



Office of Environment & Heritage

Our Ref: DOC17/176111
Your Ref: MP 09-0228 MOD 4

Rebecca Sommer
Senior Planner
Key Sites & Industry Assessment
Department of Planning
GPO Box 39
Sydney NSW 2001

Dear Ms Sommer

Re: North Byron Parklands, Cultural Events Site Major Project (MP) 09-0028 Modification 4.

Thank you for your letter dated 20 March 2017 about the North Byron Parklands MP 09-0028 Modification 4 (Mod 4) seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input.

Our review of the supplied Mod 4 documentation has identified number of issues relating to the current consent MP09_00028 Mod 3. The OEH anticipates that these issues should be resolved prior to any Mod 4 approval for MP 09_0028, or conditions included as part of that approval to ensure they are resolved.

The OEH notes, with reference to the Environmental Assessment report by PJEP Environmental Planning dated March 2017- Section 5.5.1, that the "*dedication executed by the Minister for the Environment on 25 April 2009*" referred to in the report is about the direct transfer of land under a proposed 'land-swap' arrangement. The land parcels included in the swap arrangement between the National Parks and Wildlife Service and the Billinudgel Property Trust Pty Ltd are shown in Figure 1 below, and are referred to as the Stage 1 lands. The land swap for the Stage 1 lands, which has not occurred, includes approximately 12 hectares of land held by the Billinudgel Property Trust in exchange for approximately 7.5 hectares of land held under Part 11 of the *National Parks and Wildlife Act 1974* (NPW Act).

In addition to the Stage 1 lands, a second and independent stage of land transfers (Stage 2 lands) was proposed to dedicate land to the Billinudgel Nature Reserve. Both stages remain consistent with the overall "Reserve land" proposal under the original "*Heads of Agreement – for the North Byron Parklands Festival Site*" drafted in December 2007, depicted in Figure 2. The OEH notes that these 'Reserve lands' are now subject to the Major Project 09_0028 (Mod 3) approval, and appear under the revised Ecological Structure Plan 2010 as "land to be dedicated to DECC".

The OEH recognises that the following issues remain unresolved due to inconsistencies within the interacting documents:

- i. the current permissibility of certain activities in the Stage 1 lands held under Part 11 of the NPW Act, given that the land swap has not been completed.

- ii. the superseding of legal descriptions (Lot/DP) and boundary alignments of the land parcels referenced under the existing 'Heads of Agreement' due to subsequent survey and subdivision meaning these descriptions are no longer relevant.
- iii. the lack of a formal approval by the Minister administering the NPW Act, or an appointed delegate, for the transfer of the Stage 2 lands for addition to the Billinudgel Nature Reserve.
- iv. the apparent inconsistency of the Mod 4 proposal to make all land transfers "*contingent on the Parklands securing permanent approval*", with the current interpretation of Condition 20(c) of MP09_0028 Mod 3 and the Statement of Commitments.

In our previous letter on this matter dated 3 November 2016 (our reference DOC16/548710), we also identified the need to revise the North Byron Parklands Flora and Fauna Rehabilitation Program to deliver the required habitat creation adjacent to the southern carpark.

In order to effectively address the issues listed above, the OEH recommends that prior to approval of Mod 4, or conditioned as part of the Mod 4 approval, the proponent should be required to:

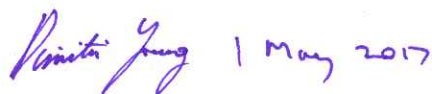
1. Prepare new Terms of Agreement (replace the existing "Heads of Agreement"), between Billinudgel Property Pty Ltd as trustee of the Billinudgel Property Trust (owner) of the North Byron Parklands and the NSW Minister (for the Environment) administering the NPW Act, or an appointed delegate. The new agreement is to be completed in consultation and to the satisfaction of the National Parks and Wildlife Service and finalised by 31 December 2017.

The new Terms of Agreement must:

- a. identify and map all the lands depicted on Figure 7 "land to be dedicated to DECC" of the revised Ecological Structure Plan approved by the Department of Planning and Environment and show land parcels as either Stage 1 (land-swap) or Stage 2 (land-dedication).
 - b. set out the operative and administrative provisions required to manage and transfer all lands.
 - c. set out the timing for when the required parcels of land will be dedicated to the OEH.
2. Revise the North Byron Parklands Flora and Fauna Rehabilitation Program to:
 - a. deliver on the 12.9 hectares of proposed new habitat under the Ecological Structure Plan to provide the buffer to Billinudgel Nature Reserve and the SEPP 14 Wetlands.
 - b. define and map the preferred plant community type(s) to be created over the site in consultation with OEH.
 - c. provide performance based actions, include a staged approach to the rehabilitation of the site if required to achieve the preferred plant community type(s).
 - d. provide the timeframe to achieve the target habitat creation under the existing consent and any post consent (ongoing) requirements as per the 10 year program.
 - e. reference the newly drafted "Terms of Agreement" (as per recommendation 1) in Section 7.4 Dedication of Land Parcels to OEH.

If you have any further questions about this issue, Ms Rachel Binskin, Regional Operations Officer, Regional Operations, OEH, can be contacted on 6659 8247 or at rachel.binskin@environment.nsw.gov.au.

Yours sincerely

 1 May 2017

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Regional Operations

Contact officer: RACHEL BINSKIN
 6659 8247

cc: Allan Peatman, Reserve Establishment Team Leader, NPWS; Damien Hofmeyer, Tweed Area Manager, NPWS

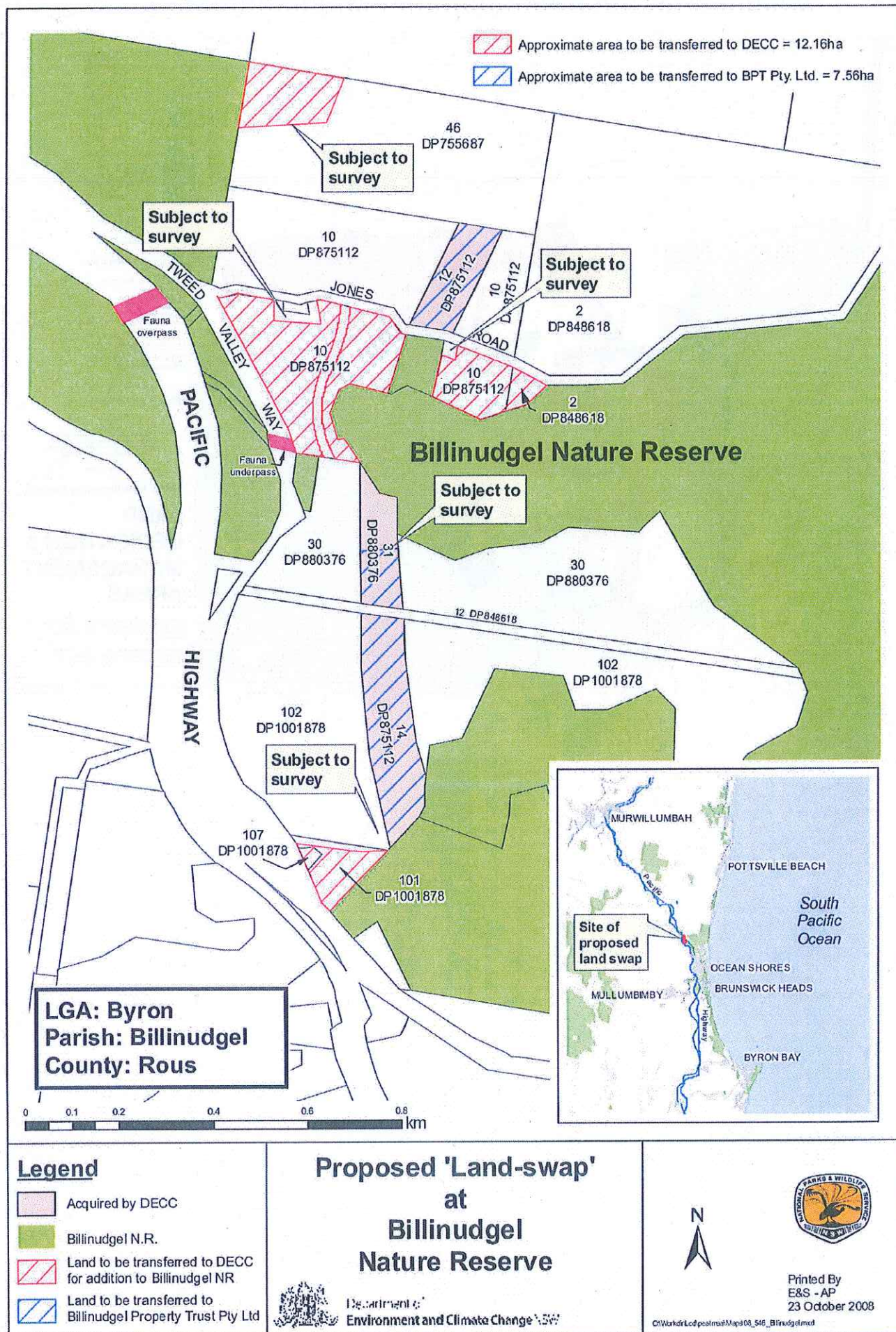


Figure 2 – Original Heads of Agreement 'Reserved Lands' map.
 The S1, S2, S4 and S6 lands are referred to as Stage 1, and the S5, S7, S8 and S9 lands are Stage 2.

