the project, or potential site contamination risks.</p>
<i>SEPP No.64 – Advertising and Signage</i>	<p>SEPP 64 aims to ensure that any signage associated with a development, including any advertisement, that is visible from a public place is compatible with the desired amenity and visual character of an area, is suitably located and is of a high quality and finish.</p> <p>Signage associated with the approved development is consistent with the provisions of SEPP 64, and the proposed modification does not involve any material change to signage associated with the approved development.</p>
<i>SEPP (Coastal Management) 2018</i>	<p><i>SEPP (Coastal Management) 2018</i> aims to protect, preserve and manage the environmental, social and economic values of the coastal zone, and encourage a strategic approach to coastal management.</p> <p>The policy applies to land within the coastal zone, which comprises four coastal management areas, including:</p> <ul style="list-style-type: none"> <li>• coastal wetlands and littoral rainforest areas;</li> <li>• coastal vulnerability areas (ie. areas subject to erosion and hazard);</li> <li>• coastal environment areas (ie. coastal waters, lakes, lagoons and associated areas); and</li> <li>• coastal use areas (ie. sensitive land adjacent to coastal waters).</li> </ul> <p>As outlined in the EIS for the approved project, parts of the Parklands site are identified as a 'proximity area for coastal wetlands', with the wetlands themselves located to the east and south of the site.</p> <p>Clause 11 of the SEPP requires that a consent authority must not grant consent to an application within the 'proximity area' unless it is satisfied that the development would not have a significant impact on:</p> <ul style="list-style-type: none"> <li>• the biophysical, hydrological or ecological integrity of the adjacent coastal wetland; or</li> <li>• the quantity or quality of surface or ground water flows to the coastal wetland.</li> </ul> <p>The potential for impact on the coastal wetlands was assessed as part of the approved development, which found that the project is able to be undertaken in a manner that would not adversely affect the wetlands. The proposed modification does not involve any change to the layout or approved maximum capacities of the events on the site, and is not expected to result in any material change to effects on coastal wetlands.</p>



<b><i>Instrument</i></b>	<b><i>Consideration</i></b>
<i>SEPP (Infrastructure) 2007</i>	<p><i>SEPP (Infrastructure) 2007</i> aims to facilitate the effective delivery of infrastructure across the State.</p> <p>Clause 104 of the SEPP applies to traffic generating development and ensures that Roads and Maritime Services (RMS) is given the opportunity to make representations on certain traffic generating development applications before a consent authority makes a determination on the proposal.</p> <p>The approved Parklands project meets the thresholds in Schedule 3 of the SEPP (as a place of assembly with parking for over 200 vehicles), and was therefore traffic generating development for the purposes of the SEPP.</p> <p>Comprehensive traffic assessment has been undertaken for the approved development, in consultation with the RMS. The proposed modification does not involve any change to maximum traffic generation associated with the approved project, or any change to approved traffic circulation, access or impacts.</p>
<i>SEPP (Miscellaneous Consent Provisions) 2007</i>	<p><i>SEPP (Miscellaneous Consent Provisions) 2007</i> aims (amongst other things) to ensure that suitable provision is made for ensuring the safety of persons using temporary structures, and to encourage the protection of the environment by managing noise, parking and traffic impacts and ensuring heritage protection.</p> <p>Clause 12 of the SEPP outlines a number of matters that a consent authority is required to consider before granting consent to the erection of temporary structures.</p> <p>Consideration of these matters was provided in the EIS for the approved development, and the proposed modification does not involve any change to the layout or maximum capacities of events on the site. As such, the ongoing use of temporary structures associated with the Parklands site is able to be readily managed in accordance with the aims, provisions and matters for consideration in the SEPP.</p>
<i>SEPP (Primary Production and Rural Development) 2019</i>	<p><i>SEPP (Primary Production and Rural Development) 2019</i> aims to facilitate the orderly and economic use and development of lands for primary production, and to implement measures designed to reduce land use conflicts.</p> <p>The approved development does not involve any significant change to pre-existing development on the site, and does not adversely affect the use of the site for continued agricultural purposes outside the outdoor event periods, which amount to a maximum of 20 event days per year. The proposed use of the site for cultural events would not significantly affect the agricultural capability of the subject land.</p>



