

Section 96(2) Application to Modify
Development Consent 2012-269

North Byron Cultural Events

PLANNERS NORTH, November, 2015

COMPLIANCE AND USAGE STATEMENT

This Section 96(2) Application has been prepared and submitted under Part 4 of the *Environmental Planning and Assessment Act 1979* by:

Preparation

Name: Steve Connelly
Company: PLANNERS NORTH
Address: 3/69 Centennial Circuit, Byron Bay
P.O. Box 538, Lennox Head NSW 2478
In respect of: Development Approval for Events

Application

Proponent: North Byron Beach Resort Pty Ltd
Address: 3/69 Centennial Circuit, Byron Bay
Postal Address: C/ - PLANNERS NORTH
P.O. Box 538, Lennox Head NSW 2478
Land to be developed: North Beach Site, Bayshore Drive, Byron Bay
Proposed development: Section 96(2) Application to Modify Development Consent 2012/269
Environmental Assessment: Statement of Environmental Effects

Certificate

I certify that I have prepared the content of this Modification Application and to the best of my knowledge:

- it is in accordance with the Act and Regulations, and
- it is true in all material particulars and does not, by its presentation or omission of information, materially mislead.

Notice

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PLANNERS NORTH declares that it does not have, nor expects to have, a beneficial interest in the subject project. Nor does it have any reportable political donations within the meaning of Section 147(3) of the Act to declare.

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Steve Connelly FPIA CPP
Partnership Principal



ABN 56 291 496 553
3/69 Centennial Circuit
Byron Bay

T: 1300 66 00 87
E: steve@plannersnorth.com.au
W: plannersnorth.com.au

Ref: 1315-320

Date: November 2015

NORTH BYRON BEACH RESORT • CULTURAL EVENTS

EXECUTIVE SUMMARY

i

PLANNERS NORTH has been engaged by the owners of the subject land, Ganra Pty Ltd, to prepare a Section 96(2) Application to modify Development Consent 2012/269 for Cultural Events on land at Bayshore Drive, Byron Bay.

Development Consent 2012/269 for a temporary place public assembly and for temporary primitive camping in association with the public assembly use was approved by Council on 18th April 2013.

The proposed modifications reflect the near completion of works at the resort site concerning DA 87/208 and improved environmental outcomes with the with the adjustment of certain other conditions to correspond to events which have occurred post the issue of approval.

The grounds for this approval are summarised below:

- the proposed amendment is substantially the same development and that originally approved by Council;
- the modifications sought maintain the outcomes of the assessment process pertaining to the application of the Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014; and
- the proposed development is not likely to result in significant adverse impacts on the existing natural or built environment.



The object of DA 2012/269 is to “trial” the use of the subject land for events and associated onsite camping. To date developmental activity in the immediate locality has made that trialling difficult if not impossible. This modification seeks to extend the period over which the trial can apply. In our submission it is appropriate in both social and economic terms to facilitate the trial to “test” the capacity of the land for cultural event usage.

TABLE OF CONTENTS

1.	INTRODUCTION	1
1.1	Background	1
1.2	Structure of Report and its Scope	1
1.3	Further Information	1
2.	THE SITE AND ITS CONTEXT	2
2.1	Cadastral Description	2
2.2	Site Context	2
2.3	Site History	2
3.	THE PROPOSED MODIFICATIONS	3
3.1	Condition Modifications	3
3.2	Extent of the Site	3
3.3	Condition 1, Development to be in accordance with approved Plans and Documentation	4
3.4	Condition 2, Description of development	6
3.5	Condition 3, Construction Works	6
3.6	Condition 4, Conflicts with Development Consent No. 87/208	7
3.7	Condition 11, Wet Weather Car Parking	7
3.8	Condition 12, Consent required for works within the road reserve - Bayshore	8
3.9	Condition 13, Traffic Management Plan	9
3.10	Condition 14, Car Parking Layout, Vehicle Circulation and Access Plans Required	10
3.11	Condition 17, Construction Times (Civil Works)	10
3.12	Condition 28, Bayshore Drive – Roadworks in Accordance Approved Plans	11
3.13	Condition 30, Car parking spaces are to be available for the approved use	11
4.	ASSESSMENT OF APPLICATION AGAINST RELEVANT STAUTORY ENVIRONMENTAL PLANNING MATTERS	12
4.1	Section 96(2) of the EP&A Act 1979	12
4.2	Section 79C(1) of the EP&A Act 1979	13
5.	CONCLUSION	15
	REFERENCES	16

LIST OF PLANS

Plan 3.1	Updated Cultural Events Site Plan 16/11/15	5
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LIST OF APPENDICES

APPENDIX A	Application Form and Landowner Authority	17
APPENDIX B	Flora and Fauna Assessment	24

1. INTRODUCTION

This section of the report identifies the nature of client instructions, relevant background information and the structure of the report.

1.1 BACKGROUND

PLANNERS NORTH has been engaged by the owners of the subject land, Ganra Pty Ltd, to prepare a Section 96(2) Application to modify Development Consent 2012/269 for Cultural Events on land at Bayshore Drive, Byron Bay.

Development Consent 2012/269 for a temporary place public assembly and for temporary primitive camping in association with the public assembly use was approved by Council on 18th April 2013.

The proposed modifications reflect the near completion of works at the resort site concerning DA 87/208 and improved environmental outcomes with the with the adjustment of certain other conditions to correspond to events which have occurred post the issue of approval.

The proposed modifications will result in substantially the same development as that approved.

1.2 STRUCTURE OF REPORT AND ITS SCOPE

Section 2 of this report describes the physical characteristics of the subject land and its planning context. Section 3 describes in detail the development proposal. Having regard to the provisions of Section 79C (1)(a) Section 4 sets out an examination of the statutory and policy planning status relating to the land, with particular regard to the proposal described in Section 3. Section 5 looks at the environmental interactions of the proposal, particularly as specified by S.79 (1)(b) and (c) of the Act. The final section of the report undertakes a general review of the project and summation as to the appropriateness of the project having regard to the planning controls applying to the land and land use needs in the locality and matters set out for consideration in Section 79C (1)(e).

The Development Application form and landowner consent authorising lodgement of the subject application are contained in **Appendix A** to this report. **Appendix B** contains a report with respect to flora and fauna by Mr. Peter Parker.

1.3 FURTHER INFORMATION

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with **Steve Connelly (1300 66 00 87)** prior to determination of this application.

2. THE SITE AND ITS CONTEXT

This section of the report identifies the subject site and describes its environmental planning context.

2.1 CADASTRAL DESCRIPTION

Given the near completion of Stage 1 of the Elements Resort, the land to which Development Consent 2012/269 is proposed to be amended to only comprises the following land:

- Lot 1 DP 243218;
- Lot 2 DP 243218;
- Lot 11 DP 243218;
- Lot 12 DP 243218;
- Lot 13 DP 243218; and
- Lot 449 DP 812102.

That part of the site to which this Section 96 Modification Application relates is relatively flat. The site fronts Bayshore Drive.

2.2 SITE CONTEXT

The subject site is located approximately 4.5km or 8 minutes drive from the north west of Byron Bay Town Centre. The site adjoins the Tyagarah Nature Reserve to the west, the North Coast Railway and Sunrise Beach Estate to the south and Belongil Beach and the coastline to the north. Belongil Creek adjoins the site to the east. The site is accessed via Bayshore Drive.

2.3 SITE HISTORY

Development Consent 87/208 for Tourist Accommodation comprising 161 x 2 and 3 room cabins and the use of an existing 32 cabins on the site was approved by Council on 11 August 1987. Section 96 Application 5.1987.208.2 to modify the design of cabin 82 was approved by Council in December 2012. Section 96 Application 5.1987.208.3 for the modification of the approval incorporating design modernisation and reconstruction of 75 cabins including site modification to this location and footprints was approved on 22 November 2013. Section 96 Application 5.1987.208.4 to relocate and modernise the design of 22 of 193 previously approved cabins (tourist facility) was approved by Council on 20 February 2015.

DA Approval 2012/269 was originally determined on the 18th of April 2013. Since then, 2 amendments have been made of an administrative nature to the approval. Amendment 2 was determined on the 11th of September 2013.

3. THE PROPOSED MODIFICATIONS

This section of the report outlines the proposed modifications to the development approved in accordance with Development Consent 2012/269.

3.1 CONDITION MODIFICATIONS

The current situation in relation to DA 2012/269 is that it utilises land which is the subject of DA 87/208. That situation was satisfactory whilst 87/208 was in the course of construction and there was no conflict. Now that consent 87/208 is very near to completion, it is necessary to adjust the footprint of the cultural events facility from places within the site where conflict could occur. This will require modification of certain conditions. Conditions as they appear in the Development Consent are set out below. Following the existing condition the proposed condition sought by this modification is described. In that condition words that are proposed to be deleted are shown “~~struck through~~” and additional text is shown in red font. Below each condition a brief commentary is provided in relation to the rationale behind the modification as sought.

3.2 EXTENT OF THE SITE

Existing Parameter

Land to be developed:

The land described in the existing Development Approval is:

- Lot 1 DP 780243
- Lot 447 DP 812102
- Lot 449 DP 812102
- Lot 450 DP 812102
- Lot 6 DP 243218
- Lot 7 DP 243218
- Lot 1 DP 243218
- Lot 2 DP 243218
- Lot 8 DP 243218
- Lot 9 DP 243218
- Lot 10 DP 243218
- Lot 11 DP 243218
- Lot 12 DP 243218
- Lot 13 DP 243218

Bayshore Drive, Byron Bay.

Proposed Parameter

Land to be developed:

- Lot 1 DP 780243
- Lot 447 DP 812102
- ~~Lot 449 DP 812102~~
- Lot 450 DP 812102
- Lot 6 DP 243218
- Lot 7 DP 243218
- ~~Lot 1 DP 243218~~
- ~~Lot 2 DP 243218~~
- Lot 8 DP 243218
- Lot 9 DP 243218
- Lot 10 DP 243218
- ~~Lot 11 DP 243218~~
- ~~Lot 12 DP 243218~~
- ~~Lot 13 DP 243218~~

Bayshore Drive, Byron Bay.

Comment: This amendment changes the “land to be developed” reference in order to omit from the Events Parcel land to which the Resort Use, Elements, will apply.

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4

3.3 CONDITION 1, DEVELOPMENT TO BE IN ACCORDANCE WITH APPROVED PLANS AND DOCUMENTATION

Existing Condition

- The development is to be in accordance with the following plans and documentation, as modified by any conditions of this consent:

Reference	Document	Prepared by	Date
-	Event & Camping Precincts Plan	North Byron Cultural Events	23 February 2013
-	Statement of Environmental Effects for North Byron Cultural Events. Small Festivals 2012 to 2021 [as amended by Correspondence from Balanced Systems, dated 11 and 22 February 2013]	Balanced Systems Planning Consultants	June 2012
-	Noise Impact Assessment for Noise Issues associated with North Byron Cultural Events. North Beach, Bayshore Drive Byron Bay.	Greg Alderson and Associates Pty Ltd	June 2012
Appendix B	Event Temporary Camping Ground Management Plan	Mark Norris and Associates	1 May 2012
Job No. 04338 01/01	Parking Layout Plan	Greg Alderson and Associates Pty Ltd	29 April 2011

The development is also to be in accordance with any changes as shown in red ink on the approved plans. The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

Proposed Condition

- The development is to be in accordance with the following plans and documentation, as modified by any conditions of this consent:

Reference	Document	Prepared by	Date
-	Updated Event & Camping Precincts Plan	North Byron Cultural Events	23 February 2013 16 November 2015
-	Statement of Environmental Effects for North Byron Cultural Events. Small Festivals 2012 to 2021 [as amended by Correspondence from Balanced Systems dated 11 and 22 February 2013]	Balanced Systems Planning Consultants	June 2012
-	Noise Impact Assessment for Noise Issues associated with North Byron Cultural Events. North Beach, Bayshore Drive Byron Bay.	Greg Alderson and Associates Pty Ltd	June 2012
Appendix B	Event Temporary Camping Ground Management Plan	Mark Norris and Associates	1 May 2012
Job No. 04338 01/01	Parking Layout Plan	Greg Alderson and Associates Pty Ltd	29 April 2011

NEW EVENT SPACE
15830m²
[1760 + 8325 + 5745]

LAKE

LAKE

LAKE

WITHIN SP3
1760m²

EVENT
3655m²

DELETED
8325m²

DELETED
5745m²

BEACH ACCESS

BEACH ACCESS

7/4

- EVENTS PRECINCT - RESTAURANT
- EVENTS PRECINCT - CARPARKING AND EVENTS
- EVENTS PRECINCT - CARPARKING
- CAMPING PRECINCT - PRIMITIVE ZONE

The development is also to be in accordance with any changes as shown in red ink on the approved plans. The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

Comment: Attached herewith as **Plan 3.1** is the updated footprint of the Temporary Events use. This footprint excludes all property associated with the Elements Resort site. The environmental status of the land not mapped as part of the events area in the original consent has been the subject of environmental assessment. That assessment is contained at **Appendix B**.

3.4 CONDITION 2, DESCRIPTION OF DEVELOPMENT

Existing Condition

- Consent is provided to the use of the site as a Temporary Place of Assembly and as a Temporary Primitive Camping Ground, subject to the limitations set out within the conditions of this consent. The Temporary Place of Assembly must not extend into the 7(f1) Coastal Land Zone under Byron Local Environmental Plan 1988. The Temporary Primitive Camping Ground must not extend into the 2(t) Tourist Zone under Byron Local Environmental Plan 1988.

Approval is granted for a two year trial period, commencing on the first event day and expiring two years from that date. A maximum of 6 events may be carried out within each 12 month period that the trial operates. Of these, 3 events are limited to a maximum of 3000 patrons, and the remaining 3 events are limited to a maximum of 1000 patrons. No more than 12 event days are permitted within each year of the trial period.

The first event must commence within 5 years of the date that the development consent operates from (1 May 2013). Written notification must be provided to Byron Shire Council nominating the date of the first event under this development consent.

Proposed Condition

- Consent is provided to the use of the site as a Temporary Place of Assembly and as a Temporary Primitive Camping Ground, subject to the limitations set out within the conditions of this consent. The Temporary Place of Assembly must not extend into the 7(f1) Coastal Land Zone under Byron Local Environmental Plan 1988. The Temporary Primitive Camping Ground must not extend into the 2(t) Tourist Zone under Byron Local Environmental Plan 1988.

Approval is granted for a two year trial period, commencing on the first event day and expiring two years from that date. A maximum of 6 events may be carried out within each 12 month period that the trial operates. Of these, 3 events are limited to a maximum of 3000 patrons, and the remaining 3 events are limited to a maximum of 1000 patrons. No more than 12 event days are permitted within each year of the trial period.

The first event must commence ~~within 5 years of the date that the development consent operates from (1 May 2013)~~ **before 1 May 2018**. Written notification must be provided to Byron Shire Council nominating the date of the first event under this development consent.

Comment: Because of the potential for land use conflict associated with the construction of the Elements Resort, it has not considered appropriate to trial development approval 2012/269. This amendment will facilitate a realistic period for the trial.

3.5 CONDITION 3, CONSTRUCTION WORKS

Existing Condition

- Construction works approved as part of the development are limited to the following (unless otherwise required by conditions of consent):

- (a) Upgrading of Bayshore Drive within the road reserve subject to approval/s being issued under Section 138 of the Roads Act 1993.
- (b) Works associated with the provision of a temporary primitive camping ground including the provision of gravel vehicle accessways, installation of fire hydrants and water tanks subject to approval/s being issued under Section 68 of the Local Government Act 1993. No permanent works are permitted within the area designated as Precinct A in Map 2 of Byron Development Control Plan 2010 Chapter 18, to allow for the objective for revegetation of the area to be achieved in the future.
- (c) Works associated with the provision of temporary car parking areas including the provision of access from Bayshore Drive, and gravel vehicle accessways within the car parking areas as required.

Proposed Condition

3. Construction works approved as part of the development are limited to the following (unless otherwise required by conditions of consent):

- ~~(a) Upgrading of Bayshore Drive within the road reserve subject to approval/s being issued under Section 138 of the Roads Act 1993.~~
- (b) Works associated with the provision of a temporary primitive camping ground including the provision of gravel vehicle accessways, installation of fire hydrants and water tanks subject to approval/s being issued under Section 68 of the Local Government Act 1993. No permanent works are permitted within the area designated as Precinct A in Map 2 of Byron Development Control Plan 2010 Chapter 18, to allow for the objective for revegetation of the area to be achieved in the future.
- ~~(c) Works associated with the provision of temporary car parking areas including the provision of access from Bayshore Drive, and gravel vehicle accessways within the car parking areas as required.~~

Comment: Since the issue of this approval, roadworks have been completed in Bayshore Drive. This makes item (a) and (c) of condition 3 superfluous.

3.6 CONDITION 4, CONFLICTS WITH DEVELOPMENT CONSENT NO. 87/208

Existing Condition

4. This development consent shall cease if an Occupation Certificate is issued after the date consent is issued for the construction of any holiday cabins associated with Development Consent No. 87/208.

Proposed Condition

4. Condition deleted.

Comment: This condition was particularly relevant when parts of the cultural event site were contained within the Elements Resort site. The earlier modification proposals set out in sections 3.2 & 3.3 to amend the relevant land parcels and event area footprint to exclude any overlapping use.

3.7 CONDITION 11, WET WEATHER CAR PARKING

Existing Condition

11. The wet weather contingency car parking that is shown numbered as '71 Spaces', '424 Spaces' and '502 Spaces' within Drawing No. 801 (Rev. A, dated 23/02/2013) shall only be used following significant rainfall periods where the primary car parking area has become non-trafficable.

Proposed Condition

11. **No event shall be carried out on site if, following significant rainfall, - the primary car parking area becomes non-trafficable.** ~~The wet weather contingency car parking that is shown numbered as 71 Spaces', '424 Spaces' and '502 Spaces' within Drawing No. 801 (Rev. A, dated 23/02/2013) shall only be used following significant rainfall periods where the primary car parking area has become non-trafficable.~~

Comment: The protocol adopted for other events, eg Ballina Races; Bangalow Showground; and Mullumbimby Football Club is that in situations where prolonged inclement weather makes the use of the grounds non-trafficable, then events are cancelled. This is the protocol that is proposed to be applied in the subject circumstances.

3.8 CONDITION 12, CONSENT REQUIRED FOR WORKS WITHIN THE ROAD RESERVE - BAYSHORE

Existing Condition

12. Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manuals and are to provide for the following works:

- | | |
|--|--|
| Road Pavement - Bayshore Drive:
north from existing fully constructed
pavement/kerb & gutter | <ul style="list-style-type: none"> - Repair potholes in pavement. - Placement of a one coat bituminous spray seal over the existing sealed pavement. - Gravel re-sheet shoulders to a nominal width of 1.Sm. - Provide a trafficable 6 metre pavement. - Drainage management/improvement works. - Works in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings". - Any upgrade of the access road is to incorporate use of speed humps or other speed limiting devices to limit the speed of - vehicles to 40km/h at the northern end of Bayshore Drive. |
|--|--|

Proposed Condition

12. Condition deleted.

Comment: The roadworks within Bayshore Drive Reserve have now been completed and this condition is superfluous.

3.9 CONDITION 13, TRAFFIC MANAGEMENT PLAN

Existing Condition

13. Consent from Council must be obtained for a Traffic Management Plan pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

"The plan shall incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site".

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller. The following comments from the Local Traffic Committee are to be incorporated in the Traffic Management Plan:

- (a) formalise access to the car park;
- (b) the pedestrian refuge requires signage and improvements to the pedestrian fencing along the road way are required;
- (c) coach parking should be separated from disabled parking;
- (d) conflicts to be resolved with bus pick-up and set-down near the disabled access.

Proposed Condition

13. Consent from Council must be obtained for a Traffic Management Plan pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction of the development. The traffic control plan is to be designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

~~"The plan shall incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site".~~

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller. The following comments from the Local Traffic Committee are to be incorporated in the Traffic Management Plan:

- (a) formalise access to the car park;
- (b) the pedestrian refuge requires signage and improvements to the pedestrian fencing along the road way are required;
- (c) coach parking should be separated from disabled parking;
- (d) conflicts to be resolved with bus pick-up and set-down near the disabled access.

Comment: The amendments to Condition 13 relate to the removal of an aspect of the Consent Conditions which applied in circumstances where resort construction was underway. Given that this aspect is now largely completed, this element of the Consent Condition is no longer considered required.

3.10 CONDITION 14, CAR PARKING LAYOUT, VEHICLE CIRCULATION AND ACCESS PLANS REQUIRED

Existing Condition

14. The application for a Construction Certificate is to include plans and specification that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent.

The access, parking and manoeuvring for the site is to comply with the requirements of Council's DCP 2010, AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 - 2010 - Parking facilities, Part 2:Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- a) Dry weather and Wet weather contingency layout plans;
- b) Pavement description;
- c) Drainage;
- d) Turning paths;
- e) Delineation and signage;
- f) Pedestrian paths and management.

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

Proposed Condition

- ~~14. The application for a Construction Certificate is to include plans and specification that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent.~~

The access, parking and manoeuvring for the site is to comply with the requirements of Council's DCP 2010, AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 - 2010 - Parking facilities, Part 2:Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- ~~a) Dry weather and Wet weather contingency layout plans;~~
- ~~b) Pavement description;~~
- c) Drainage;
- d) Turning paths;
- e) Delineation and signage;
- f) Pedestrian paths and management.

~~NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".~~

Comment: Parts of this Consent Condition were applicable in circumstances where the public road was used for event car parking purposes. However, where short term car parking is provided on an open field only certain provisions of Council's DCP are applicable.

3.11 CONDITION 17, CONSTRUCTION TIMES (CIVIL WORKS)

Existing Condition

17. Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a) Monday to Friday, from 7 am to 6 pm.
- b) Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Proposed Condition

17. Condition deleted.

Comment: As roadworks are now completed.

3.12 CONDITION 28, BAYSHORE DRIVE – ROADWORKS IN ACCORDANCE APPROVED PLANS

Existing Condition

28. The roadworks required in Bayshore Drive are to be constructed in accordance with the approved plans.

Proposed Condition

28. Condition deleted.

Comment: This condition is now superfluous given the completion of roadworks in Bayshore Drive.

3.13 CONDITION 30, CAR PARKING SPACES ARE TO BE AVAILABLE FOR THE APPROVED USE

Existing Condition

30. The Dry and Wet weather car parking spaces are to be provided and maintained in accordance with the approved plans, together with all necessary access driveways and turning areas, to the satisfaction of Council.

Proposed Condition

30. The ~~Dry and Wet weather~~ car parking spaces are to be provided and maintained in accordance with the approved plans, together with all necessary access driveways and turning areas, to the satisfaction of Council.

Comment: Given the changes proposed at Condition 11, the reference to wet and dry weather car parking is now no longer relevant.

4. ASSESSMENT OF APPLICATION AGAINST RELEVANT STAUTORY ENVIRONMENTAL PLANNING MATTERS

This section provides an assessment of the proposed modification pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 (EP&A Act). The assessment of the proposed amendments is undertaken in accordance with the relevant provisions of the EP&A Act which, in this instance, comprises Section 96(2) and Section 79C.

4.1 SECTION 96(2) OF THE EP&A ACT 1979

Section 96(2) of the EP&A Act 1979 provides as follows:

“96 Modification of consents generally

...

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

...”

Comment: The proposed modifications to the approved cultural event consent do not result in any material change to the approved land use. The modifications merely adjust the consent to ensure that no conflict with DA approval 87/208 and bring the consent into contemporary situation where certain construction work envisaged at the time of approval has been completed.

The overall form of the development will remain consistent with that originally approved and result in substantially the same development.

4.2 SECTION 79C(1) OF THE EP&A ACT 1979

The matters for consideration provided by Section 79C(1) are addressed as follows:

79C Evaluation

(1) Matters for consideration-general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

4.2.1 STATE ENVIRONMENTAL PLANNING POLICIES

The following State Environmental Planning Policies apply to this development:

Title: SEPP No. 71 - Coastal Protection

Gazetted: 01.11.02

Abstract: The policy has been made under the Environmental Planning and Assessment Act 1979 to ensure that development in the NSW coastal zone is appropriate and suitably located, to ensure that there is a consistent and strategic approach to coastal planning and management and to ensure there is a clear development assessment framework for the coastal zone.

SEPP: [SEPP No. 71 - Coastal Protection](#)

Related: [Link to planning.nsw.gov.au](http://link.to.planning.nsw.gov.au)

Comment: The modifications involved are minor and do not result in any changes which adversely impact on the considerations set out in SEPP 71.

Title: SEPP No. 14 - Coastal Wetlands

Gazetted: 12.12.85

Abstract: Ensures coastal wetlands are preserved and protected for environmental and economic reasons. The policy applies to local government areas outside the Sydney metropolitan area that front the Pacific Ocean. The policy identifies over 1300 wetlands of high natural value from Tweed Heads to Broken Bay and from Wollongong to Cape Howe. Land clearing, levee construction, drainage work or filling may only be carried out within these wetlands with the consent of the local council and the agreement of the Director General of the Department and Planning. Such development also requires an environmental impact statement to be lodged with a development application. The policy is continually reviewed. It has, for example, been amended to omit or include areas, clarify the definition of the land to which the policy applies and to allow minimal clearing along boundaries for fencing and surveying

SEPP: [SEPP No. 14 - Coastal Wetlands](#)

Comment: SEPP No. 14 provides that the concurrence of the Director General is required for any works involving clearing, levee construction, drainage or filling of land to which SEPP No. 14 applies. The proposed modification does not affect that part of the land to which SEPP No. 14 applies.

Title: SEPP No. 44 - Koala Habitat Protection

Gazetted: 06.01.95

Abstract: Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range. The policy applies to 107 local government areas. Local councils cannot

approve development in an area affected by the policy without an investigation of core koala habitat. The policy provides the state-wide approach needed to enable appropriate development to continue, while ensuring there is ongoing protection of koalas and their habitat

SEPP: [SEPP No. 44 - Koala Habitat Protection](#)

Comment: SEPP No. 44 is not triggered. Potential impacts on flora and fauna have been addressed in the ecological report prepared by Peter Parker Environmental Consultants Pty Ltd and provided at **Appendix B** at this report.

4.2.2 BYRON LOCAL ENVIRONMENTAL PLANS 1988 & 2014

The subject site to which development consent 2012/269 applies is partly zoned SP3 Tourist in accordance with the Provisions of BLEP 14. The north eastern part of the site to which the Development Consent applies is zoned 7(f1) Coastal Land Zone in accordance with the provisions of Byron Local Environmental Plan 1988 (BLEP 88). The proposed alterations do not offend any provisions of either planning instrument applicable.

4.2.3 BYRON DEVELOPMENT CONTROL PLANS 2010 & 2014

Two Development Control Plans apply to the subject land relevant to the 1988 and 2014 Local Environmental Plans. Neither Development Control Plan has specific requirements which are relevant to this modification application.

(iii) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

No planning agreement applies to the subject land.

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

4.2.4 NSW COASTAL POLICY

The provisions of the NSW Coastal Policy applies in the subject circumstances, but nothing in the modification proposed is at odds with any of the principles espoused in the NSW Coastal Policy.

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,

A Coastal Zone Management Plan has not been adopted for Byron Shire Council.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

Comment:

The object of DA 2012/269 is to “trial” the use of the subject land for events and associated onsite camping. To date developmental activity in the immediate locality has made that trialling difficult if not impossible. This modification seeks to extend the period over which the trial can apply. In our submission it is appropriate in both social and economic terms to facilitate the trial to “test” the capacity of the land for cultural event usage.

4.2.5 INTEGRATED DEVELOPMENT CONSIDERATIONS

No integrated approvals within the meaning of Section 91 apply to this modification.

5. CONCLUSION

PLANNERS NORTH has been instructed by North Byron Beach Resort Pty Ltd to submit a Section 96(2) application to modify DA 2012/269. This modification seeks to make alterations to the footprint of the development so as not to conflict with the approved Elements Resort site use and to adjust conditions of consent to reflect occurrences (eg. the completion of work in Bayshore Drive) which have occurred since the original issue of the approval.

The grounds for this approval are summarised below:

- the proposed amendment is substantially the same development and that originally approved by Council;
- the modifications sought maintain the outcomes of the assessment process pertaining to the application of the Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014; and
- the proposed development is not likely to result in significant adverse impacts on the existing natural or built environment.

The object of DA 2012/269 is to “trial” the use of the subject land for events and associated onsite camping. To date developmental activity in the immediate locality has made that trialling difficult if not impossible. This modification seeks to extend the period over which the trial can apply. In our submission it is appropriate in both social and economic terms to facilitate the trial to “test” the capacity of the land for cultural event usage.

Should you require any additional information or wish to clarify any matter raised by this Modification Application, please feel free to contact the writer at any time.



Stephen Connelly FPIA CPP
Certified Practising Planner

REFERENCES

BLEP, 1988 *Byron Local Environmental Plan, 1988*, Byron Shire Council, 1988.

BLEP, 2014 *Byron Local Environmental Plan, 2014*, Byron Shire Council, 2014.

APPENDIX A

Application Form and
Land Owner Authority



BYRON SHIRE COUNCIL

PO Box 219
 Mullumbimby NSW 2482
 DX 20007 MULLUMBIMBY
 Ph : (02) 6626 7000
 Fax: (02) 6684 3018
 E-mail: council@byron.nsw.gov.au
 Web: www.byron.nsw.gov.au

Office Use Only

S.96 No:

Parcel No(s):

Zoning:

Notations: FPL DIP ASS HER BPL HCV
 PR123 (Precinct:

Date Received...../...../.....
 #763951 (Updated 10/11/2015)

Section 96 Application to modify a development consent

Issued under Sections 96(1) or 96(2) of the Environmental Planning and Assessment Act 1979

Use this form to apply to **modify an existing development consent**. Council can only approve this application if it is satisfied that the development as modified would be substantially the same development as that approved. Please place a cross in the relevant boxes and fill out all appropriate blank Steps. Please ensure you have submitted all relevant information to minimise delays. Once your application has been assessed you will be advised in writing of Council's determination

Step 1 Details of original development consent ie. the consent being modified

Development Consent No. (ie. 10.2005.500.1) Date of determination (as noted on the front page of your consent

2012/2 10th of April

Description of development consented

Carport

Step 2 Description of land

Unit No.	House No.	Street Name	Street Type e.g. St, Rd
		Bayshore	Drive
Suburb or Town			Postcode
Byron Bay			2481
Lot No.	DP No.	Sec No.	Owner/s
1 & 2	243218		Ganra Pty Ltd
449	.243218		
	.812102		

Step 3 Details of the applicant/s

Given name	Surname / Company Name		
	PLANNERS NORTH		
Given name	Surname / Company Name		
Unit No.	House No.	Street Name / PO Box	Street Type e.g. St, Rd
		PO Box 538	
Suburb or Town		State	Postcode
Lennox Head		NSW	2478
Contact name	Daytime telephone	Fax	
Steve	1300 66 00 87		
Mobile	E-mail		
04192379	steve.plannersnorth.com.au		

Step 4 Type and details of modification

Describe the modification that you propose:

modify conditions 1-4, 11-1, 22-23

Modification involving minor Modification involving Other modifications (S96(2))

error, misdescription or miscalculation (S96(1))	minimal environmental impact (s96(1A))	
--	--	--

Details continued:

<p>S96(1) Modification involving minor error, misdescription or miscalculation: <i>Outline the specific error that you would like to amend i.e. condition number and error or change to approved plans that you seek to change</i></p>
<p>S96(1A) Modification involving minimal environmental impact: <i>Outline how the proposed modification is of minimal environmental impact</i></p>
<p>S96(1A) and S96(2) Substantially the same development: <i>Outline why the proposed modified development is considered substantially the same development as the development for which the consent was originally granted</i></p>
<p>See Statement of Environmental Effects.</p>

Before submitting your application, please ensure that you have attached all the information Council requires to assess your proposal.

Step 1	Provide details of previous consent. The Development Application number, the date of determination (ie. date approved) and the description can all be found on the Notice of Determination.
Step 2	Land description can also be found on the Notice of Determination, alternatively it will also be on your Rates notice.
Step 3	Council needs these details to contact the applicant regarding the application
Step 4	<p>Tick the type of modification sought. If you are unsure, discuss with Council's Duty Planner.</p> <p>Give details of the manner and extent of the modification sought. If you wish to modify conditions of development consent you need to provide precise wording for each condition you wish to modify. In the case of a 'Modification involving minor error, misdescription or miscalculation (s96(1))' indicate the error or misdescription or miscalculation.</p> <p>If more space is required please attach further details</p>

Information required **Six (6) copies of amended information are required to be submitted.**

Architectural Plans – Amended plans must be coloured or clouded to show the changes from the approved plans.	<input checked="" type="checkbox"/>
Drainage/ Engineering Plans – Amended plans must be coloured or clouded to show the changes from the approved plans.	<input checked="" type="checkbox"/>
Amended BASIX certificate for the development, if the changes proposed will alter the location of windows, skylights and/or air conditioning. Note: BASIX is required for all Residential Development (new dwellings/ units/ townhouses/Alts & Adds to dwelling/installation of a pool or spa).	N/A

Other information – please list

Official use only

Advertising level: Level 0 Level 1 Level 2 Level 3 Level

Received by (Council officer) – Name:

Signature:	Date:
------------	-------

Notes/comments/additional information:

The information you provide in this application will enable your application to be assessed by Council and any relevant state agency. If the information is not provided, Council can refuse the application. Your application will be notified or advertised to the public for comment if the development is Designated Development, Integrated Development or other Advertised Development. Council will also keep the application in a Register that can be viewed by the public at any time. Please contact the Council if the information in your application is incorrect or if it changes. Information collected will be used in accordance with Council's Privacy and Personal Information Management Plan.

Signatures of all owner/s

The owners of the land to be developed must sign the application.


If you are not the owner of the land, you must have all owner/s sign the application. If the application is on Crown land, an authorised officer of the Department of Lands must sign the application.

As the owner/s of the above property, I/we consent to this application and consent to the council, its servants or agents entering upon the property without first having given notice, for the purpose of carrying out all or any inspections which may deem appropriate in connection with the processing of this application.

Signature <input type="text" value="See attached landowner authority"/>	Signature <input type="text"/>
Name <input type="text"/>	Name <input type="text"/>
Date <input type="text"/>	Date <input type="text"/>

Applicants

- Anyone can apply for approval but if the applicant is not the owner of the land, then the owner's written consent to lodge the application is required.
- All correspondence will be sent to the applicant. It is important to notify Council of any change of address and/or telephone number if this occurs during the processing of the application.
- By signing this application, you are acknowledging that you have read the notes and instructions on this form, and have included all the requested information as it applies to this application.
- The information provided in this application is required to enable the application to be assessed by Council and any relevant state agencies. The public is entitled to inspect the application and any associated documents.

Signature  <input type="text" value="TOI STEVE"/>	Signature <input type="text"/>
Name <input type="text" value="STEVE e"/>	Name <input type="text"/>
Date <input type="text" value="10/11/15"/>	Date <input type="text"/>

IMPORTANT INFORMATION

Prior to submitting your application, please ensure that you have attached ALL the information Council requires to assess your proposal as outlined in the Lodgement Checklist on the previous page.

Failure to submit all require information will result in delays in determining your application.

Payment Options

Council accepts payments by cash, cheque, money order, eftpos or credit card (Visa and Master only) at Council's administration offices. All cheques are to made payable to Byron Shire Council. Should you wish to mail your application package to Council and wish to use the credit card facility, please download An Authority to Charge Credit Card form which can be found at www.byron.nsw.gov.au/forms or alternatively enclose a cheque or money order.

Please be aware of the statutory obligations to disclose **Political Donations and Gifts** that may apply to you or associated people if you are lodging a development or s96 application. A failure to meet your obligations is an offence. Links to information and resources on this topic are available from Council's website at <http://www.byron.nsw.gov.au/political-donations> or from Council. All Political Donations and Gifts Disclosure Statements will be public documents.

LAND OWNER AUTHORITYTO WHOM IT MAY CONCERN

This is to advise that PLANNERS NORTH abn: 56 291 496 553 has been engaged by:

Client Name: CIANCA PTY LTD.

Client Address: 144 BAYSHORE DR BYRON BAY

Dated 27 APRIL 2015.

in respect to land described as: NORTH BYRON BEACH RESORT

No: 144 Street: BAYSHORE DR

Locality/Suburb: BYRON BAY NSW. e

Real Property Description: MULTIPLE.

The owner of the abovementioned land hereby authorises PLANNERS NORTH or its agents to:

1. Inspect Records
2. Carry out searches and site inspections
3. Take Site Samples
4. Lodge applications, objections or appeals

Signed



GANRA PTY LTD

ABN: 74 201 176 282

Ph: 02 6685 6561

Wb: www.northbyronbeachresort.com.au

Ad: Cent of Bayshore Drive Byron Bay

Po: PO Box 2150 Byron Bay NSW 2481

11 August 2014

To Whom it may concern,

As Directors of the following companies, we hereby authorize Mr Jeremy Holmes as Development Director, to sign documents for and on behalf of:

- GANRA PTY LTD (AND: 74 201 176 282)
- NORTH BYRON BEACH RESORT PTY LTD (ABN: 81 145 768 172)
- BAYSHORE PROPERTY HOLDINGS PTY LTD (ABN: 35 147 684 884)

With respect to development projects and other related interests of the above mentioned companies.



Peggy A Flannery
DIRECTOR



Brian J Flannery
DIRECTOR

APPENDIX B

Flora and Fauna Assessment

Peter Parker

25

Environmental Consultants
Pty Ltd

Broken Head Road, Broken
Head, NSW 2481

☎ 0266 853 148



ACN 076 885 704

NORTH BYRON BEACH RESORT
SECTION 96(2) MODIFICATION OF
DEVELOPMENT APPROVAL
10.2012.269.1
(SMALL CULTURAL EVENTS)

FLORA AND FAUNA ASSESSMENT

PREPARED FOR
NORTH BYRON BEACH RESORT PTY LTD

10 NOVEMBER 2015

CONTENTS

GLOSSARY	4
1.0 INTRODUCTION	7
2.0 PREVIOUS STUDIES	11
2.1 Fauna impact statement	11
2.2 Species impact statement	13
3.0 SITE INSPECTION	13
3.1 Vegetation	14
3.1.1 Vegetation classification, structure and floristics	14
3.1.2 Vegetation transects	14
3.2 Fauna	15
4.0 RESULTS	19
4.1 Vegetation associations and communities	19
4.2 Fauna	19
4.2.1 Frogs and reptiles	19
4.2.2 Birds	21
4.2.3 Mammals	23
5.0 DISCUSSION	27
5.1 Threatened species and endangered ecological communities	27
5.2 Tree removal	27
5.3 Byron Biodiversity Conservation Strategy 2004	28
6.0 STATUTORY CONSIDERATIONS	28
6.1 Koala habitat and State Environmental and Planning Policy No. 44	28
6.2 <i>Environmental Planning and Assessment Act 1979</i>	30
7.0 REFERENCES	41

TABLES

Table 1:	Structural formation classes of vegetation defined by growth form and crown separation	15
Table 2:	Height classes and names of various growth forms for non-rainforest vegetation associations	15
Table 3:	Frog species recorded during SIS and AMBS surveys	20
Table 4:	Bat species recorded or captured at the site	25
Table 5:	Endangered ecological communities recorded at the site	25

FIGURES

Fig. 1:	Approved "events" site 2013	9
Fig. 2:	Areas to be added and deleted from "event" development consent	10
Fig. 3:	SIS survey methods	16
Fig. 4:	Vegetation	18
Fig. 5:	Threatened species locations	26

GLOSSARY

Assessment guidelines means assessment guidelines issued and in force under section 94A of the *Threatened Species Conservation Act 1995* or, subject to section 5C of the *Fisheries Management Act 1994*

Abundance: means a quantification of the population of the species or community

Affected species: means subject species likely to be affected by the proposal

Conservation status: is regarded as the degree of representation of a species or community in formal conservation reserves

Critical habitat: the area declared to be critical habitat under Part 3 of the *Threatened Species Conservation Act 1995*

Development: the erection of a building on that land, the carrying out of work in, on, over or under that land, the use of that land or of a building or work on that land, and the subdivision of that land

Ecological community: an assemblage of species occupying a particular area

Endangered ecological community ("EEC"): an ecological community specified in Part 1 of Schedule 1 of the *Threatened Species Conservation Act 1995*

Endangered population: a population specified under Part 1 of Schedule 1 of the *Threatened Species Conservation Act 1995*

Endangered species: a species listed under Schedule 1 of the *Threatened Species Conservation Act 1995*

EPA Act: *Environmental Planning and Assessment Act, 1979*

Habitat: an area or areas occupied, or periodically or occasionally occupied by a species, population or ecological community and includes any abiotic component

OEH: Office of Environment and Heritage

GLOSSARY

Recovery and threat abatement plan: a plan to promote the recovery of threatened species, population or an ecological community with the aim of returning the species, population, or ecological community to a position of viability in nature. The purpose of the threat abatement plan is to manage key threatening processes with a view to their abatement, amelioration or elimination

SEPP: State Environmental Planning Policy

Significant species: means species not listed under the *Threatened Species Conservation Act 1995* but considered to be of regional or local significance

Study area: is the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly

Subject site: the "events" area which is proposed for development or activity

Subject species: those threatened species which are considered known or likely to occur in the study area

Threatened species: a species listed in Part 1 or 4 of Schedule 1 or in Schedule 2 of the *Threatened Species Conservation Act 1995*

Threatening process: means a process that threatens, or may have the capability to threaten, the survival or evolutionary development of species, populations or ecological communities

TSC Act: *Threatened Species Conservation Act 1995*

Vulnerable species: A species listed under Schedule 2 of the *Threatened Species Conservation Act 1995* or when a fish, listed under the *Fisheries Management Act 1994*

SUMMARY

- This s.96(2) amendment assessment has been prepared for the North Byron Beach Resort with respect to DA 10.2012.269.1 for cultural events. Consent was granted by Council on 1 May 2013.
- A substantial vegetation and fauna trapping survey was previously undertaken for the site and compiled as a species impact statement. The results of this survey were incorporated into the flora and fauna report prepared in support of DA 10.2012.269.1. These matters have been revisited with respect to this s.96(2) modification assessment.
- The "events" location is situated on grassland of little ecological significance. No trees require removal and the landscape species planted at the site will be incorporated into the new "events" area.
- Species profiles were previously completed for threatened species either recorded or likely to occur at the "events" site. These profiles addressed impacts such as noise and light on foraging patterns. It was concluded that these effects would be minor due to the short duration of the events and their relatively small footprint when considered in relation to the extent of threatened species habitat locally available.
- The assessment of the potential impact of the proposal concluded that there would be no significant effect on threatened species, populations or ecological communities or their habitats as the proposal (car parking, events and camping areas) occupy habitat of low ecological value and the "events" are short-term (days).

1.0 INTRODUCTION

This flora and fauna assessment has been prepared for the North Byron Beach Resort in support of a s.96(2) application to modify the area approved in 2013 for short-term cultural events.

The location of the approved events area is illustrated in Figs. 1 and 2 at pages 9 and 10. This is similar but smaller than the Splendour camping area of 2012 (Plates 1 and 2).

The need for this s.96(2) modification is that DA 2012/269 utilises land which is the subject of development approval 87/208. That situation was satisfactory whilst 87/208 was in the course of construction. However, 87/208 is near completion and it is necessary to remove the cultural events facility from those places within the site where conflict is likely to occur between approvals.



Plate 1: Splendour camping 2012 (looking south)



Plate 2: Splendour camping 2012 (looking north west)



Fig. 1: Approved "events" site 2013

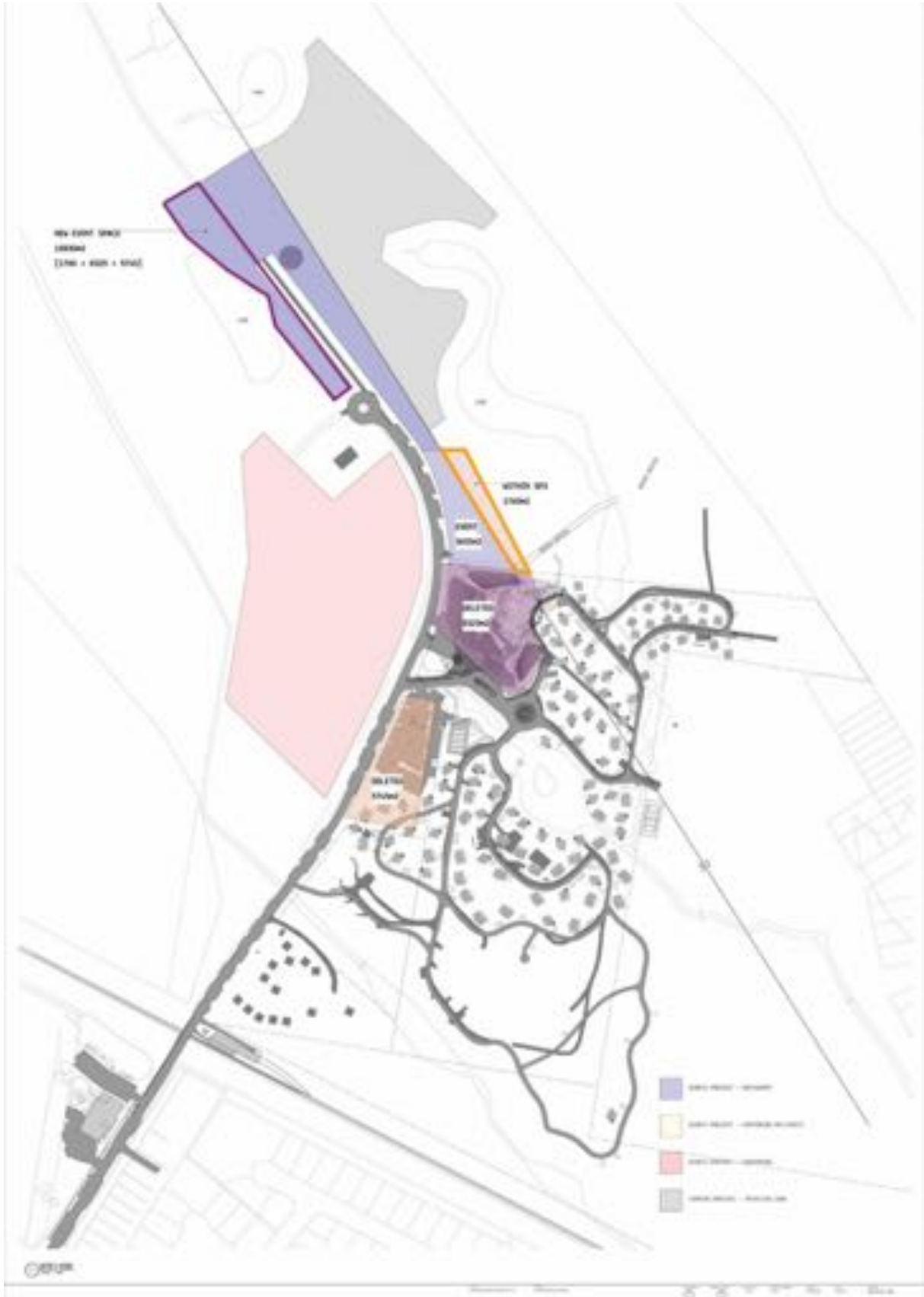


Fig. 2: Areas to be added and deleted from “event” development consent

2.0 PREVIOUS STUDIES

A considerable body of scientific knowledge has been collated for the North Beach Byron Beach Resort (the "site") from previous surveys (see list below and references contained herein).

2.1 Fauna impact statement

The first extensive study at the site was a fauna impact statement prepared for a proposal by a previous owner, Holiday Villages (Byron Bay) Pty Ltd (Club Mediterranean). This study was undertaken by the Australian Museum Business Services ("AMBS") (1995) and included additional lands within the Belongil Estuary and Byron Shire Council's ("Council") sewage treatment plant ("STP").

The AMBS concluded that 12 endangered fauna species (which at the time were listed under schedule 12 of the NPW Act) were "*resident in or regular visitors to the local area*".

A species impact statement ("SIS") was subsequently prepared by Peter Parker Environmental Consultants Pty Ltd for North Beach Byron Pty Ltd in 2006 (Parker 2006). This study brought together the results of all previous surveys and served as base line data for future development applications. The following studies were reviewed for the SIS and are relevant, to some extent, to the subject modification:

- Australian Museum Business Services, 1995 *Fauna impact statement for the proposed Club Mediterranee village, Byron Bay*. A report to Holiday Villages (Byron Bay) Pty Limited, Vols. 1-2;
- *Byron Shire Council 1999 Byron flora and fauna study*. A report prepared by Landmark Ecological Services Pty Ltd, Ecograph and Terafocus Pty Ltd;

- NPWS, 1995 *Vertebrates of upper north-east New South Wales*. A report by the New South Wales National Parks and Wildlife Service to the Natural Resources Audit Council. Publ. National Parks and Wildlife Service;
- ERM Mitchell McCotter Pty Ltd 2001 *Byron Bay sewerage augmentation scheme species impact statement*. A report to the NSW Department of Land and Water Conservation and Byron Shire Council;
- Holmes, G 1991 Byron Bay Beach Resort faunal survey. A report to Byron Bay Beach Resort;
- Milledge, D.R 1991 *A survey of the terrestrial vertebrates of coastal Byron Shire*. Aust. Zoo. 7: (3-4) 66-90.
- Parker, P 1992a *Development application, Volume 1, Flora*, Holiday Villages Byron Bay Pty Ltd. A report to Club. Med;
- Parker, P 1992b *Development application, Volume 2, Fauna*, Holiday Villages Byron Bay Pty Ltd. A report to Club. Med;
- Parker, P 1992c *Development application, Volume 3, Environmental Management Plan: Holiday Villages Byron Bay Pty Ltd*. A report to Club. Med;
- Parker, P 1993a *An environmental assessment of the proposed car parking area*. A report to Holiday Villages Byron Bay Pty Ltd;
- Parker, P 2003 *Chapter 4.14 flora and fauna survey*. A report to Becton Pty Ltd as part of the Master Plan for North Beach site, Byron Bay;
- Parker, P and D Pont 2000 *Belongil Estuary study and management plan*. A report to Byron Shire Council;
- Sandpiper Ecological Surveys 2001 *Byron town centre bypass, stage one species impact statement*. A report to Byron Shire Council;
- Sheringham P., and J. Westaway 1995 *Significant vascular plants of upper north-east NSW*. A report by the NSW National Parks and Wildlife Service for the Natural Resources Audit Council. DEC, NSW; and

- Willing and Partners and Geomarine 1997 *Belongil Creek Estuary Processes Study*. Final Report to the Belongil Estuary Management Committee.

2.2 Species impact statement

The SIS reported 19 threatened species in the study area. The following records were gathered during 2002-03 and 2004 and from opportunistic sightings undertaken up until 2006:

- Two frogs: the wallum froglet and wallum sedge-frog;
- Ten birds: the bush hen, brolga, black-necked stork, osprey, pied oyster-catcher, sooty oyster-catcher, little tern, bush stone-curlew, beach stone-curlew, lesser sand plover; and
- Seven mammals: the koala, the northern long-eared bat, the little bent-wing bat, the fishing bat, the grey-headed flying-fox, the black flying-fox (now deleted) and the long-nosed potoroo.

The majority of these threatened species use habitats in the study area seasonally or opportunistically. For example, species which move through the site periodically include the koala, the little bent-wing bat, the bush hen, the black-necked stork, the bush stone-curlew and the brolga.

Summer visitors to the estuary include the little tern, the beach stone-curlew and the lesser sand plover. Species which may reside at the site for extended periods of time, and for which breeding populations are known, include the osprey, the long-nosed potoroo, the northern long-eared bat and the wallum froglet.

3.0 SITE INSPECTION

An inspection of the proposed events site included walking over the site on 28 August 2012 (Fig. 1). The area for this modification report was inspected on a number of occasions over the following years but

in particular was visited on 6 November 2015 for three hours. The majority of this time was spent investigation habitats around the water body margin and drainage line and plotting landscape trees.

3.1 Vegetation

3.1.1 Vegetation classification, structure and floristics

The vegetation classification system adopted for this survey is based on Walker and Hopkins (1990). Walker and Hopkins (1990) describe the components of the vegetation in the following order:

- the first species is usually the most abundant in the tallest stratum;
- a second species is chosen when it is always present in the tallest stratum. In the absence of a tallest stratum species, the most abundant species in the next most conspicuous stratum is chosen. For those associations where several species dominate, these are listed in order of abundance;
- a third species is chosen from any stratum, usually a ground cover or shrub layer. It is used as an indicator species;
- the forest type refers to the distances between the crowns of adjacent trees (refer to Table 1); and
- the height of the tallest stratum is defined by the terms 'low', 'mid-high', or 'tall' (refer to Table 2).

3.1.2 Vegetation transects

The following features of the vegetation were noted:

- dominant trees, shrubs and ground covers in each stratum (refer to Table 1);
- major plant species in the association;
- tree heights and projective foliage cover; and
- any threatened species.

Table 1: Structural formation classes of vegetation defined by growth form and crown separation (after Walker and Hopkins 1990)

Crown Separation	Closed or dense	Mid-dense	Sparse	Very sparse	Isolated plants	Isolated clumps
Field criteria	Touching-overlapping	Touching-slight separation	Clearly separated	Well separated	Isolated	Isolated
Growth form						
Tree	Closed forest	Open forest	Woodland	Open woodland	Isolated trees	Isolated clumps of heath shrubs
Heath shrub	Closed heathland	Heathland	Open heath	Sparse heath	Isolated heath shrubs	Isolated clump of heath shrubs
Sedge	Closed sedgeland	Sedgeland	Open sedgeland	Sparse sedgeland	Isolated sedges	Isolated clump of sedges
Sod grass	Closed sod grassland	Sod grassland	Open sod grassland	Sparse sod grassland	Isolated sod grasses	Isolated clumps of sod grasses

Table 2: Height classes and names of various growth forms for non-rainforest vegetation associations (after Walker and Hopkins 1990)

Height m	Trees, vines	Shrubs, heath shrubs, chenopod shrubs, mallee (tree or shrub form)	Tussock and hummock grasses, forbs, rushes, sedges, ferns	Sod grasses, mosses, lichens, liverworts
20.01-35.01	Extremely tall	NA	NA	NA
12.01-20	Tall	NA	NA	NA
6.01-12	Mid-high	Extremely tall	NA	NA
3.01-6	Low	Very tall	Extremely tall	NA
1.01-3	Dwarf	Tall	Tall	Extremely tall
0.51-1	NA	Low	Mid-high	Tall
0.26-0.5	NA	Low	Mid-high	Tall
<0.25	NA	Dwarf	Low	Low

3.2 Fauna

The fauna assessment relied on previous and exhaustive studies undertaken at the site (see Parker 2006 and records contained therein). Fauna survey effort is illustrated in Fig. 3 at page 16 which has been sourced from the SIS (Parker 2006).

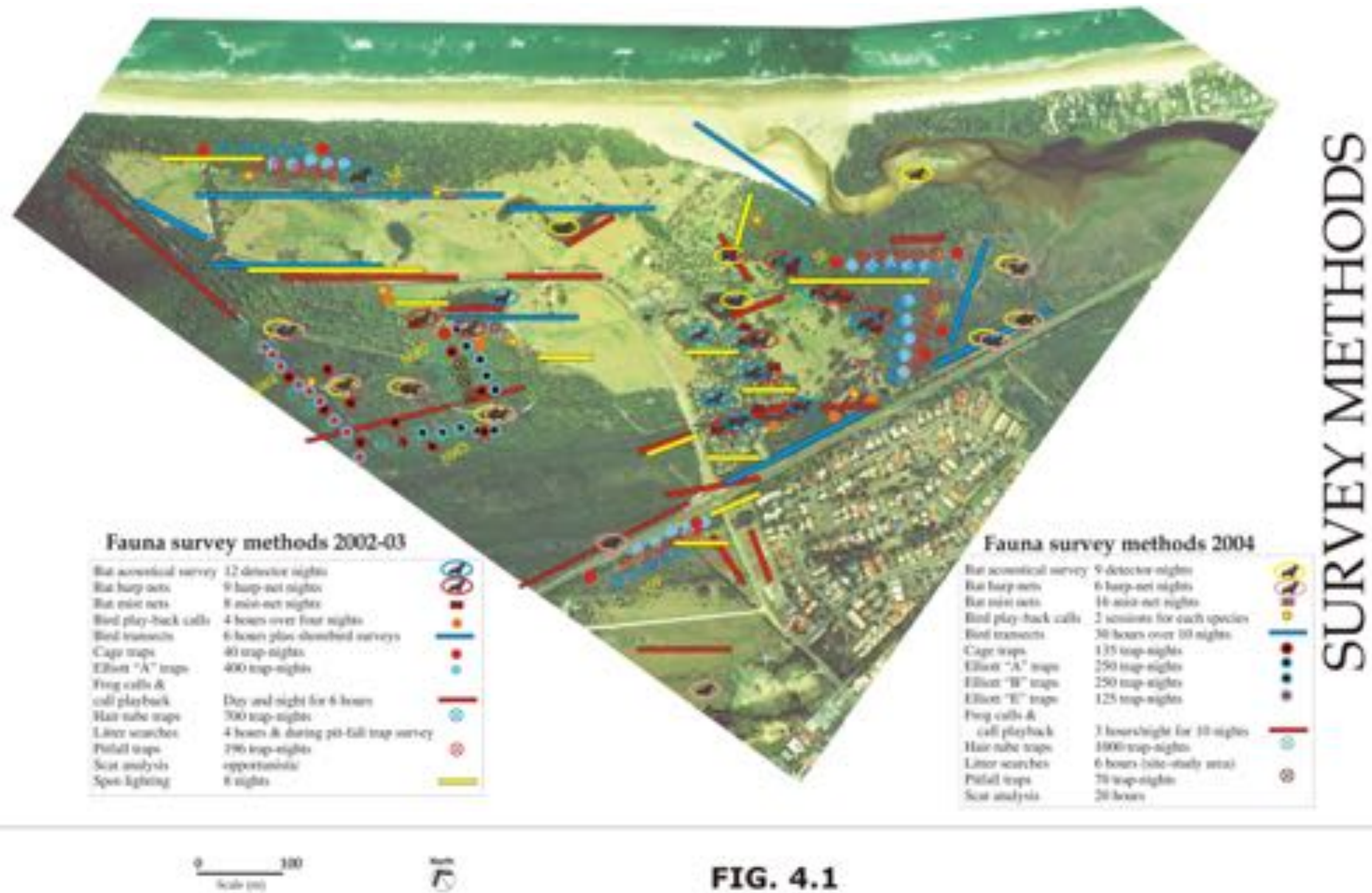


Fig. 3: SIS survey methods (Source Fig 4.1 of Parker 2006)



Plate 3: Water body near events site (photo 28.08.2012)



Plate 4: Event site to be located on both sides of water body (photo 6.11.2015)



Plate 5: Broad-leaved paperbarks planted on Event site



Plate 6: Maned ducks



Plate 7: Existing beach access (photo 28.08.2012) to be retained



Plate 8: Event site with construction in rear



Fig. 4: Vegetation

4.0 RESULTS

4.1 Vegetation associations and communities

The North Byron Beach Resort site supports a wide variety of vegetation communities which were previously mapped in the SIS.

Vegetation associations at the "events" site were limited to grassland with scattered trees and a drain with fringing aquatic species (Plates 3-4).

Grassland supported Queensland blue couch, *Digitaria didactyla*, narrow-leaf carpet grass, *Axonopus fissifolius*, Rhode's grass, *Chloris gayana*, bahia grass, *Paspalum notatum*, and opportunistic exotic species. Coast banksia, *Banksia integrifolia* var. *integrifolia*,, broad-leaved paperbark, *Melaleuca quinquenervia*, and other species illustrated in Fig. 4 were represented by scattered individuals which were planted for landscaping.

4.2 Fauna

4.2.1 Frogs and reptiles

The SIS reported that thirteen frog species were recorded during the combined 2002-2003 and 2004 fauna surveys. These thirteen species, plus two additional species, were previously recorded at the site or in the adjacent study area by the AMBS (Table 3 at page 20).

Table 3: Frog species recorded during SIS and AMBS surveys (S= Parker surveys; AM=Australian Museum survey) (*=Vulnerable)

Scientific name	Common name and record source
<i>Chaunus marinus</i>	Cane toad (S & AM)
<i>Crinia signifera</i>	Common eastern froglet (S & AM)
<i>Crinia tinnula</i> *	Wallum froglet (S & AM)
<i>Limnodynastes ornatus</i>	Ornate burrowing frog (S & AM)
<i>Limnodynastes peronii</i>	Brown-striped frog (S & AM)
<i>Limnodynastes terrareginae</i>	Northern banjo frog (S & AM)
<i>Litoria caerulea</i>	Green tree frog (S & AM)
<i>Litoria chloris</i>	Red-eyed tree frog (AM)
<i>Litoria dentate</i>	Bleating tree frog (S & AM)
<i>Litoria fallax</i>	Eastern dwarf tree frog (S & AM)
<i>Litoria gracilentata</i>	Dainty green sedge-frog (S & AM)
<i>Litoria nasuta</i>	Rocket frog (S & AM)
<i>Litoria olongburensis</i> *	Wallum sedge-frog (S & AM)
<i>Litoria peronii</i>	Peron's tree frog (AM)
<i>Litoria tyleri</i>	Tyler's tree frog (S & AM)

Targeted surveys were undertaken for both the Wallum froglet and Wallum sedge-frog during the 2002-03 and 2004 surveys in order to determine whether the range of these species had expanded or contracted. The Wallum sedge-frog was not recorded in the 2002-03 survey despite surveying in heavy rain at the end of summer and in early autumn. However, this species was recorded adjacent to the north coast railway line (not at the site but in the study area) on 8 and 10 December 2004 after heavy rains (Parker 2006 p. 138).

Based on previous records, the cane toad is likely to be the most abundant frog species to occur at the events site. It is unlikely that either the wallum froglet or wallum sedge-frog would occur in the waterbodies in the vicinity of the site as these habitats are unsuitable. However, the rocket frog, the eastern dwarf tree, the green tree frog and the brown-striped frog have been recorded previously.

The water dragon, *Physignathus lesueurii*, was regularly observed along creeks and waterbodies, and the lace monitor, *Varanus varius*, was occasionally observed within forest and woodlands

during both the 2002-03 and 2004 surveys. A number of other species are expected to occur based on the suitability of habitats and previous AMBS records (Parker 2006).

It is expected that the water dragon would frequent the waterbodies in the vicinity of the "events" site but that use of the site by other reptiles would be opportunistic

4.2.2 Birds

The site supported a variety of woodland and open country bird species with habitat variety and ecotonal variation contributing to species diversity (Parker 2006).

Characteristic woodland species that occupied the site throughout the two SIS surveys included flocks of the rainbow lorikeet, *Trichoglossus haematodus*, and the scaly-breasted lorikeet, *Trichoglossus chlorolepiotus*, the brush (little) wattlebird, *Anthochaera chrysoptera*, the white-cheeked honeyeater, *Phylidonyris nigra*, the noisy friarbird, *Philemon corniculatus*, the grey fantail, *Rhipidura fuliginosa* and the willie-wagtail, *Rhipidura leucophrys*.

Conspicuous species in both fauna surveys within the forest and woodland included the white-throated gerygone, *Gerygone olivacea*, Lewin's honeyeater, *Meliphaga lewinii*, the eastern whipbird, *Psophodes olivaceus*, and the grey shrike-thrush, *Colluricincla harmonica*.

Species that characterised the grasslands or landscaped areas included the Australian magpie, *Gymnorhina tibicen*, the masked lapwing, *Vanellus miles*, the Australian magpie lark, *Grallina*

cyanoleuca, the bar-shouldered dove, the willie wagtail, the grey butcherbird, *Cracticus torquatus*, the pied butcherbird, *Cracticus nigrogularis*, the torresian crow, *Corvus orru* and the laughing kookaburra, *Dacelo novaeguineae*.

Species recorded during the site inspection included the maned duck, *Chenonetta jubata*, the rainbow bee-eater, *Merops ornatus*, the brush (little) wattlebird, and the crested pigeon, *Geophaps lophotes*.

Severable vulnerable birds species were recorded in the 2002-03 and 2004 survey. Play-back calls enticed a response from the bush hen in the 2002-03 survey but not the 2004 survey; the pied oyster-catcher was recorded flying over the site and on the banks of the Belongil Estuary in both surveys and reported in the shorebird survey as breeding at the estuary mouth. An osprey nest site was recorded in the north of the site and ospreys were noted flying over the site and perching along the estuary foreshore during both the 2002-03 and 2004 surveys.

The endangered black-necked stork, *Ephippiorhynchus asiaticus*, was recorded on the grassy verge near a waterbody on 1 October 2003. The brolga, *Grus rubicunda*, was recorded near a waterbody on 16 June 2004. Both the black-necked stork and brolga were subsequently located at the West Byron STP. Shorebird surveys were reported in the SIS but are not relevant with respect to this development application as the beach access is remote from threatened shorebird habitat.

4.2.3 Mammals

Hair-tube surveys were used in the SIS to provide a broad picture of habitat usage by small to medium sized mammals, with eight species being recorded in the 2002-03 survey and an additional two species in the 2004 survey. The most significant species recorded was the vulnerable long-nosed potoroo. This species was previously known from the Tyagarah Nature Reserve (Milledge 1991).

The swamp wallaby, *Wallabia bicolor*, was particularly conspicuous and was observed during the site inspection undertaken on 6 November 2015. The common brush-tail possum, *Trichosurus vulpecular*, and mountain brush-tail possum, *Trichosurus caninus*, were both captured in cage traps in 2002 whereas only the mountain brush-tail possum was captured in 2004 and was commonly observed by spotlight and recorded under the eaves of an cabin which has subsequently been removed.

Other species recorded by spotlight in the 2002-03 survey included the sugar glider, *Petaurus breviceps*, the grey-headed flying-fox and the black flying-fox. The grey-headed flying-fox was observed foraging on banksia blossoms during the 2004 survey.

