



# **North Byron Parklands Cultural Events Site**

State Significant  
Development  
Modification Assessment  
(SSD 8169 MOD 1)



July 2019

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### **Cover photo**

Amphitheatre, looking east (Department of Planning and Environment, 2018)

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# Glossary

Abbreviation	Definition
BSC	Byron Shire Council
Consent	Development Consent
Department	Department of Planning, Industry and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
LGA	Local Government Area
Minister	Minister for Planning and Public Spaces
NSWPF	NSW Police Force
PER	Performance Evaluation Report
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
Public Health Regulation	Public Health Regulation 2012
PWMP	Potable Water Management Plan
RMS	Roads and Maritime Services
SSD	State Significant Development
TSC	Tweed Shire Council



# Executive Summary

This report details the Department of Planning, Industry and Environment's (the Department) assessment of an application to modify the State significant development (SSD) consent for the North Byron Parklands Cultural Events Site located at 126 Tweed Valley Way, Yelgun in the Byron local government area (LGA).

## Approval History

On 13 March 2019, development consent was granted by the Independent Planning Commission for the North Byron Parklands Cultural Events Site (SSD 8169). The development consent permits the ongoing use of the cultural events site for cultural, educational and outdoor events and the construction and operation of additional site infrastructure, including a conference centre, administrative building, event facilities, and on-site road and transport infrastructure. The site currently hosts two annual international music festivals: Splendour in the Grass (SITG) and the Falls Festival Byron Bay (Falls Festival).

## Modification Application

The modification application seeks approval to amend Condition A7 of the development consent to enable the Falls Festival to commence at a capacity of 30,000 patrons subject to meeting several requirements. Billinudgel Property Pty Ltd (the Applicant) is also seeking to amend Condition D45 following advice received from NSW Health regarding its role in endorsing the Potable Water Management Plan (PWMP) required under Condition D45. The application has been lodged pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

## Statutory Context

The Department has reviewed the scope of the modification application and is satisfied the proposed modification application would result in minimal environmental impacts and should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application be lodged.

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's delegation dated 14 September 2011, the Independent Planning Commission may determine the application under delegation as Tweed Shire Council (TSC) objected to the modification application.

## Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 specifies that the notification requirements of the EP&A Regulation do not apply to SSD. Accordingly, the application was not notified or advertised. However, it was made publicly available on the Department's website. Four government authorities commented on the application. Of these, TSC objected to the proposed modification on traffic management grounds.

## Assessment

The Department's assessment of the modification application has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development.

While Condition A7 currently allows the Applicant to commence SITG at the Stage 2 capacity of 42,500 patrons instead of 35,000 patrons (subject to meeting consent conditions and performance monitoring requirements), this condition does not apply to the Falls Festival. The Applicant indicated the proposed amendment to Condition A7 is administrative and would not result in any additional environmental impacts beyond what was assessed under the original application. The Department considers amending Condition A7 does not involve any change to the maximum capacity of events held on-site, given the large events have already been assessed at the maximum capacity of 35,000 patrons for the Falls Festival and 50,000 patrons for SITG. As such, the proposed modification would not result in additional environmental impacts or intensification of use beyond what was assessed under the original application.

The Department acknowledges TSC's concerns but emphasises that Condition A7 does not automatically enable the Applicant to commence a large outdoor event at a larger capacity, without the Applicant first demonstrating it has adequately met the large event progression requirements outlined within the development consent. The Department has recommended Condition A7 be amended to include reference to the Falls Festival.

The Department has also considered the Applicant's request to amend Condition D45 and acknowledges NSW Health has no formal responsibility under the Public Health Regulation 2012 (Public Health Regulation) to endorse the PWMP. The Department has recommended Condition D45 be amended to align with the requirements of the NSW Health guidelines and Public Health Regulation.

The Department concludes the proposal is in the public interest and the applications are approvable, subject to conditions.