<b>Instrument</b>	<b>Consideration</b>
<i>Local Environmental Plans</i>	<p>The site is located within the Byron local government area (LGA), although the approved development also involves use of some land to the north of the site (including the northern access road and a bushfire evacuation area) that is within the Tweed LGA.</p> <p>The site and northern areas encompass a number of land use zones under the <i>Byron Local Environmental Plan (LEP) 2014</i>, the <i>Byron LEP 1988</i>, and the <i>Tweed LEP 2014</i>, including:</p> <ul style="list-style-type: none"> <li>• <i>Byron LEP 2014:</i> <ul style="list-style-type: none"> <li>○ RU1 Primary Production;</li> <li>○ RU2 Rural Landscape;</li> </ul> </li> <li>• <i>Byron LEP 1988:</i> <ul style="list-style-type: none"> <li>○ 1(a) (General Rural Zone);</li> <li>○ 1(b1) (Agricultural Protection (b1) Zone);</li> <li>○ 7(k) (Habitat Zone);</li> <li>○ 9(a) (Proposed Road Reserve Zone);</li> </ul> </li> <li>• <i>Tweed LEP 2014:</i> <ul style="list-style-type: none"> <li>○ RU1 Primary Production; and</li> <li>○ RU2 Rural Landscape;</li> </ul> </li> </ul> <p>As outlined in Section 1 above, the Parklands cultural events site is subject to an existing concept plan approval. Essentially, this means that the proposed development is permissible within the above land use zones, despite anything to the contrary in the LEPs.</p> <p>As outlined in the EIS for the approved development, the North Byron Cultural Events Site project is able to be undertaken in a manner that is consistent with the applicable development standards and provisions of the LEPs. The proposed modification does not involve any change to the consistency of the project with the LEPs.</p>

#### **4 Environmental Issues**

Consideration of the environmental effects of the proposed modification is presented in the following table.

In summary, it is considered that the proposal would not result in any material change to the environmental effects of the development as approved.

**Table 3: Consideration of Environmental Effects**

<b>Issue</b>	<b>Consideration</b>
<i>Soil and Water</i>	The proposed modification does not involve any change to the approved disturbance area of the project, or to the approved layout or maximum capacity of events on the site. As such, the proposed modification is not expected to result in any material change to soil and water related impacts associated with the approved development.
<i>Noise and Vibration</i>	The proposed modification does not involve any change to the maximum capacity of events on the site. As such, the proposal is not expected to result in any material change to noise and vibration related impacts associated with the approved development.





<b>Issue</b>	<b>Consideration</b>
	<p>As outlined in the EIS for the approved project, noise assessment for the largest event on the site (ie. Splendour at 50,000 patrons) found that the project is able to comply with applicable noise criteria during worst case meteorological conditions at all off-site receiver locations, with the exception of 2 receivers on Jones Road which are subject to noise agreements with Parklands.</p> <p>Further, the last two large summer events have been undertaken at an approved capacity of 25,000 patrons, and both of these events have complied with the applicable noise criteria and KPIs.</p> <p>As noted in Section 1 above, the conditions of the approved development consent provide for the orderly progressive growth of the large winter event and large summer event. In this regard, Parklands is not able to progress to the next growth stage until it has demonstrated to the satisfaction of the Planning Secretary that the current stage has met certain KPIs, including the following noise-related KPIs:</p> <ul style="list-style-type: none"> <li>• overall compliance with the applicable noise limits; and</li> <li>• effectiveness of noise mitigation, management and response measures, including monitoring results.</li> </ul> <p>These measures, as well as other conditions of the consent, would ensure that the proposed staging for the large summer event would occur in an orderly manner.</p>
<i>Visual and Lighting</i>	The proposed modification does not involve any change to the approved layout or maximum capacity of events on the site. As such, the proposal is not expected to result in any material change to visual or lighting related impacts associated with the approved development.
<i>Air Quality and Greenhouse Gases</i>	The proposed modification would not result in any material increase in air quality or greenhouse gas emissions associated with the approved development.
<i>Ecology</i>	The proposed modification does not involve any change to the approved disturbance area of the project, or to the maximum capacity of events on the site. As such, the proposal is not expected to result in any material change to biodiversity related impacts associated with the approved development.
<i>Heritage</i>	The proposed modification does not involve any change to the approved disturbance area of the project, and would not affect any heritage items.
<i>Traffic and Transport</i>	<p>The proposed modification does not involve any change to the maximum capacity of events on the site. As such, the proposal is not expected to result in any material change to traffic and transport related impacts associated with the approved development.</p> <p>As outlined in the EIS (and Response to Submissions) for the approved project, traffic assessment indicates that the project is able to maintain reasonable traffic service levels on all of the key roads and intersections surrounding the Parklands site. For the largest event (ie. Splendour at 50,000 patrons), the assessment indicates that service levels are able to comply with the applicable traffic criteria at all times, with the exception of a minor decrease (to Level of Service 'E') on Tweed Valley Way</p>



