

Ecological Concerns

15 Torakina Rd, Brunswick Heads

Clarence Property Group - Wallum Development

Introduction

An important threatened species site to the south of the town of Brunswick Heads, NSW has been approved for development from Clarence Property group, Ballina. The site sits within a sensitive coastal area bordering Simpsons Creek (a tributary of the Brunswick River and a part of the Cape Byron Marine Park Sanctuary Zone) with known vulnerable, threatened and endangered species present. The land has been deemed a 'regionally significant development as per Schedule 6, Clause 8 of the State Environmental Planning Policy (Planning Systems) 2021 as it is a coastal subdivision involving subdivision of land for residential purposes into more than 100 lots and lies within a sensitive coastal location' (NSW State Government). This determination has meant that a Regional Planning Panel was the body responsible for the approval of the DA, due to NSW Planning's definition that these kinds of developments (larger in investment value, scale and/or complexity) require regional planning panels made up of independent experts to decide whether to approve these developments.

Recently, community members learned of this approved development, with significant, growing public support resulting in media attention. Byron Shire Councillors explained that they were unaware of the development and had been bypassed, most likely due to the aforementioned trigger under NSW Environmental Planning Policy, although it seems that Council was consulted in 2021 and had conditions that the proposer needed to rectify prior to approval. An initial Concept Plan Approval (CPA) for the site was developed on July 9, 2013 and the issuing of consent for DA10.2016.337.1 for Stage 1A of the subdivision was approved and has now been constructed north of the current development subject site. The current development subject site was only approved earlier this year.

Ecological Concerns

Locally-based ecologists, NGOs, politicians, as well as concerned community members have some serious questions around why the DA was approved given the important environmental attributes of the site, including the fact that ***the site contains and interfaces with numerous***

matters of ecological significance, including the following matters referred to in the most recent [NRPP Planning Report](#):

- “Biodiversity Values’ Mapped land (Biodiversity Conservation Act 2016);
- Coastal Environment Area, Coastal Use Area, and Coastal Wetlands (and buffer);
- Frontage to the Cape Byron Marine Park Sanctuary Zone (Simpsons Creek);
- High Environmental Value vegetation including Koala preferred habitat;
- Mitchells Rainforest Snail potential habitat (Very high likelihood);
- Wallum Sedge Frog (presence and habitat).

The contracted consultants (Australian Wetland Consulting - AWC) [Revised Vegetation Management Plan](#) reflects that the development footprint will directly affect related plant community types, listed in the table below:

3.3 Vegetation Communities

The BDAR [AWC 2022] confirmed and mapped a number of vegetation communities at the site. Vegetation types are expressed in terms of plant community types (as per the BioNet Vegetation Classification) at Table 3-1. Figure 3.1 shows PCT mapping within the development footprint, with Council vegetation mapping adopted for undeveloped land in the east of the site.

Table 3-1 Plant Community Types

PCT ID	Formation	Class	Plant Community Type (PCT)
Development footprint			
1230	Forested Wetlands	Coastal Swamp Forest	Swamp Mahogany swamp forest on coastal lowlands of the NSW North Coast Bioregion and northern Sydney Basin Bioregion.
1064	Forested Wetlands	Coastal Swamp Forests	Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion
1135	Dry Sclerophyll Forests (Shrubby sub-formation)	North Coast Dry Sclerophyll Forests	Scribbly Gum - Needlebark Stringybark heathy open forest of coastal lowlands of the northern NSW North Coast Bioregion
785	Heathlands	Northern Montane Heaths	Coastal heath on sands of the NSW North Coast Bioregion
1290	Freshwater Wetlands	Coastal Heath Swamps	Soft Twig-rush Sedgeland of North Coast Wallum Swamps
1297	Freshwater Wetlands	Coastal Heath Swamps	Wet heathland and shrubland of coastal lowlands of the NSW North Coast Bioregion
Residual land (eastern conservation land)			
916	Saline Wetlands	Mangrove Swamps	Mangrove – Grey Mangrove low closed forest of the NSW Coastal Bioregion
1297	Freshwater Wetlands	Coastal Heath Swamps	Wet heathland and shrubland of coastal lowlands of the NSW North Coast Bioregion
1125	Saline Wetlands	Saltmarshes	Saltmarsh complex of the NSW North Coast Bioregion
1235	Forested Wetlands	Coastal Swamp Forests	Swamp Oak swamp forest of the coastal lowlands of the NSW North Coast Bioregion
663	Heathlands	Coastal Heath Swamps	Banksia dry shrubland on coastal sands of the NSW North Coast Bioregion