Small mammals recorded in Elliott and cage traps were dominated by rats. The swamp rat, *Rattus lutreolus*, was captured in broad-leaved paperbark forest and littoral rainforest, the bush rat was captured in woodland, littoral rainforest and heathland and the

black rat was captured in woodland near Bayshore Drive and heathland in the north-west of the site.

Bats

Seven bat species were detected in the 2002-03 SIS survey and an additional species was recorded in the 2004 SIS survey. This species-total was less than the 14 species previously recorded at the site by the AM. Two species were recorded during the 2003 survey that were predicted by the AM but not recorded. These were the grey-headed flying-fox and the chocolate wattled bat, *Chalinolobus morio*.

Three species were trapped at the site (Gould's long-eared bat, the northern long-eared bat and the chocolate wattled bat). The most abundant species recorded by call was Gould's long-eared bat. A number of passes of the little bent-wing bat and the fishing bat were also recorded during the 2002-2003 survey. The little bent-wing bat was recorded foraging over several of the waterbodies and the southern myotis bat was recorded over at the mouth of the Belongil Estuary.

Six vulnerable bat species are known for the site, four of which were recorded during the 2002-03 and 2004 surveys (Fig. 5 at page 26).

Table 4: Bat species recorded or captured at the site (Source: Parker 2006)

<p>* = Vulnerable species</p> <p>Record source: (S=SIS survey; AM= AM survey)</p> <p>Method: H = harp-net; An = Anabat; Sp = spotlight; M = mist-net</p>
<p>PTEROPIDAE</p> <p>Common blossom bat, <i>Syconycteris australis</i> * (AM): H, M</p> <p>Grey-headed flying-fox, <i>Pteropus poliocephalus</i> * (S): Sp</p> <p>MOLLOSIDAE</p> <p>Little free-tail bat, <i>Mormopterus loriae</i> (AM): An</p> <p>White-striped mastiff bat, <i>Nyctinomus australis</i> (S; AM): An</p> <p>VESPERTILIONIDAE</p> <p>Broad-nosed bat, <i>Scotorepens</i> sp. (AM): An</p> <p>Chocolate wattled bat, <i>Chalinolobus morio</i> (S): H</p> <p>Eastern broad-nosed bat, <i>Scotorepens orion</i> (AM): H & An</p> <p>Eastern forest bat, <i>Vespadelus pumilus</i> (AM): An</p> <p>Northern long-eared bat, <i>Nyctophilus bifax</i> * (S; AM): H & An</p> <p>Southern myotis, <i>Myotis macropus /adversus</i> * (S; AM): H & An</p> <p>Gould's long-eared bat, <i>Nyctophilus gouldi</i> (S; AM): H & An</p> <p>Gould's wattled bat, <i>Chalinolobus gouldii</i> (AM): An</p> <p>Greater broad-nosed bat, <i>Scoteanax rueppellii</i> * (AM): H & An</p> <p>Large bent-wing bat, <i>Miniopterus schreibersii</i>, * (AM): An</p> <p>Little bent-wing bat, <i>Miniopterus australis</i> * (S; AM): H & An</p>

Table 5: Endangered ecological communities recorded at the site (Source Parker 2006)

Coastal Saltmarsh in the NSW North Coast Bioregion	Recorded adjacent to Belongil Estuary and as fringing vegetation around waterbodies in the east. The proposal will not impact on this endangered ecological community as no development will occur near the Estuary or the waterbodies
Freshwater wetland	Recorded to the south of the proposal as a small tributary of Belongil Creek. This community is buffered by swamp oak woodland and will not be impacted
Littoral Rainforest in the NSW North Coast Bioregion	Recorded north and south of the proposal. This community will not be impacted as suitable buffers are provided and reforestation of the rainforest edge has been undertaken. Adequate existing access to the beach is available and paths through the littoral rainforest established
Swamp Oak Floodplain Forest of the NSW North Coast Bioregion	Recorded adjacent to the Belongil Estuary and as scattered swamp she-oak along watercourses. The proposal will not impact on this endangered ecological community
Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast Bioregion	Recorded at the site near the Belongil Estuary and protected under SEPP 14

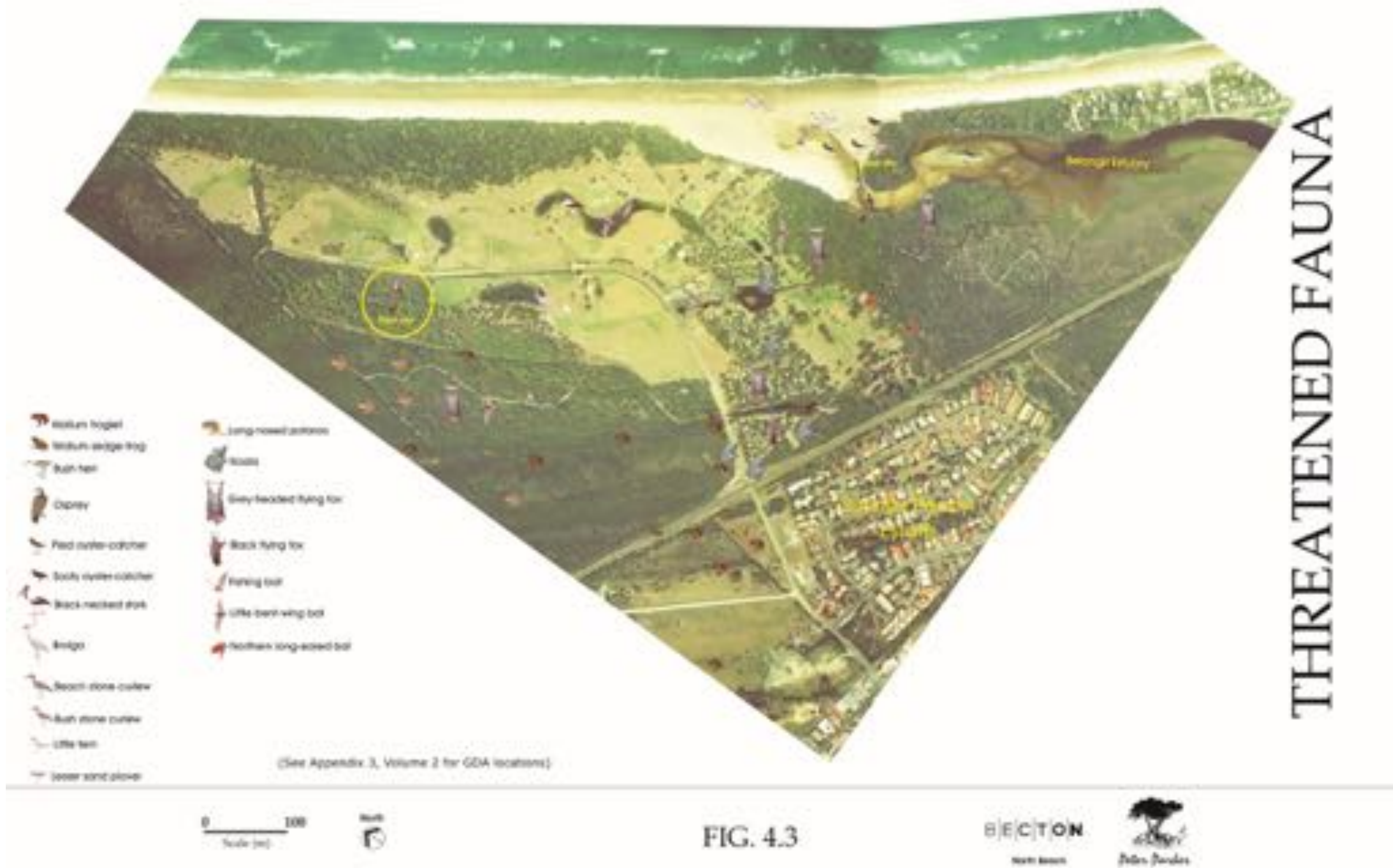


Fig. 5: Threatened species locations (Source Fig. 4.3 of Parker 2006), the black flying fox has subsequently been deleted from the TSC ACT

5.0 DISCUSSION

5.1 Threatened species and endangered ecological communities

Two bats, the southern myotis and the little bent-wing bat were reported in the SIS over the waterbody near the proposed events area. The black-necked stork was also reported in the SIS (see Fig. 5).

Two plants, stinking laurel and durobby have been recorded at the site. The stinking laurel is located at some distance from the events proposal and the durobby is a planted landscape specimen located in a defined garden bed.

A number of endangered ecological communities occur at the site. These are listed in Table 5 at page 25.

The “events” development was carefully designed to avoid impacting on conservation assets such as the littoral rainforest located landward of the frontal dunes and exiting vegetated areas. Camping and ancillary activities were set back 20 m from the waterbodies to minimise any disturbance.

5.2 Tree removal

This modification proposal avoids the need to remove native vegetation. The proposal has inherent flexibility in the siting of tents and ancillary structures so that they can avoid impacting on trees. The Splendour camping event demonstrated that the site can be intensively occupied for short periods of time under poor weather conditions without impacting on local biodiversity.

5.3 Byron Biodiversity Conservation Strategy 2004

The Byron Biodiversity Conservation Strategy 2004 (BSC 2004) advocates the conservation and restoration of high conservation vegetation along with the establishment and restoration of wildlife corridors. This proposal is consistent with the objects of Council's Byron Biodiversity Conservation Strategy 2004 in that it avoids areas of conservation value.

6.0 STATUTORY CONSIDERATIONS

6.1 Koala habitat and State Environmental and Planning Policy No. 44

State Environmental and Planning Policy No. 44 - Koala Habitat Protection ("SEPP 44") commenced on 13 February 1995 with the aim to:

"Encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline;"

- (a) *"by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat;*
- (b) *by encouraging the identification of areas of core koala habitat; and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones."*

Definitions in SEPP 44

Various definitions are provided in SEPP 44. These are as follows:

"Core koala habitat" means an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population;

"Potential koala habitat" means areas of native vegetation where the trees of the types listed in Schedule 2 of the Policy constitute at least 15% of the total number of trees in the upper or lower strata of the tree component;

"Land to which the Policy applies" SEPP 44 applies to land for which a development application has been lodged for each local government area listed in Schedule 1 of the Policy. It does not apply to land dedicated or reserved under the *National Parks and Wildlife Act 1974* or to land dedicated under the *Forestry Act 1916* as a State forest or flora reserve.

SEPP 44 applies to land that:

- Has an area of more than 1 ha; or
- Has, together with any adjoining land in the same ownership, an area of more than 1 ha;
- Whether or not the development application applies to the whole, or only part, of the land.

The subject site is greater than 1 ha, thus SEPP 44 applies. This Policy requires that core koala food trees listed under Schedule 2 comprise 15% or more of the total number of trees in the upper or lower strata of the tree component. Koala food trees (e.g., swamp mahogany, *Eucalyptus robusta*) have been planted throughout the

North Beach site as landscaping and for reforestation. This species also occurs in local woodlands. However, swamp mahogany does not occur in the area proposed for the events nor does it occupy 15% or more of the North Beach site.