<b>Issue</b>	<b>Consideration</b>
	<p>which would occur over a period of up to 4 hours on one day of the year. This reduction would occur under traffic controlled conditions, and the assessment indicates that service levels on Tweed Valley Way would still remain reasonable during this time.</p> <p>With regard to the large summer event, the analysis indicates that an event with the maximum approved capacity of 35,000 patrons, plus background traffic, plus a 30% increase to account for seasonal peak traffic, would have lower overall impacts on the road network than a large winter event with 50,000 patrons. Consequently, the large summer event is expected to have lower traffic impacts than the large winter event at full capacity, and hence further traffic assessment focused on the worst case 50,000 patron event.</p> <p>Further, the last two large summer events have been undertaken at an approved capacity of 25,000 patrons, and both of these events have complied with the applicable traffic consent conditions and KPIs.</p> <p>As outlined in Section 1 above, the conditions of the approved development consent provide for the orderly progressive growth of the large winter event and large summer event. In this regard, Parklands is not able to progress to the next growth stage until it has demonstrated to the satisfaction of the Planning Secretary that the current stage has met certain KPIs, including a number of traffic-related KPIs. These include:</p> <ul style="list-style-type: none"> <li>• minimum level of service (LoS) C to be maintained at the Yelgun interchange including merges and diverges;</li> <li>• LoS for local traffic and through traffic on the Tweed Valley Way should not fall below a LoS D, with maximum of LoS E for no more than 4 hours a day;</li> <li>• queue lengths on the link road between Tweed Valley Way and the Yelgun interchange must be limited to a maximum of 60 metres;</li> <li>• queue lengths on the interchange ramps must not be within 210 metres of the start of the ramp; and</li> <li>• on-site queuing is not to extend onto the Pacific Highway or the Tweed Valley Way at any time.</li> </ul> <p>These KPIs and other conditions of consent would ensure that the proposed staging progression for the large summer event would occur in an orderly manner.</p>
<b>Infrastructure, Services and Waste</b>	The proposed modification does not involve any change to the approved layout or maximum capacity of events on the site. As such, the proposal is not expected to result in any material change to infrastructure, services or waste management associated with the approved development.
<b>Hazards</b>	The proposed modification does not involve any change to the approved layout or maximum capacity of events on the site. As such, the proposal is not expected to result in any material change to bushfire, dangerous goods management or other hazards associated with the approved development.
<b>Social and Economic</b>	The proposed modification does not involve any change to the maximum capacity of events on the site, and the proposed staging for the large summer event is consistent with the approved staging for the large winter event on the site.



<i>Issue</i>	<i>Consideration</i>
	<p>As outlined above, the conditions of the approved development consent provide for the orderly progressive growth of the large winter event and large summer event. In this regard, Parklands is not able to progress to the next growth stage until it has demonstrated to the satisfaction of the Planning Secretary that the current stage has operated successfully and met applicable KPIs. This would ensure that any social and socio-economic impacts are appropriately addressed with the progressive growth of the events.</p> <p>Further, the proposed modification would enable the socio-economic benefits associated with the large summer event to be realised consistent with the progressive growth of the festival.</p>

## **5 Conclusion**

It is considered that the proposed modification represents a minor modification of the North Byron Cultural Events Site project as approved.

Having regard to the salient environmental, social and economic issues, it is considered that the proposed modification represents continued orderly use of the land. It is respectfully requested that the Department, having due regard for the information submitted in this document, grants approval to the proposed modification.

Should you have any enquiries in relation to this matter, please do not hesitate to contact me on 0400 392 861.

Yours faithfully,  
**PJEP – Environmental Planning**

**Phil Jones**  
Principal Environmental Planner

Cc: Parklands  
Attachments: