

21<sup>st</sup> February, 2024

Alexander Galea  
Manager – Agile Planning  
Department of Planning, Housing and Infrastructure

Delivery Via: [Alexander.Galea@dpie.nsw.gov.au](mailto:Alexander.Galea@dpie.nsw.gov.au)

Dear Alexander,

**RE: Response to Request for Information RR-2021-89 (PP-2021-4455) - Part of Lot 44 DP 1274452 South West Rocks (Saltwater) Planning Proposal**

Thank you for providing the request for information dated from the Biodiversity, Conservation and Science Division dated 23rd January 2024. We welcome such comments from the BCS.

The following letter provides further clarity in relation to requests that relate to the assessment of High Environmental Values within pat Lot44 DP1274452 Namely, comments 1, 2, 3 and 4. It is acknowledged that comment 5 relates more to the planning mechanism used to secure offsets under the KPoM and as such the responses to this point will be delivered by the planning team.

It is anticipated this correspondence contains relevant information sufficient to your needs, however if further information is required, please don't hesitate in contacting the undersigned on 0410 522 399 or alternatively at [karl.robertson@biodiversityaust.com.au](mailto:karl.robertson@biodiversityaust.com.au)

Kind Regards,

Karl Robertson  
BAM Accredited Assessor BAAS21022  
Principal Ecologist  
Biodiversity Australia

BCS Comment	Biodiversity Australia Response
<p>The planning proposal be revised to map all parts of the planning area containing land mapped on the NSW Biodiversity Values Map as HEV land and apply the C2 Environmental Conservation zone to this land.</p>	<p>The North Coast Regional Plan 2041 (NCRP) acknowledges that lands mapped as Biodiversity Values have <u>potential</u> to conform to High Environmental Value assets. The Biodiversity Values mapping within the Subject Land relates specifically to the Swift Parrot which is a listed Sall. Notwithstanding this, the Swift Parrot does not breed within mainland Australia and would only use the Subject Land as an absolute minute and insignificant portion of an enormous foraging range. As such, it is not possible that an assessment of Sall would determine any potential for significant impact to the species. Accordingly, the areas mapped as “important Habitat” for the Swift Parrot will trigger species credits for the species at the D/A stage. This incremental Species Credit generation is considered appropriate mitigator for the minute and incremental impacts that any proposed development may have on the species. This would not be sufficient to warrant the zoning of the land as C2.</p> <p>The BCS NE Branch Approach to Biodiversity Assessments for Planning Proposals describes the HEV criteria of Biodiversity Values Map as a criteria which should be inspected and verified. This inspection has been undertaken and like the information stated above, it has been determined that an amendment to the BV mapping is appropriate given that there is no likelihood of measurable impacts to any matters of Sall.</p> <p>Where the BV mapping is accurate, the NE BCS suggest that these areas should be mapped as HEV and subsequently C2. This is a contradiction to the Northern Councils Final Recommendations on C2 zonings and the NCRP which describes only “Key Threatened Species Habitat” as a justified reason for C2 zoning. The C2 zone recommendations also go further to describe Key Threatened Species Habitat as “<i>habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present</i>.” this is not the case with the Biodiversity Values mapping on the Subject Land and would thus not provide justification for C2 zoning.</p> <p>Appendix A shows the previous BV mapping within the Subject Land and the amended map. As stated above, this would require the Swift Parrot to be subject to species credits through the BOS during any development applications. This does not, however, justify a requirement for C2 zoning in these areas.</p>
<p>Surveys for Wallum froglet be conducted in the planning area in accordance with the NSW</p>	<p>The NSW Survey Guideline for Threatened Frogs (DPIE 2020) is designed to demonstrate with sufficient certainty, that a true negative record can be relied on. This is a very important process when an Accredited Assessor wishes to exclude a species based on them being absent during field surveys. However, this assessor is not attempting to make such as</p>

BCS Comment	Biodiversity Australia Response
<p>Survey Guide for Threatened Frogs (DPIE 2020).</p>	<p>argument. It has been very well documented over many decades, that the Subject Land provides habitat for the Wallum Froglet. This was also confirmed during the field surveys for this assessment and other concurrent BDARs.</p> <p>It must also be acknowledged that there are currently no approved Wallum Froglet experts listed. Notwithstanding this, an accredited assessor and strategic planner must use the best available information to make educated and informed decisions.</p> <p>Dimitri has described that the Wallum Froglet has been recorded numerous times within the planning area which is also incorrect. The Wallum Froglet has been recorded numerous times within the broader Subject Land however not within the Planning Area. This does not mean that Wallum Froglets would not ever occur within the Planning Area, in fact, it is considered very likely that the species would occur within the Planning Area during periods of very heavy and prolonged rainfall. However, this ignores the core definition of “Key Threatened Species Habitat” which is <i>“habitats for threatened species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present”</i>.</p> <p>When assessing the suitability of the Wallum Froglet habitat objectively, against the definitions presented above. It is irrefutable that the 2007 Connel Wagner report provides the most comprehensive and accurate description of which areas would conform to that definition. Given that the Connel Wagner report is from 2007, Biodiversity Australia engaged accredited assessor Damian McCann from Australian Wetlands Consulting (CV within Appendix B) to inspect the Subject Land and comment on the relevance of the 2007 Connel Wagner mapping and conclusions in the current day. It was concluded by Mr McCann that <i>“Soil and landscape factors have remained largely unchanged while vegetation has not changed materially with regard to the suitability for the species.”</i></p> <p>From the above, it is clear that Wallum Froglets may, from time to time, frequent the Planning Area during periods of extreme rainfall at the outer reaches of their local home range. Notwithstanding this, the lands which have been determined to provide “Key Habitat” for the species have already been studied and secured as C2 zones within previous planning proposals.</p>
<p>All confirmed Wallum froglet habitat in the planning area be</p>	<p>As per previous response, the presence of habitat for a threatened species does not provide sufficient justification for a C2 zoning. That must be determined by the presence of “Key Threatened Species Habitat” which is <i>“habitats for threatened</i></p>

