

25 February 2019

Planners North
Attn Kate Singleton
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Address

Kate:

North Byron Beach Planning Proposal

1.0 Introduction

Peter Parker Environmental Consultants Pty Ltd ("PPEC") has been engaged by North Byron Bay Resort Pty Ltd, the owners of Lots 1 & 2 DP 1215893, Lots 12 & 13 DP 243218 and Lot 449 DP 812102 Bayshore Drive, Byron Bay, to provide ecological advice with respect to a Planning Proposal relating to the land illustrated in Fig. 1 at North Beach Byron.

The Planning Proposal provides to apply the E4 Environmental Living Zone and SP3 Tourist Zone to the site in accordance with the provisions of Byron Local Environmental Plan 2014.

This advice describes the ecological characteristics of the land and places the Planning Proposal in the context of the *Biodiversity Conservation Act 2016* ("BCA") and the *Biodiversity Conservation Regulation 2017* ("BCR").

The BCR contains provisions with respect to subdivision approvals under the Environmental Planning and Assessment Act 1979. The most significant of these relate to the biodiversity offset scheme threshold (s.7.4). This is addressed below.



Fig. 1: The site the subject of the Planning Proposal and Conceptual Subdivision Layout

2.0 Background

The land has an extensive history of ecological studies, which include the following:

- Australian Museum Business Services, 1995 *Fauna impact statement for the proposed Club Mediterranean village, Byron Bay*. A report to Holiday Villages (Byron Bay) Pty Limited, Vols. 1-2;
- 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 1993 *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. 2006 *Species impact statement ("SIS")*. Prepared for North Beach Byron Vols. 1-3;
- Parker, P. 2011 *The "Sun Bistro" North Beach Byron flora and fauna report*. Prepared for Bayshore Property Holdings Pty Ltd;
- Parker, P. 2012 *North Byron Cultural Events flora and fauna assessment*. Prepared for North Byron Beach resort; and
- Parker, P. and A. Gosling 2017 *Vegetation Management and Flora and Fauna Monitoring Plan for North Byron Beach Resort Events*.

2.1 Species impact study

The SIS reported 19 threatened species in a study area which included the North Beach site and into the Tyagarah Nature Reserve.

The following threatened species were recorded between 2002-2006:

- 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 and the long-nosed potoroo.

The majority of these species use habitats in the study area seasonally or opportunistically. 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 northern long-eared bat and the wallum froglet. It is unlikely that the long-nosed potoroo still occurs at the site following habitat inspections over the past decade (pers. obs.).

2.2 Flora and fauna surveys in the area subject to the Planning Proposal and current development consent

Part of the area subject to this Planning Proposal was used for camping by the Splendour Festival in 2012. Over 500 patrons camped during the festival (Plates 1 and 2).

In 2012, PPEC undertook a flora and fauna assessment for inclusion in the North Byron Cultural Events development application ("DA") (DA 10 2012.269.1). This DA sought Council approval for camping and cultural events which were around half the size of the Splendour festival. A conditional consent granted by Council on 1 May 2013 required the preparation of a vegetation management plan ("VMP").

A VMP was subsequently prepared by PPEC on 23 March 2017. The VMP contained a number of management zones. However, the only zones relevant to this rezoning proposal area the waterbody buffer and the event footprint (Fig. 2).



Plate 1: Splendour camping 2012 (looking south)



Plate 2: Splendour camping 2012 (looking north west)