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# 1. Introduction

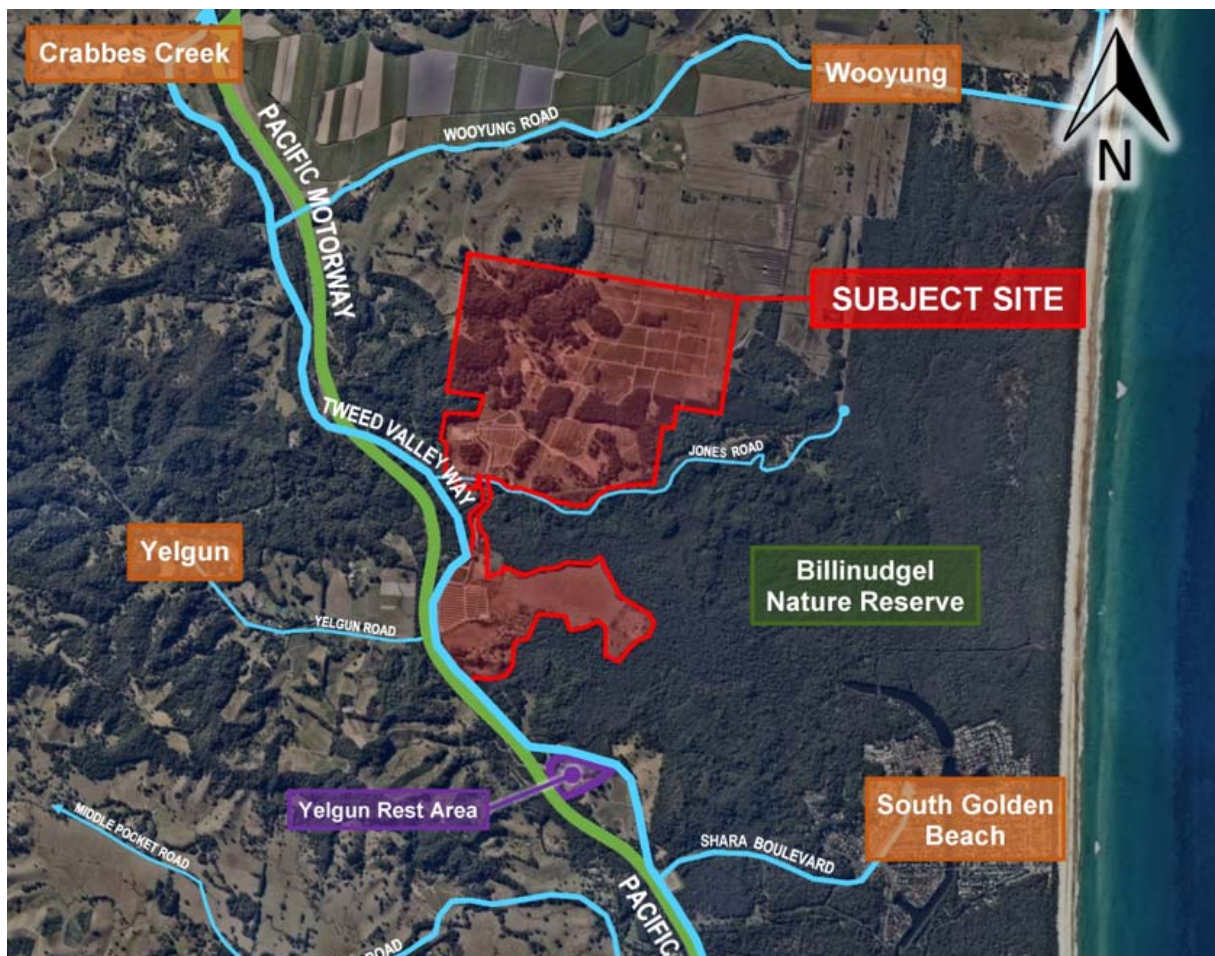
This report provides an assessment of an application to modify the State significant development consent (SSD) for the North Byron Parklands Cultural Events Site, Yelgun.

The modification application seeks approval to amend Condition A7 of the development consent to enable the Falls Festival Byron Bay (Falls Festival) to commence at a capacity of 30,000 patrons subject to meeting several requirements. The application has been lodged by Billinudgel Property Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Independent Planning Commission (the Commission) may determine the application under delegation, as Tweed Shire Council (TSC) objected to the proposal.