Further, AWC reports also list fourteen threatened fauna species at the site, listed in the table below:

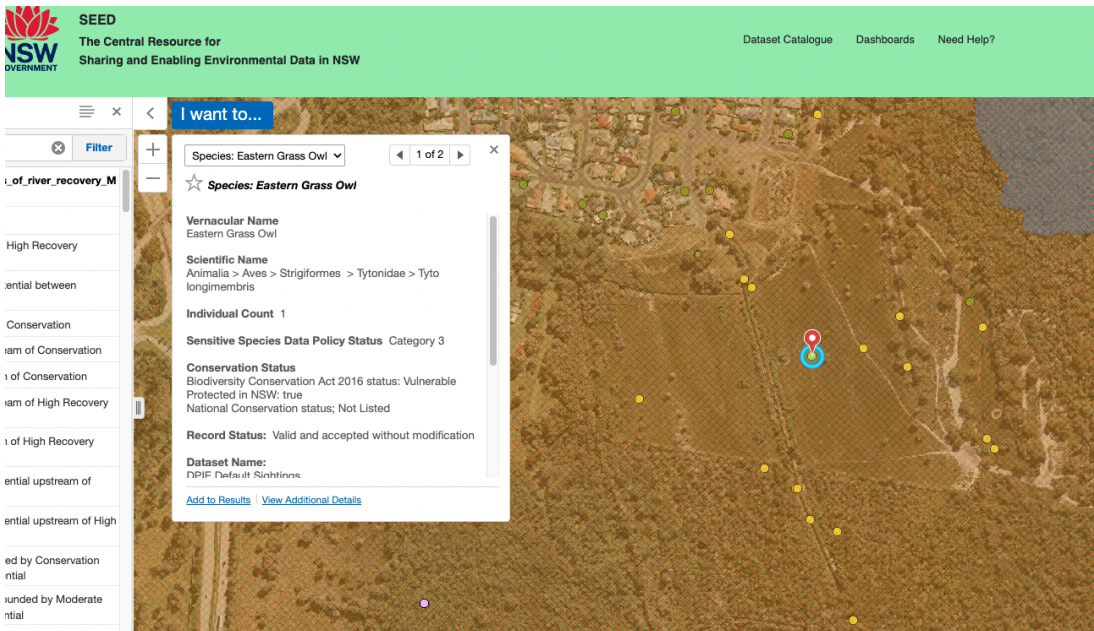
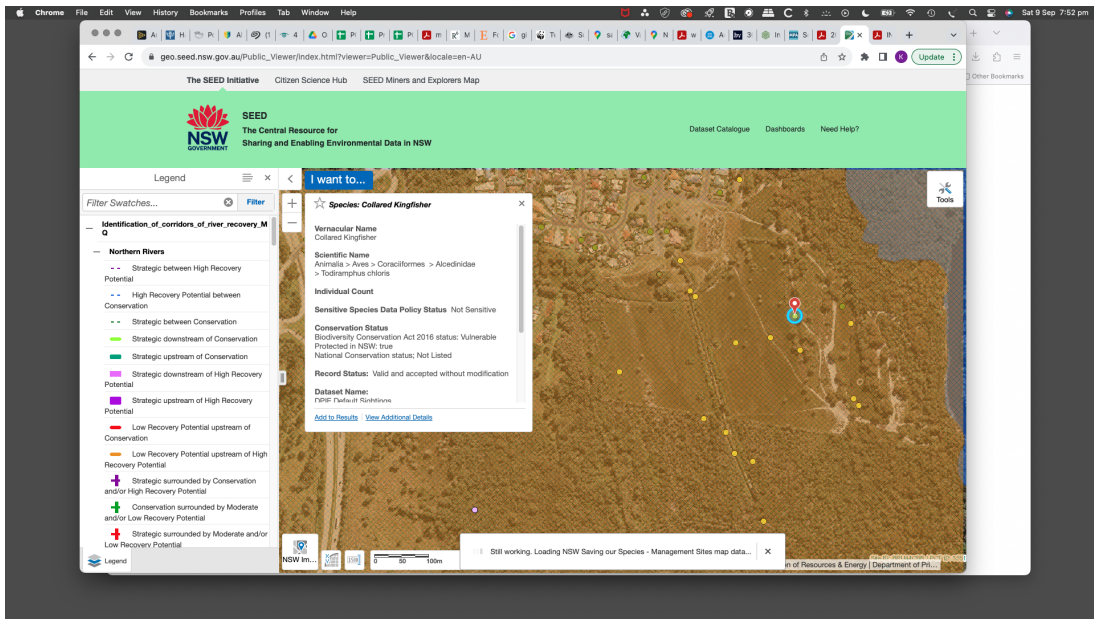
Table 4-1 Threatened fauna impacts and habitat protection/compensation

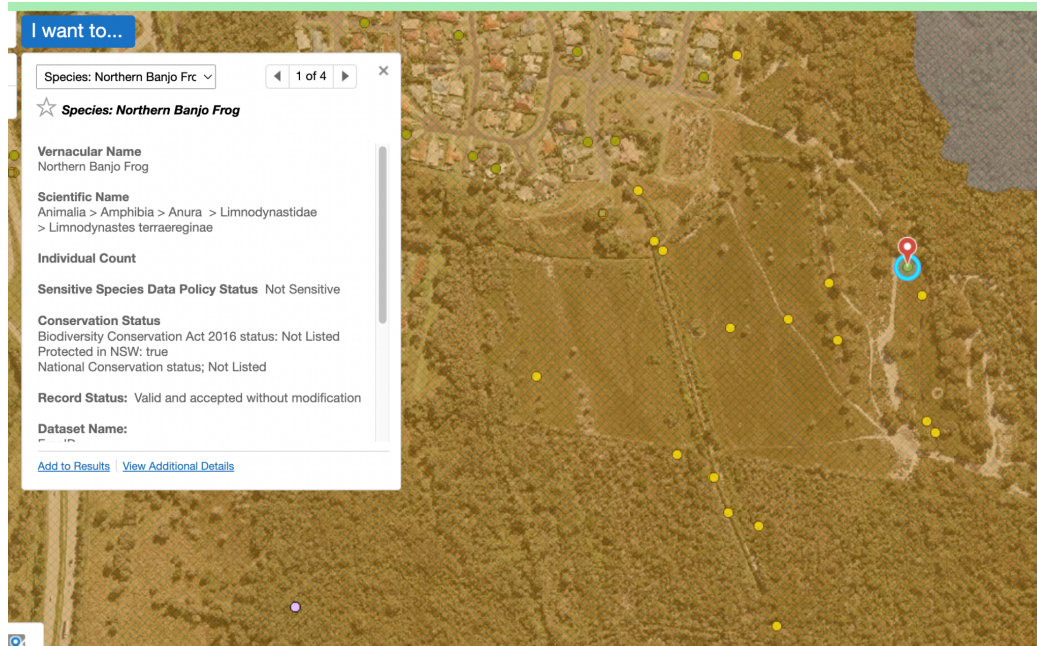
Species	Habitat Impacts	Compensation
Common Planigale	Slashed heath in development footprint impacted, other habitats unaffected.	None proposed. Habitat retained and protected within residual land.
Eastern Osprey	Foraging and nesting resources unaffected.	None proposed.
Glossy Black-cockatoo	Minor reduction of feed trees (Black She-oak) within development footprint. Foraging and potential breeding resources (hollow-bearing trees) retained within residue land.	Compensation plantings of Black She-oak. Nest boxes installed in east of site under Stage 1 VMP.
Grey-headed Flying-fox	Minor loss of foraging resources within development footprint.	None proposed. Substantial foraging habitat retained and protected within residual land.
Koala	Loss of 29 scattered Swamp Mahogany (primary feed tree) within development footprint. Minor loss of secondary foraging resources (Scribbly Gum).	Compensation plantings of primary feed tree Swamp Mahogany and infill plantings of Scribbly Gum within residual land.
Microbats	Foraging and breeding resources largely unaffected.	None proposed.
Olongburra Frog	Habitat retained adjacent to development footprint.	Habitat compensation proposed – refer WFMP.
Pale-vented Bush-hen	Habitat largely unaffected.	None proposed.
Wallum Froglet	Habitat impacted within development footprint.	Habitat compensation proposed – refer WFMP.
White-bellied Sea-eagle	Habitat unaffected.	None proposed.
White-throated Needle-tail	Habitat unaffected.	None proposed.

This table includes 3 species of microbats, Large Bent-winged Bat (*Miniopterus orianae oceanensis*), Little Bent-winged Bat (*Miniopterus australis*), as well as the Greater Broad-nosed Bat (*Scoteanax rueppellii*).

Local ecologists and Bionet data have discovered a number of other threatened species. These include:

- Collared kingfisher (presence - more data required);
- Eastern grass owl (presence - more data required);
- Northern banjo frog (presence - more data required).





Six plant community types (PCTs), some of which are threatened ecological communities (TECs) (Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions, and; Swamp Oak Floodplain Forest of the NSW North Coast, Sydney Basin and South East Corner Bioregions) occur directly within the development site. Nine PCTs occur in the Proposed Conservation Areas. These PCTs also include TECs such as Mangroves (Grey Mangrove low closed forest of the NSW Coastal Bioregion), and; Coastal Saltmarsh in the North Coast, Sydney Basin and South East Corner Bioregions.

In addition, the *EPBC Act Protected Matters Search Tool* was utilised to assess potential Matters of National Environmental Significance (MNES) within the property boundary. The search tool found a range of critically endangered, endangered, vulnerable and threatened species, as well as four threatened ecological communities (vulnerable, endangered and critically endangered), which weren't given proper consideration in light of the DA. This includes migratory species.

Bird Species

There were thirty-three bird species not mentioned in the AWC reports. Five of these were listed as, 'species, or species habitat known to occur within area'. Six were listed as, 'species or species habitat are likely to occur within area', and twenty-two were listed as 'species or species habitat may occur within area'. These include critically endangered and endangered species.

Frog Species

Two additional frog species not yet mentioned in this summary, include the Fleay's frog (endangered) and pouch frog (vulnerable). These are identified as 'species or species habitat likely to occur' and 'species or species habitat may occur' respectively.

Insect Species

Two insect species not yet mentioned in this summary, include the Australian fritillary (critically endangered) and pink underwing moth (endangered). These are identified as 'species or species habitat may occur' and 'breeding likely to occur within area' respectively.

Mammal Species

Six additional mammal species not yet mentioned in this summary are, 'known, likely or may occur within this area'. This includes the yellow-bellied glider (south-eastern - *Petaurus australis australis*), which ecologists have documented on the property.

Plant Species

Thirty-three plant species are listed as 'known, likely, or may occur within this area'.