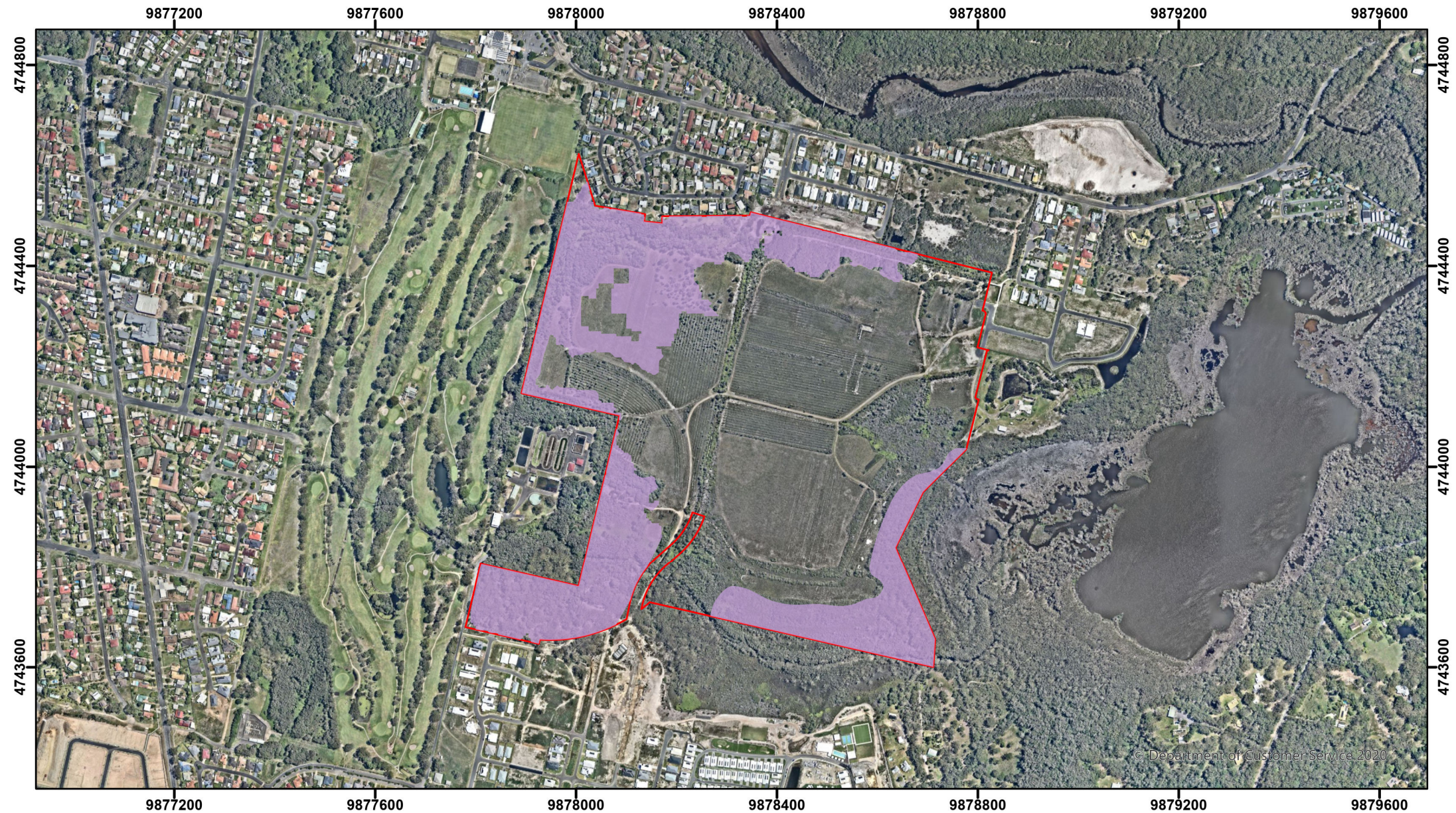
BCS Comment	Biodiversity Australia Response
<p>mapped as HEV land and the C2 Environmental Conservation zone applied to that land.</p>	<p><i>species or endangered populations that cannot withstand further loss where the threatened species or endangered population is present”.</i></p> <p>Under the assumptions of Mr Young, all flowering trees within NSW would hold sufficient enough biodiversity value to be considered for C2 zoning due to them providing potential foraging and young rearing resource for the Grey-headed Flying-fox. Accordingly, C2 zonings are reserved for “Key Threatened Species Habitat” and not broadly any threatened species habitat.</p> <p>The Connell Wagner LES is the best available resource to describe “Key Threatened Species Habitats” relating to the Wallum Froglet. The current validity of the Connell Wagner LES has been confirmed by Wetland Specialist – Damian McCann as shown in Appendix B. With this considered, the “Key Threatened Species Habitat” for the Wallum Froglet have already been incorporated through the 2007 rezoning of the broader subject land.</p>
<p>The planning proposal be revised to map all areas of Plant Community Type 4004 as HEV land and apply the C2 Environmental Conservation zone to that land.</p>	<p>Mr Young has based his position purely on the interpretation of guidelines rather than the underlying Statutes, Final Determination and Case Law. The position of this assessor remains the same and until the Final Determinations are formally amended, they will remain the same as a matter of professional objectivity.</p> <p>The use of edaphic criteria can, in no way, be considered a supplementary descriptor, further, vegetation composition is determined by the edaphic conditions and not <i>vice versa</i>.</p> <p>The importance of edaphic criteria is clearly demonstrated within the name of the TEC Swamp Sclerophyll Forest on <u>Coastal Floodplains</u> of the NSW North Coast, Sydney Basin and South East Corner bioregions as well as very clearly articulated within Part 1 paragraph 1 of the Final Determinations;</p> <p><b>NSW Scientific Committee - final determination</b></p> <p><b><i>The Scientific Committee has found that:</i></b></p>