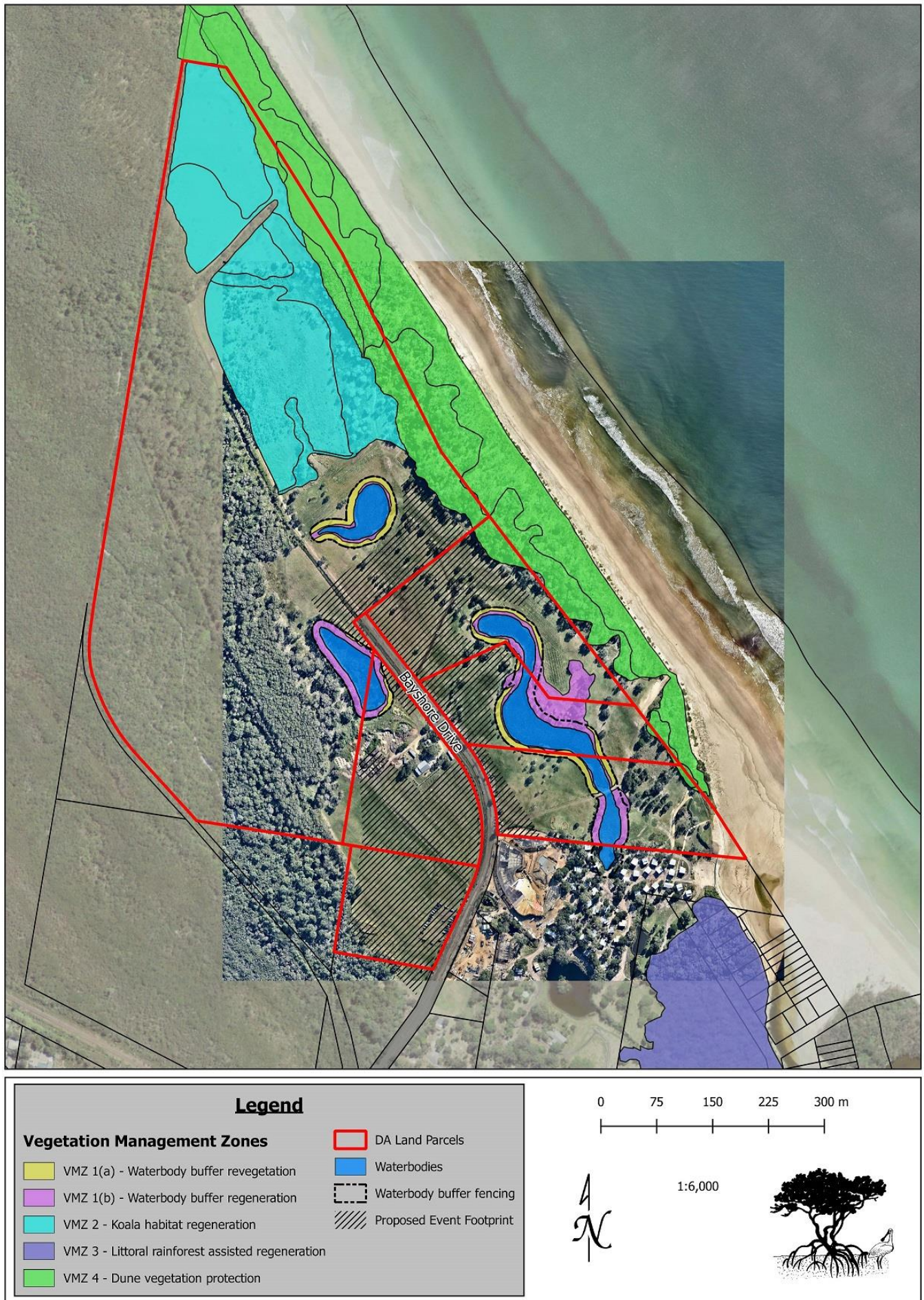


Fig. 2: Management zones mapped in the VMP

2.3 Waterbody buffer

Part (b) of the VMP required:

- *Establishment of vegetated buffers around waterbodies. Revegetation of a buffer to open freshwater habitat must incorporate local sedge and swamp sclerophyll species planted at a suitable density to maintain water quality and discourage the cane toad;*

A 5 m buffer around the water bodies was fenced and allowed to naturally regenerate.

This is illustrated in Figs. 1 & 2 and Plate 3.

Trees were retained and naturally occurring regeneration was encouraged. The objects of the proposed E4 zone are consistent with this revegetation initiative.



Plate 3: Fenced water body 5 m buffer

3.0 Site inspection and statutory review

A site inspection was undertaken on 12 September 2018 for approximately three hours.

This followed consultants' meetings and the provision of maps detailing proposed asset protection zones, site layout and access to potential allotments.

The following site features were noted and are addressed in this advice:

- Site features and consistency of habitats over spatial and temporal scales;
- Threatened species habitats;
- Presence and pattern of native vegetation¹ within proposed allotments;
- Biodiversity offsets scheme thresholds (s.7.1 *Biodiversity Conservation Regulation 2017*) and
- Whether the proposed subdivision is likely to have impacts on biodiversity values which may be regarded as serious and irreversible (s.6.7 of *Biodiversity Conservation Regulation 2017*)².

3.1 Site features and consistency of habitats over spatial and temporal scales

The area proposed as an E4 zone is dominated primarily by exotic grassland (Plates 4 and 5). However, the site contains three constructed waterbodies (Fig. 1) which have freshwater wetland characteristics and are ecologically significant.

Features of the waterbodies include:

- native fringing and submerged vegetation;
- native and exotic frogs (e.g., the cane toad);
- native and exotic fish (e.g., the native eels and exotic plague minnow);
- native waterbirds; and
- regenerating trees and shrubs within the water body buffer.

¹ Native vegetation is defined under the *Local Land Services Act 2013*.

(1) For the purposes of this Part, "native vegetation" means any of the following types of plants native to New South Wales: (a) trees (including any sapling or shrub or any scrub), (b) understorey plants, (c) groundcover (being any type of herbaceous vegetation), (d) plants occurring in a wetland. (2) A plant is native to New South Wales if it was established in New South Wales before European settlement.

² An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because: (a) it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or (b) it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or (c) it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or (d) the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.



Fig. 4: Exotic grassland dominates the site



Plate 5: The proposed E4 site, electric fence used to manage horse grazing

3.2 Threatened species habitats

The flora and fauna surveys undertaken for the FIS and SIS did not record threatened frogs or birds within the waterbodies, the surrounding grassland in the proposed E4 zone. However, a number of vulnerable bat species are likely to forage over the water bodies opportunistically. Development permissible within the proposed E4 zone is unlikely to result in impacts to the waterbodies or opportunistic fauna provided that buffers are maintained and water quality is monitored.

3.3 Presence and pattern of native vegetation within allotments

Native vegetation within the proposed E4 zone comprises predominantly of scattered trees and exotic grassland (Fig. 1).

Trees are dominated by coast banksia, *Banksia integrifolia* var. *integrifolia*, and broad-leaved paperbark, *Melaleuca quinquenervia*, most of which have been planted and reached maturity. The vegetation adjacent to the water bodies contains native sedges, rushes and water lillies.

3.4 Biodiversity offsets scheme (s.7.1 Biodiversity Conservation Regulation 2017)

The Biodiversity Offsets Scheme applies to:

- *local development (assessed under Part 4 of the Environmental Planning and Assessment Act 1979) that triggers the Biodiversity Offsets Scheme threshold or is likely to significantly affect threatened species based on the test of significance in section 7.3 of the Biodiversity Conservation Act 2016*
- *state significant development and state significant infrastructure projects, unless the Secretary of the Department of Planning and Environment and the Chief Executive of OEH determine that the project is not likely to have a significant impact*
- *biodiversity certification proposals*
- *clearing of native vegetation in urban areas and areas zoned for environmental conservation that exceeds the Biodiversity Offsets Scheme threshold and does not require development consent*
- *clearing of native vegetation that requires approval by the Native Vegetation Panel under the Local Land Services Act 2013*

- *activities assessed and determined under Part 5 of the Environmental Planning and Assessment Act 1979 (generally, proposals by government entities), if proponents choose to 'opt in' to the Scheme.*

The BCR identifies thresholds for the triggering of the Biodiversity Offsets Scheme. This has two elements:

- *whether the amount of native vegetation being cleared exceeds a threshold area set out below*
- *whether the impacts occur on an area mapped on the Biodiversity Values map published by the Minister for the Environment.*

If clearing and other impacts exceeds either trigger, the Biodiversity Offset Scheme applies to the proposed development including biodiversity impacts prescribed by Division 6.1 of the BCR.