## 1.1 Background

The Applicant operates the North Byron Parklands Cultural Events Site (the site) at 126 Tweed Valley Way, Yelgun in the Byron local government area (see **Figure 1**). The Applicant previously operated the site under a trial project approval (MP 09\_0028) which is due to lapse on 31 August 2019. Since 2013, the site has hosted two annual international music festivals, Splendour in the Grass (SITG) in July and the Falls Festival in December/January.



**Figure 1** | Site Location

Under the trial project approval, the Applicant held 11 major events at the site, including six large trial events (SITG) and five medium trial events (Falls Festival). The Applicant has also held four minor/community events at the site, including the Fields of Healing Festival, two cross-country events and an endurance horse riding event.

On 13 March 2019, the Applicant was granted development consent (SSD 8169) for the ongoing use of the cultural events site for cultural, educational and outdoor events for up to 20 event days per year, including:

- two large events per year (i.e. SITG and Falls Festival) over a maximum of five event days each, for up to:
  - 35,000 patrons per event day at SITG, increasing to 42,500 patrons and then 50,000 patrons, subject to meeting key performance indicators (KPIs)
  - 25,000 patrons per event day at Falls Festival, increasing to 30,000 patrons and then 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, which would run either on separate event days (i.e. a one-off music concert) or over three consecutive event days (i.e. multi-day event music festival) with up to 25,000 patrons per event day
- five small (5,000 patrons) and two minor (1,500 patrons) one-day community events
- the construction of additional site infrastructure, including a conference centre, administrative building, event facilities, and on-site road and transport infrastructure.

## 1.2 Subject Site

The site is located in Yelgun on the NSW far north coast, approximately 22 kilometres (km) north of Byron Bay and 35 km south of Tweed Heads. The site comprises 259 hectares of flat cleared land, and 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 (see **Figure 1**).

The site is situated in a rural-residential locality in the far north-east of the Byron LGA, adjacent to the boundary of the Tweed LGA. The nearest sensitive receivers are a cluster of rural-residential properties located approximately 1 km from the site on Jones Road. The site is immediately bounded by:

- agricultural lands to the north
- Billinudgel Nature Reserve to the south and east
- Pacific Motorway and Tweed Valley Way to the west.

Local residential communities near the site include:

- South Golden Beach (1.5 km), Ocean Shores (2 km), Billinudgel (2 km) and Brunswick Heads (6 km) to the south and south-east
- Wooyung (1.6 km) and Pottsville (6 km) to the north
- Yelgun (1.5 km), Crabbes Creek (2 km) and Middle Pocket (4.5 km) to the west.

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.

## 1.3 Approval History

On 13 March 2019, development consent was granted by the Commission for the development of the North Byron Parklands Cultural Events Site (SSD 8169). The development consent permits the ongoing use of the cultural events site for cultural, educational and outdoor events and the construction and operation of additional site

infrastructure, including a conference centre, administrative building, event facilities, and on-site road and transport infrastructure.

The development consent includes Condition A7, which is relevant to the modification application. Condition A7 allows the Applicant to commence SITG at a capacity of 42,500 patrons subject to meeting the following requirements:

- the Applicant must demonstrate it has previously held an event at the site with a capacity of 35,000 patrons
- the Applicant must demonstrate it has met the KPIs and Performance Evaluation Report (PER) requirements
- the Planning Secretary must approve the Applicant’s request to progress to the next stage’s capacity.

**1.4 Large Event Commencement and Progression Requirements**

The development consent outlines the requirements for increasing the capacities of SITG and Falls Festival over three stages, as shown in **Table 1**. Conditions D10 to D15 require the Applicant to demonstrate it has successfully managed a large outdoor event at the previous stage’s capacity to the satisfaction of the Planning Secretary. The Applicant is also required to prepare and submit a PER that considers the environmental performance and compliance of the development to date.

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

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

In addition, Condition A6 of the consent permits SITG and Falls Festival to commence at the Stage 1 capacities outlined in **Table 1**. Notwithstanding, Condition A7 allows SITG to commence at the Stage 2 capacity of 42,500 patrons, subject to meeting additional requirements including those outlined in Conditions D10 to D15 of the consent. However, Condition A7 does not currently apply to the Falls Festival.

