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20<sup>th</sup> May 2010

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Dear Darryl,

**RE: EPBC assessment for the proposed tourist accommodation on Lots 1, 2 & 3 DP 29748 and Lot 4 Section 1 DP 31209 Cypress Crescent, Cabarita.**

James Warren and Associates has prepared a report *Response to the Director General's Environmental Assessment Requirements (DGEARS), Flora and Fauna Assessment* for Lots 1, 2 & 3 DP 29748 and Lot 4 Section 1 DP 31209 Cypress Crescent, Cabarita (March 2010).

The following is an assessment, in accordance with the Commonwealth Environment Protection & Biodiversity Conservation (EPBC) Act (1999), to supplement the above mentioned Flora and Fauna Assessment.

**Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (NES Matters)**

The Environment Protection & Biodiversity Conservation (EPBC) Act (1999) was passed by Commonwealth Parliament in June 1999 and came into force on 16 July, 2000. A person must not, without an approval under the Act, take an action that has or will have, or is likely to have, a significant impact on a matter of National Environmental Significance (NES). These matters are listed as:

- (a) the world heritage values of a declared World Heritage property;
- (b) the ecological character of a declared Ramsar wetland;
- (c) a threatened species or endangered community listed under the Act;
- (d) a migratory species listed under the Act; or
- (e) the environment in a Commonwealth marine area or on Commonwealth land.

The Act also prohibits the taking, without an approval under the Act, of:

- (a) a nuclear action; or
- (b) an action in a Commonwealth marine area or on Commonwealth land that has or will have, or is likely to have, a significant impact on the environment.



An action includes a project, development, undertaking or an activity or series of activities. An action does not require approval if it is a lawful continuation of a use of land, sea or seabed that was occurring before the commencement of the Act. An enlargement, expansion or intensification of a use is not a continuation of a use.

The EPBC Act (1999) does not require Commonwealth approval for the rezoning of land. It does, however, suggest that when rezoning land, planning authorities should consider whether to allow actions that could significantly affect NES matters or the environment of Commonwealth land.

### ***Occurrence of Matter of NES on Subject Site***

A Commonwealth Assessment will be required for proposed activities on the subject site if they affect a matter of NES.

There are no declared World Heritage Areas or Ramsar Wetlands in the Locality, Study area or Subject site.

### ***Listed Threatened species***

No Commonwealth listed flora species or endangered Ecological Communities were recorded on the site.

One (1) Commonwealth listed threatened fauna species, Grey-headed flying-fox (*Pteropus poliocephalus*) (Vulnerable) - was considered to potential occur on the site over time.

### ***Listed Migratory Species***

Listed migratory species in NSW are considered predominantly in the Japan-Australia Migratory Bird Agreement (JAMBA) and China-Australia Migratory Bird Agreement (CAMBA).

No migratory species as listed within schedules of the EPBC Act (1999) were recorded on site or considered as possible occurrences on site.

### ***Assessment against EPBC Act Principal Significant Impact Guidelines***

The Assessment against the EPBC Act is made using Principal Significant Impact Guidelines 1.1 (DEHWA 2009). The guidelines outline a self-assessment process to assist in determining whether an action should be referred to the Department of Environment Water Heritage and the Arts (DEHWA) for a decision on whether Commonwealth assessment and approval is required under the Act. The following section is an assessment of the proposed development (the action) against these guidelines.

### **Vulnerable Species**

#### ***Significant Impact Criteria***

An action is likely to have a significant impact on a vulnerable species if there is a real chance or possibility that it will:

- lead to a long-term decrease in the size of an important population of a species;



- reduce the area of occupancy of an important population;
- fragment an existing important population into two or more populations;
- adversely affect habitat critical to the survival of a species;
- disrupt the breeding cycle of an important population;
- modify, destroy, remove or isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline;
- result in invasive species that are harmful to a vulnerable species becoming established in the vulnerable species' habitat;
- introduce disease that may cause the species to decline; or
- interfere substantially with the recovery of the species.

#### *Assessment of Proposed Action*

One (1) fauna species, listed as vulnerable within schedules of the EPBC Act (1999), was recorded from the subject site:

It is considered that the Proposed development will not result in any of the above listed impacts on the Grey-headed flying-fox.

It is considered that the subject site does not support an important population of any species listed in the EPBC Act (1999) and a significant impact on these species will not be incurred.

#### Requirement for Commonwealth Referral

Based on the assessment provided above, Referral to the Commonwealth Department of Environment Water Heritage and the Arts (DEWHA) is not required. The proposed action is unlikely to result in a significant impact on any matter of NES. It is concluded that Commonwealth Assessment is not required for the Proposed development of the subject site.

#### **Reference**

DEWHA (2009) Department of Environment, Water, Heritage and the Arts. Matters of National Environmental Significance. Significant impact guidelines 1.1 Environment Protection and Biodiversity Conservation Act 1999.

If you require any further clarification of these assessments please don't hesitate to contact us.

Yours faithfully,  
JAMES WARREN & ASSOCIATES PTY LTD  
Per:

James Warren  
MANAGING DIRECTOR