With respect to subdivision, the BCR s.7.1(3) states that:

- *If proposed development is or involves the subdivision of land, the subdivision is taken to involve the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land is to be subdivided. Once that clearing has been taken into account, the clearing for the purposes of the subsequent development of the land for which it was subdivided is not to be taken into account when determining whether the subsequent development exceeds the threshold.*

The site inspection confirmed that clearing of native vegetation would be unlikely to breach the clearing threshold of 0.25-0.5 ha prescribed under the regulation (Table 1). Extensive exotic grassland occurs at the site and these areas provide ample scope for the provision of building envelopes.

Table 1: Clearing thresholds for native vegetation

Minimum lot size associated with the property	Threshold for clearing, above which the BAM and offsets scheme apply
Less than 1 ha	0.25 ha or more
1 ha to less than 40 ha	0.5 ha or more
40 ha to less than 1000 ha	1 ha or more
1000 ha or more	2 ha or more

3.5 Biodiversity Values Map

The Biodiversity Values Map identifies land with high biodiversity value, as defined by clause 7.3(3) of the BCR. The Biodiversity Offsets Scheme applies to all clearing of native vegetation and other biodiversity impacts prescribed by Division 6.1 of the BCR on land identified on the map (Fig. 3).

The waterbodies are mapped on the Biodiversity Values Map. However, the waterbody buffers will mitigate potential biodiversity impacts.



Fig. 3: Biodiversity Values Map

3.6 Other potential biodiversity impacts

Other potential biodiversity impacts are defined under Divn. 6.1 of the BCR as follows:

Sections 6.3 and 6.6 (2)

- (1) *The impacts on biodiversity values of the following actions are prescribed (subject to subclause (2)) as biodiversity impacts to be assessed under the biodiversity offsets scheme:*
 - (a) *the impacts of development on the following habitat of threatened species or ecological communities:*
 - (i) *karst, caves, crevices, cliffs and other geological features of significance,*
 - (ii) *rocks,*
 - (iii) *human made structures,*
 - (iv) *non-native vegetation,*
 - (b) *the impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range,*
 - (c) *the impacts of development on movement of threatened species that maintains their lifecycle,*
 - (d) *the impacts of development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities (including from subsidence or upsidence resulting from underground mining or other development),*
 - (e) *the impacts of wind turbine strikes on protected animals,*
 - (f) *the impacts of vehicle strikes on threatened species of animals or on animals that are part of a threatened ecological community.*

The proposed E4 zone will not impact on other biodiversity impacts as listed above.

3.7 Whether the proposed subdivision is likely to have impacts on biodiversity values which may be regarded as serious and irreversible

S.6.7 of the BCR relates to serious and irreversible impacts ("SAII").

An impact is to be regarded as serious and irreversible if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because:

(a) it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or

(b) it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or

(c) it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or

(d) the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

There are no known SAII species likely to occur in the area proposed for E4 zoning.

In conclusion, the BCA and BCR impose few restrictions on subdividing the proposed E4 lands illustrated in Fig. 1 other than the provision of adequate water body buffers.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Parker', with a stylized flourish at the end.

Peter Parker

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31 August 2021

Planners North
Attn Kate Singleton
Via email

Kate:

Proposed E4 zoning, Elements Resort Byron Bay

Further to your request, I provide my comments on the submission from Byron Bird Buddies (BBB) which reads as follows:

The Ecological assessment has failed to identify the Latham Snipe as a migratory bird utilizing the ponds on site. Byron Bird Buddies have recorded Latham Snipe on the site for rezoning since 2007. This bird is protected under several International Agreements such as JAMBA, BONN and ROKAMBA. The birds arrive in September and leave in February. Some are present all summer while others are using the ponds as a stop-over. The largest number recorded was 12 birds in September 2020. The birds prefer an open spaced habitat close to a water body with grassy edges. The ponds provide that type of environment.