BCS Comment	Biodiversity Australia Response
	<p data-bbox="611 515 1995 667"> 1. <i>Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions is the name given to the ecological community associated with humic clay loams and sandy loams, on waterlogged or <u>periodically inundated alluvial flats and drainage lines associated with coastal floodplains.</u> <u>Floodplains are level landform patterns on which there may be active erosion and aggradation by channelled and overbank stream flow with an average recurrence interval of 100 years or less</u> (adapted from Speight 1990).</i> </p> <p data-bbox="560 699 1904 786"> The position of the broader BCS to follow underpinning legislation and caselaw has recently been reinforced within Appendix E of the Updating BioNet Plant Community Types: Eastern NSW PCT Classifications Version 1.1 (2022) Guidelines, which states; </p>

BCS Comment	Biodiversity Australia Response
	<p data-bbox="600 531 1366 638"><b>Appendix E: Guiding principles applied to the process of identifying relationships between PCTs of eastern NSW and TECs</b></p> <p data-bbox="600 675 761 699"><b>A Preamble</b></p> <ol data-bbox="600 715 1400 1090" style="list-style-type: none"> <li data-bbox="600 715 1400 834">1. A Final Determination (FD) made by the NSW Threatened Species Scientific Committee constitutes the legal definition of a threatened ecological community (TEC), and is not superseded by any advice, publication or opinion (other than a revised Determination or a judgement of the courts). Applied interpretations of a TEC do not influence its definition unless confirmed through legal processes.</li> <li data-bbox="600 834 1400 930">2. A TEC is an assemblage of species in an area. A site cannot be diagnosed as representing an example of a TEC unless it occurs within the geographic boundaries stated in the Final Determination, and some component of the species assemblage listed in the Determination is found to be present.</li> <li data-bbox="600 930 1400 1090">3. The principles outlined in this document are relevant to the interpretation of Final Determinations for the purposes of the Department of Planning and Environment (DPE) operational needs to relate Approved plant community types (PCTs) included in the PCT master list. Other interpretations may exist elsewhere that may result in independent and alternative outcomes. Additional information in the form of published TEC interpretations and mapping may be considered but does not supersede the FD or constrain the interpretations of DPE.</li> </ol> <p data-bbox="560 1133 2004 1220">This assessor again asks that Mr Young applies professional objectivity on the topic and follows the guidelines of the DPE shown above by using the Final Determinations and relevant Case Law rather than subjective guidelines when determining the presence or absence of TEC's.</p> <p data-bbox="560 1257 1982 1345">It is acknowledged that the NSW Scientific Committee intends to revise the coastal floodplain EEC determinations, however, until such time as the Final Determinations are formally changed, the current legal definition of floodplain EECs will remain.</p>

## **Appendix A – BV Mapping Amendments**





### Legend

- Property Reference
- Biodiversity Values mapped for more than 90 days
- Biodiversity Values added in the last 90 days

## Map 1: Biodiversity Values Map - before review

**'Seabreeze Estate' South West Rocks NSW 2431**

Alexander Bradstock Tall TeeBee Holdings Pty Ltd

The NSW Government will be in no way liable for any loss, damage or injury arising as a result of your use or reliance on the Biodiversity Values Map, nor will it be liable for any indirect or consequential punitive or special damages or loss of profit.