During the assessment of the SSD application, the Applicant made requests to the Commission to provide the Falls Festival with a pathway to commence at the Stage 2 capacity in a similar manner to SITG. However, it is the Applicant’s view that the request was not considered by the Commission in the overall assessment of the application. Consequently, the Applicant is proposing to modify the development consent to expressly include reference to the Falls Festival in Condition A7.



## 2. Proposed Modification

### 2.1 Modification Application

The Applicant has lodged a modification application under section 4.55(1A) of the EP&A Act to modify SSD 8169 to amend Condition A7 of the development consent to enable the Falls Festival to commence at a Stage 2 capacity of 30,000 patrons, in a similar manner to SITG.

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.

Condition A7 is proposed to be modified as follows (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 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.*

### 2.2 Administrative Amendment

During the assessment period of this modification application, the Department received correspondence from the Applicant regarding NSW Health's role in endorsing the Potable Water Management Plan (PWMP) required under Condition D45. 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 Regulation 2012 (Public Health Regulation). The Applicant has agreed to include this amendment in its modification application and the Department's assessment of this issue is provided in **Section 6.2**.



### 3. Strategic Context

The Department has considered the strategic context of the site and is satisfied the proposed modification is consistent with relevant strategic planning documents including the *North Coast Regional Plan 2036*.

The proposed modification seeks to amend Condition A7 to allow Falls Festival to commence at a Stage 2 capacity, in a similar manner to SITG. The proposed modification will continue to strengthen the region's economy and tourism opportunities, particularly Direction 8 by delivering a unique tourism experience that compliments the North Coast region's existing reputation of being a vibrant cultural and artistic destination.

The proposed modification would also continue to accommodate an additional 150 full-time equivalent construction jobs and 561 operational jobs in the Byron LGA once fully developed.



## 4. Statutory Context

### 4.1 Scope of Modifications

The Department has reviewed the scope of the modification application and considers the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not increase the environmental impacts of the project as approved
- the primary function and purpose of the approved development would not change as a result of the proposed modification
- is substantially the same development as originally approved and warrants the use of section 4.55(1A) of the EP&A Act
- the approved maximum patron numbers and large event progression requirements would remain unchanged as a result of the proposed modification
- would not involve any further disturbance outside the already approved disturbance areas for the development.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

### 4.2 Consent Authority

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(a) of the EP&A Act. However, under the Minister's instrument of delegation dated 14 September 2011, the Commission may determine the application under delegation as TSC objected to the proposal.



## 5. Engagement

### 5.1 Department's Engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to State significant development. Accordingly, the application was not notified or advertised. However, it was made publicly available on the Department's website and was referred to Byron Shire Council (BSC), TSC, Roads and Maritime Services (RMS) and NSW Police Force (NSWPF) for comment.

### 5.2 Summary of Submissions

The key issues raised by State government authorities have been addressed through the provision of additional information, or through the recommended conditions of consent.

**BSC** did not object to the modification and notes that any request to increase capacity of the Falls Festival is subject to the Applicant demonstrating it has met the KPIs.

**TSC** objected to the modification application on traffic management grounds noting the altered traffic management process via Gate E as an entry/exit gate has not been trialled for the Falls Festival, and hence any increase to 30,000 patrons through Condition A7 would not be supported. TSC also discussed traffic issues associated with previous events and the impacts on Tweed Coast Road.

**NSWPF** supports the modification application and highlighted the need for sufficient increases in user pay police numbers to support the events as they progressively increase in size.

**RMS** did not object to the modification application.



## 6. Assessment

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- SEE provided to support the modification application (see **Appendix A**)
- assessment report for the original development application
- submissions from the public, State government authorities and Council (**Appendix A**)
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

### 6.1 Amendment to Condition A7

Condition A7 currently allows the Applicant to commence SITG at the Stage 2 capacity of 42,500 patrons instead of the Stage 1 capacity of 35,000 patrons, subject to meeting consent conditions and performance monitoring requirements. However, Condition A7 does not apply to the Falls Festival. The Applicant has requested Condition A7 be amended to include reference to the Falls Festival, so it may progress in a similar manner to SITG.