Background

Latham's snipe (*Gallinago hardwickii*) breeds in northern Japan and parts of eastern Russia during May-July and spends its non-breeding season (September to March) along Australia's eastern coast. It undertakes a non-stop over-ocean flight from its breeding and non-breeding grounds. It spends its entire time in Australia feeding, resting and growing new flight feathers in preparation for the long haul back to Japan in autumn.

Typical habitat is described by the BBB (above) and the west Byron wastewater ponds and surrounds provide more extensive habitat to that found at Elements.

How threatened is Latham's snipe?

Latham's snipe is not listed as a threatened species under NSW legislation. However, under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) "important" Latham snipe habitat is that which supports at least 18 birds.

The West Byron bird habitats are known to support up to 12 birds (BBB see above), thus these are not "important" in a statutory context.

Latham snipe habitat available at Elements is more limited spatially and structurally to that at West Byron. Vagrant Latham's snipes may visit Elements seasonally but the habitat available is insufficient and of lesser quality to that at West Byron.

Surveys at the Powling Street wetlands complex at Port Fairy in Victoria illustrate just how many snipe frequent one of the most important habitats in Victoria and possibly in Australia. According to a 2012 GHD report commissioned by the Federal Environment Department, over a hundred birds have been counted at the wetlands complex on 38 occasions. One count included 430 snipe.

Australian Latham snipe surveys have provided early data for 2020-21 which suggests "*no major change in the numbers of snipe at regular sites*". New snipe records continue provide information about the species' distribution. This includes a record of snipe from private property in central Tasmania and a significant record from Craigieburn wetlands https://www.swift.net.au/cb_pages/lathams_snipe_project.php#:~:text=Latham%E2%80%99s%20Snipe%20is%20one%20of%2037%20migratory%20shorebirds,supports%2018%20or%20more%20individuals%20of%20the%20species.

Habitat at Elements Resort

Potential habitat occurs along the drainage system extending from the Tyagarah Nature Reserve into the north of the site (Plate 1) and around the southern-most ponds located in



Plate 1: Typical Latham's snipe habitat along drain

the old golf course which have been managed under the approved vegetation management plan (VMP)(Plate 2).

The northern-most pond has no vegetated buffer and is unlikely to provide Latham's snipe habitat due to a lack of shelter.

The open grasslands at Elements are not Latham's snipe habitat as they are too exposed and provide no foraging resources.

The area approved for "events" adjacent to the southern most ponds and illustrated in Plate 2, is popular with day visitors and their dogs and is known locally as "Element's Park". Consequently, its suitability as Latham's snipe habitat is considerably diminished.



Plate 2: The southern pond provides potential Latham's snipe habitat with sedges and grasses around its perimeter



Plate 3: The northern pond currently provides poor Latham's snipe habitat and sedges and grasses around its perimeter are largely absent

The proposed E4 zoning will include a number of environmental improvements. These are:

- The management of the ponds within an expanded VMP and extensive landscaping using a suite of locally sourced native trees, shrubs and ground covers;
- The vegetated buffer around pond margins will be maintained and expanded to include the northern-most pond. This will provide additional potential habitat including that for Latham's snipe; and
- Day visitors and dogs will be excluded from recreational activities around the ponds. Public access to the beach will be retained along a defined pathway which is remote from sensitive habitat areas.

Regardless of whether the land is rezoned, the habitat at Elements will not be important for Latham's snipe for the reasons listed above. Notwithstanding, the proposed environmental management works will enhance local biodiversity and improve corridor function by enhanced linkages with the Tyagarah Nature Reserve to the north.

Should you require any further information, please do not hesitate to contact me

Best Regards

A handwritten signature in blue ink, appearing to read "Peter Parker".