Reptile Species

The vulnerable three-toed snake-toothed skink (*Coeranoscincus reticulatus*) is listed as 'species or species habitat may occur within this area'.

Migratory Marine Birds

Twenty-one migratory marine birds are listed as 'known, likely, or may occur within this area'.

Migratory Terrestrial Species

Six additional migratory terrestrial species (not mentioned in the AWC reports) are listed as 'known, likely, or may occur within this area'.

Migratory Wetlands Species

Twelve additional migratory terrestrial species (not mentioned in the AWC reports) are listed as 'known, likely, or may occur within this area'.

Other Matters Protected by the EPBC Act

A range of other species protected by the EPBC Act are listed as 'known, likely, or may occur within this area', as per the *EPBC Act Protected Matters Search Tool* report.

Offsets

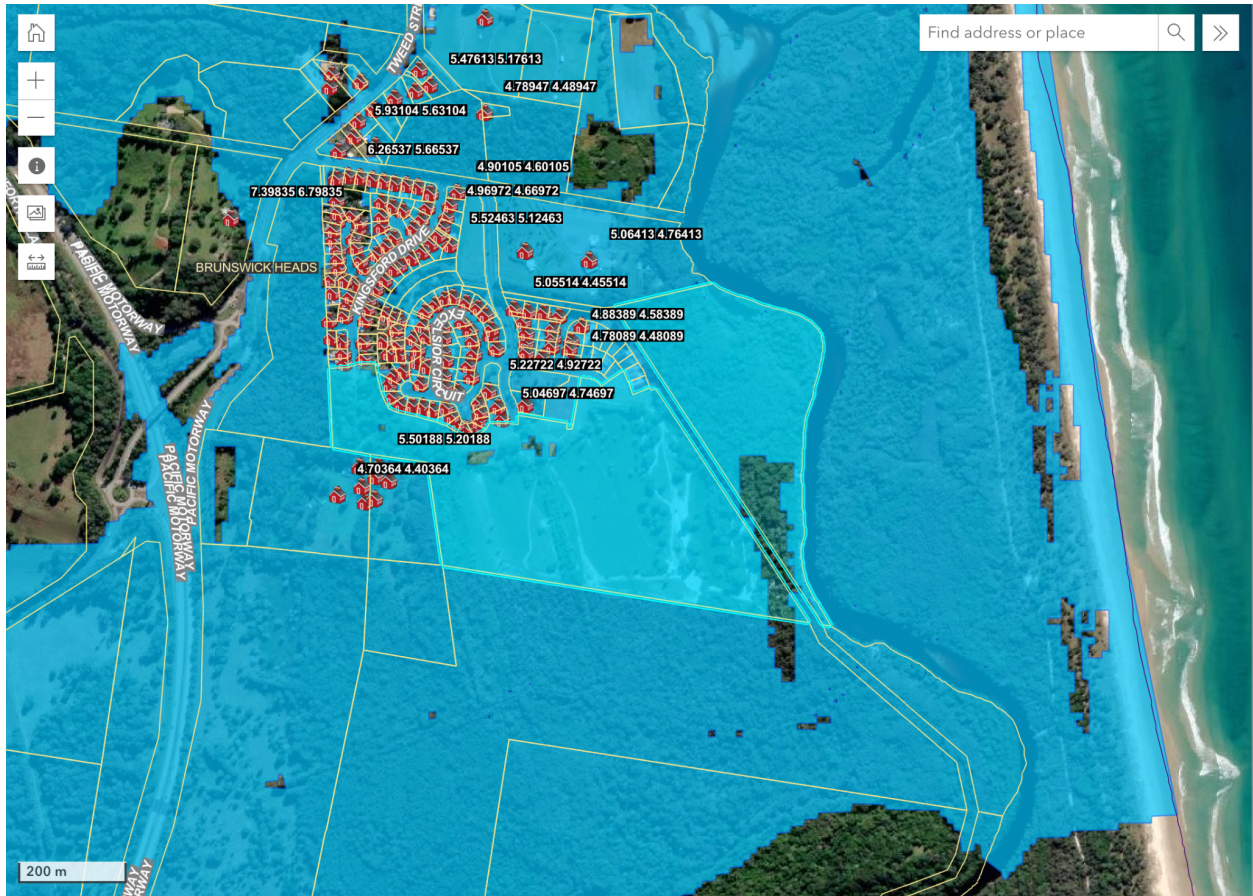
The 'offsets' outlined in the *Revised Wallum Froglet Management Plan*, as well as the *Revised Vegetation Plan* are inadequate, regardless of the 0.6ha gain to wallum froglet habitat that the reports outline. **The wallum froglet is just one threatened species of fourteen threatened fauna species reported by AWC to be present at the site.** 2:1 plantings of Koala and Glossy Black-cockatoo tree species does not offset the loss of existing, mature habitat and established food sources. Compensatory measures for the wallum froglet and olungburra frog are not satisfactory, especially as most of the sightings of these species are within the direct footprint of the proposed development. These compensatory measures will take decades to establish to the extent of the current habitat that will be lost.