The Applicant notes the proposed amendment to Condition A7 is administrative and would not involve any change to the maximum capacity of events that can be held on-site, nor would it result in any additional environmental impacts beyond what was assessed under the original application. The SEE acknowledged that prior to any staged increase in patron numbers for the Falls Festival, the Applicant would still be required to demonstrate it has previously held an event at a capacity of 25,000 patrons and has met relevant KPIs and consent conditions. In addition, the Planning Secretary would need to approve any request made by the Applicant to progress the Falls Festival to the next stage.

TSC objected to the modification raising several traffic management issues associated with the trial events. TSC noted the upgraded Gate E access road has not been trialled yet as an entry/exit point for patrons and highlighted the Tweed Coast Road has experienced traffic issues during previous outdoor events. The Applicant provided a response noting the upgraded northern access road has been used informally for vehicles exiting the site and will be operational for the upcoming SITG 2019 as an entry/exit point. In terms of impacts to the surrounding road network, the Applicant reiterated the results of the traffic modelling undertaken for the original DA, which showed the Falls Festival (at a maximum capacity of 35,000 patrons, plus background traffic and a 30% increase in seasonal peak traffic), is expected to have lower traffic impacts than SITG at full capacity. The Applicant also noted traffic impacts would be managed through the existing conditions of consent.

The remaining government authorities did not object to the proposed modification.

The Department has considered the Applicant's SEE and agrees 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. This is because the large outdoor events have already been assessed at the maximum capacity of 35,000 patrons for the Falls Festival and 50,000 patrons for SITG. As such, the proposed modification would not result in additional environmental impacts or intensification of use beyond what was assessed under the original application.

The Department acknowledges TSC's concerns but emphasises that 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 outlined in Conditions D10 to D15, the KPIs outlined in Condition D16 and the PER requirements outlined in Condition D17.

To date, the Applicant has been permitted to commence SITG at a capacity of 42,500 patrons under Condition A7. With regard to the Falls Festival, the Department notes the Applicant has previously held two Falls Festivals at the Stage 1 capacity of 25,000 patrons and can draw upon past performance monitoring data, including traffic monitoring data from previous Falls Festivals and SITG to demonstrate compliance with the requirements of Condition A7. Notwithstanding, 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 Festival or SITG to the next stage.

On this basis, the Department considers it reasonable to amend Condition A7 to include reference to the Falls Festival. The Department's assessment concludes the proposed modification is minor in nature and would not result in any material change to the approved development.

## **6.2 Amendment to Condition D45 – Potable Water Management Plan**

Condition D45 requires the Applicant to prepare a PWMP for the development. The PWMP must describe details of the Applicant's potable water supply infrastructure, procedures for treating water in accordance with applicable drinking water standards and include a quality assurance program (QAP) prepared in accordance with applicable NSW Health guidelines. Under Condition D45(a), the Plan must also be endorsed by NSW Health.

NSW Health advised it has no formal responsibility to endorse the PWMP, including the QAP where the plan relates to private drinking water suppliers. Notwithstanding, the Applicant demonstrated it is working closely with NSW Health to ensure the PWMP meets the relevant NSW Health guidelines and requirements of the Public Health Regulation. The Department notes that Condition D45(a) cannot be complied with given NSW Health's advice on the matter. The Department recommends Condition D45 be amended to align with the requirements of the Public Health Regulation and NSW Health Guidelines. The Department's assessment concludes the amendment does not change the intent of Condition D45 and would not result in any additional impacts.



## 7. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. On balance, the Department considers the proposed modification is appropriate on the basis that:

- 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
- the development will continue to facilitate tourism opportunities in the North Coast region.

The Department concludes the proposal is in the public interest and the modification application is approvable, subject to the recommended modified conditions in **Appendix B**. This report is hereby presented to the Commission for determination.

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# Appendices

## Appendix A – List of Documents

Statement of Environmental Effects: <https://www.planningportal.nsw.gov.au/major-projects/project/11826>

Submissions: <https://www.planningportal.nsw.gov.au/major-projects/project/11826>

## Appendix B – Notice of Modification