Planning circular B35 dated 22 March 1995 further assists in the interpretation of SEPP 44. Clause 5.1 of circular B35 provides clarification with respect to the application of SEPP 44. The clause includes the following:

"It is the intention of the policy that investigations for potential and core koala habitats be limited to those areas in which it is proposed to disturb habitat"

No koala food trees occur in the area subject to this modification or for the "events" area and a koala plan of management is not required.

6.2 Environmental Planning and Assessment Act 1979

For the purposes of the EPA Act and, in particular, in the administration of sections 78A, 79B, 79C, 111 and 112, the following must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats:

- Each of the factors listed in below under sections 5A a-g; and
- Any assessment guidelines ¹.

¹ For the purpose of this assessment the *Threatened species assessment guidelines, the assessment of significance*. Publ. DECC 2007 have been adopted

S.5A (a)

- a). *in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction*

In assessing the likelihood that a *viable local population* of a species will be placed at risk of extinction from this proposal the following factors have been considered:

- the proposal's likely impact upon the key habitat components essential to the species' lifecycle; and
- the size of the local population in comparison with that which is proposed to be removed/modified.

Flora

Two threatened plant species occur recorded at the site North Beach Byron site. This report has identified the locations of these plants and they will not be impacted. Thus, the proposal will not *have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.*

Fauna either recorded at the site or those species which have essential habitat components at the site

The following 18 threatened species were recorded in the study area during the surveys undertaken with respect to this SIS. These records were gathered during 2002-03 and 2004 and from opportunistic sightings:

- Two frogs: the wallum froglet and wallum sedge-frog;
- Ten birds: the bush hen, brolga, black-necked stork, osprey, pied oyster-catcher, sooty oyster-catcher, little tern, bush stone-curlew, beach stone-curlew, lesser sand plover; and

- Six mammals: the koala, the northern long-eared bat, the little bent-wing bat, the southern myotis, the grey-headed flying-fox and the long-nosed potoroo.

The black-necked stork, the little bent-wing bat and the southern myotis have been recorded proximal to the “events” camping site and the grey-headed flying fox and common blossom bat would potentially forage on coast banksias and broad-leaved paperbark. These species are addressed below.

Birds

Black-necked stork

This species occurs sparsely through much of its northern and north-east Australian range. It is more common in coastal Northern Territory and along the northern and south-eastern Queensland coast and plains where breeding populations concentrate. Vagrants have been recorded as far south as central Victoria and the NSW South Coast. It also occurs in south-east Asia and India.

This species frequents riverine swamps, large permanent pools, and coastal wetlands and estuaries. The black-necked stork forages in shallow water for small invertebrates, fish, amphibians, reptiles and possibly small mammals (Marchant and Higgins cited in State Forests 1995).

The major threat to the survival of the black-necked stork is loss of wetlands for agricultural or urban development, disturbance of feeding habitat by grazing, contamination of wetland by nutrients and loss of roost or nest trees. Injuries attributed to power lines are one of the most common sources of mortality. The “events”

modification will not impact on this species as the habitat is sub-optimal and its use of this habitat is infrequent.

Mammals

Little bent-wing bat

The little bent-wing bat is characterised by an exceptionally long terminal segment of the third finger. This placental flying mammal is greyish black to fawn-brown above and paler below.

The little bent-wing bat frequents the coastal ranges of eastern Australia from the central coast of NSW to Cape York. This species utilises caves, old mines and a variety of structures such as buildings and stormwater drains as diurnal roosts. It forages on small insects below the tree canopy and relies on caves for maternity and hibernation roosts (Dwyer 1983b).

The little bent-wing bat is widely distributed and was recorded over the waterbody near the "events" site. However, it is unlikely that the proposal will significantly impact on this species as no roosting sites will be removed or disturbed and disruption of feeding opportunities will be minimal due to the short term nature of events.

Southern myotis

The southern myotis is a small coastal winged placental mammal with grey-brown to dark brown fur above and slightly paler fur below with frosted silver-grey fur on the chest (Cronin 1991). It has an extensive coastal distribution from south-eastern Australia around the east coast to north Western Australia.

It roosts in caves usually located proximal to water and has been reported in colonies ranging from ten to hundreds of individuals.

This species also roosts in tree-hollows (Campbell 2009). It has been recorded in mines, tunnels, under bridges, in buildings and in dense foliage. Habitats include rainforests, lakes and reservoirs. It forages over the surface of water on aquatic insects and small insects (e.g., water boatmen, grasshoppers, moths and mayflies) (Robson 1984). Roosts are selected by their proximity to suitable waterways for foraging (Campbell 2009).

This proposal will not impact on this species as its potential (waterbody) habitat will not be impacted and events will be buffered from waterbody margins.

Grey-headed flying- fox

The grey-headed flying-fox feeds on the blossom of eucalypts, paperbarks, turpentine and native and introduced fruits.

This species is distributed along the eastern Australian coastline from Gladstone in Queensland to south Gippsland and Melbourne in Victoria. It rarely travels more than 200 km inland. This species is commonly observed throughout the Shire, particularly at sunset. The proposal is unlikely to impact on this species as no food trees require removal and events will be of short duration. Moreover, disturbance of feeding sites (e.g., noise and light) will be limited as the events are of short duration.

Common blossom bat

The common blossom bat is a small winged placental mammal that feeds on nectar. It has a long thin brush-like tongue and a slim pointed muzzle. Its long soft fur reddish-brown fur extends to the ankle. It is paler below and flecked with white (Cronin 1991). This species can be quite common under suitable environmental

conditions and between 1 to 17.5 bats/ha have been recorded (Law 1994). This species has been recorded east of the ranges from Cape York in Queensland to the mid-north coast of NSW.

The common blossom bat occurs in locations which support coast banksia in close proximity with littoral rainforest. It is likely to roost in the littoral rainforest near the Belongil Estuary.

The common blossom bat forages extensively in coastal heaths and usually roosts in proximity to these feeding sites. In NSW feeding sites it is considered a strict nectivore, whereas in north-east Queensland it is a facultative frugivore and to a lesser extent a folivore (Law and Spencer 1995).

The proposal will not have a significant impact on this species as coast banksias and broad-leaved paperbarks within the "event" area will be preserved. Moreover, human disturbance (e.g., noise and light) is minimised by the events being of a short duration and occupying a relatively small footprint.

S5A (a) conclusion

The flora and fauna assessment identified areas of threatened species habitat and concluded that disturbance of potential feeding sites (e.g., by noise and light) will be limited as the events are of short duration. It is concluded that the proposed "events" development is unlikely to *have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.*

S.5A (b)

b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle

of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,

No endangered populations, listed under Part 2 of Schedule 1 of the TSC Act, occur within the vicinity of the subdivision site. Thus, the action proposed will not cause *a viable local population of the species to be placed at risk of extinction.*

S.5A (c)

- c) *in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:*
- (i) *is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
 - (ii) *is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,*

Littoral rainforest EEC occurs adjacent to the approved "events" site. This was identified and mapped in the development application. This modification is relatively remote from littoral rainforest. Thus, the proposal will not *"have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction"* nor will any proposed action *"substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction"*.

S.5A (d)

d) *in relation to the habitat of a threatened species, population or ecological community:*

(i) *the extent to which habitat is likely to be removed or modified as a result of the action proposed, and*

(ii) *whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and*

(iii) *the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality,*

The proposal will not require vegetation removal. Thus, the "events" proposal will not impact on *the long-term survival of the species, population or ecological community in the locality.*

S.5A (e)

whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

The site does not contain any area which has been identified and declared as critical habitat under Part 3 of the TSC Act. Therefore, critical habitat will not be affected by the development of the site.

S.5A (f)

f) *whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan*

Impacts on plant and animal communities that are commonly listed in recovery planning include firewood gathering, track making, tree vandalism and the dumping of rubbish. These potential impacts will

be mitigated by security personnel upholding on-site management rules.

S.5A (g)

g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process

Threatening processes gazetted pursuant to the TSC Act are as follows:

- Aggressive exclusion of birds from woodland and forest habitat by abundant Noisy Miners, *Manorina melanocephala* (Latham, 1802)
- Alteration of habitat following subsidence due to longwall mining;
- Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands (as described in the final determination of the Scientific Committee to list the threatening process);
- Anthropogenic climate change;
- Bushrock removal;
- Clearing of native vegetation. Clearing is defined as the destruction of a sufficient proportion of one or more strata (layers) within a stand or stands of native vegetation so as to result in the loss, or long-term modification, of the structure, composition and ecological function of a stand or stands;
- Competition and grazing by the feral European Rabbit, *Oryctolagus cuniculus*;
- Competition from feral honey bees, *Apis mellifera*;
- Death or injury to marine species following capture in shark control programs on ocean beaches;

- Entanglement in or ingestion of anthropogenic debris in marine and estuarine environments;
- Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners;
- Herbivory and environmental degradation caused by feral deer;
- High frequency fire resulting in the disruption of life cycle processes in plants and animals and loss of vegetation structure and composition. High frequency fire is defined as two or more successive fires close enough together in time to interfere with or limit the ability of plants or animals to recruit new individuals into a population, or for plants to build up a seed-bank of sufficient size to maintain the population through the next fire;
- Importation of Red Imported Fire Ants, *Solenopsis invicta*;
- Infection by Psittacine Circoviral (beak and feather) disease affecting endangered psittacine species and populations;
- Infection of frogs by amphibian chytrid causing the disease, chytridiomycosis;
- Infection of native plants by the fungus, *Phytophthora cinnamomi*;
- Introduction and establishment of Exotic Rust Fungi of the order Pucciniales pathogenic on plants of the family Myrtaceae;
- Introduction of the Large Earth Bumblebee, *Bombus terrestris*;
- Invasion and establishment of exotic vines and scramblers;
- Loss or degradation (or both) of sites used for hill-topping by butterflies. Hill-topping in butterflies is a complex behaviour that often facilitates mating between sexes. Many butterfly species appear to congregate on hill-tops or ridges that are usually higher than the surrounding landscape. These sites may range in area from a few square metres to several hectares;

- Introduction of the Large Earth Bumblebee *Bombus terrestris*;
- Invasion and establishment of exotic vines and scramblers;
- Invasion and establishment of Scotch Broom (*Cytisus scoparius*);
- Invasion and establishment of the Cane Toad (*Bufo marinus*);
- Invasion, establishment and spread of Lantana (*Lantana camara*);
- Invasion of native plant communities by African Olive (*Olea europaea* subsp. *cuspidate*);
- Invasion of native plant communities by bitou bush, *Chrysanthemoides monilifera*. The ability of bitou bush to become the overwhelming dominant in invaded ecological communities threatens all plant communities within its distribution;
- Invasion of native plant communities by exotic perennial grasses;
- Predation by the mosquito fish, *Gambusia holbrooki*;
- Predation by the European red fox, *Vulpes vulpes*;
- Predation by the feral cat, *Felix cattus*. Predation by the feral cat has been implicated in the extinction and decline of many species of birds on islands around Australia and in the early extinction of up to seven species of small mammals on the Australian mainland;
- Predation by the ship rat, *Rattus rattus*, on Lord Howe Island; and
- Removal of dead wood and dead trees.

No threatening processes are likely to increase as a result of this s.96 modification due to the short duration of the "events", the nature of habitat where it is proposed to hold the events and on-site

management to ensure compliance with the conditions of development consent.

7.0 REFERENCES

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