A development of this scale within an MNES site, will have untold impacts on the surrounding 'protected' areas that the developer will dedicate to Byron Shire Council. The additional impact of roads and foot traffic will threaten the restoration areas that the developer is proposing, while also threatening the threatened ecological communities and species surrounding the development.

Further, other threatened species of fauna and flora, including endangered ecological communities, do not seem to be adequately accounted for in these reports. The lack of a publicly available or known Biodiversity Development Assessment Report (BDAR) for the site, due to the initial CPA in 2013 is inadequate. With a renewed interest from the Federal Government in MNES, as well as the 'death by a thousand cuts' clearing and biodiversity loss crisis that Australia is facing at a national scale, a Clause 34A Certification is inadequate for a site of such environmental significance.

Flooding

The site sits within a wetland/coastal swamp area that is known to flood (refer to figure from Byron Shire Council flood mapping below).



Next Steps

Given the aforementioned, this matter should be directed to the Minister for the Environment and Water, Tanya Plibersek, as the development will have or is likely to have a significant impact on one or more protected matters and therefore requires assessment and approval under the EPBC Act.

The authors of this summary document request answers to the following:

- A request to see the Species Impact Statements (SIS) that should have been completed as a part of the [Clause 34A Certification](#).
- Why Part 7 of the Biodiversity Conservation Act 2016 wasn't triggered as a part of this DA, given that final approvals were granted after this time. If this new legislation were triggered, a Biodiversity Development Assessment Report (BDAR) should have been required.

- The grounds on which the DA was approved, especially given the significance of the site, as well as the range of threatened species that will be impacted as a result of the development.
- The considerations that were made in regards to approving this development within a flood zone.
- Has an updated Vegetation Management Plan been submitted to Council as required under Consent Condition 6?
 - Has that Plan been assessed and or approved by Council?
- Has an amended Wallum Froglet Management Plan been submitted to Council as required under Condition 7?
 - Has that Plan been assessed and or approved?
- Has the Subdivision works certificate mentioned in Condition 7 been issued?
- Does Condition 9 apply to Water Management as implied by the heading, or to Water Monitoring as implied by the text?
- Is there a Surface Monitoring Plan (SMP) and a Groundwater Monitoring Plan (GMP) and what is the SWGMP?
- What indication is there that the drainage problem noted under Condition 11b (no slope in the proposed North South Drain) can be overcome, or that the required 0.25% gradient will overcome it?
- Has a Cultural Heritage Site Inspection Plan been submitted to Council as required under Condition 18 and has that Plan been assessed and or approved by Council?
- Where can we obtain the original Stormwater Management Plan by CivilTech Consulting Engineers?