1:10,000 at A4

GDA 1994 New South Wales Lambert

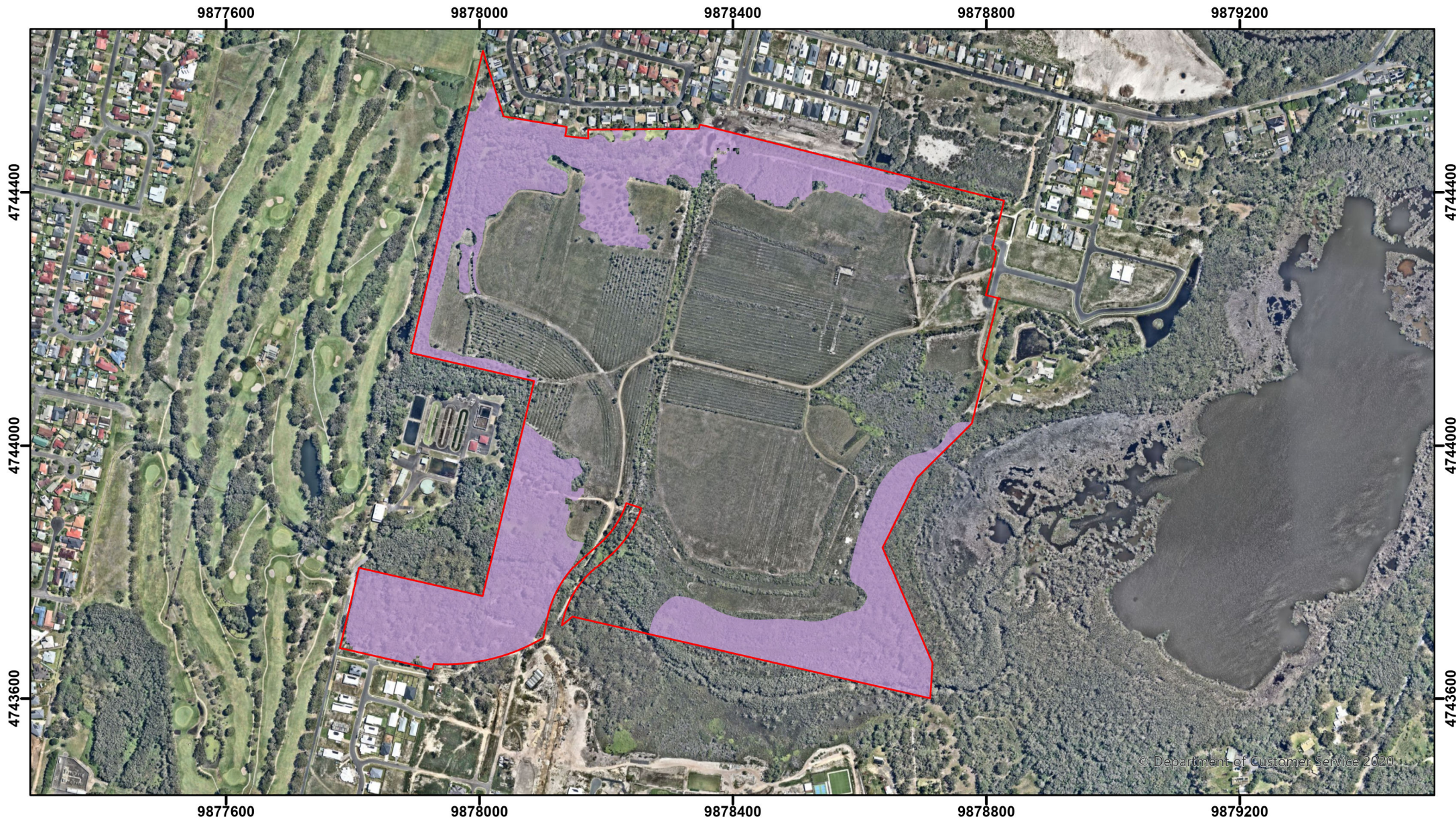
Data sources: Base imagery data supplied by Nearmap

Prepared by: Nicole Day  
Date prepared: 12/02/2024



Positional variances between data sources used for the map may occur due to differences in scale, date or method of collection.





## Legend

- Property Reference
- Biodiversity Values mapped for more than 90 days
- Biodiversity Values added in the last 90 days

## Map 2: Biodiversity Values Map - after review

**'Seabreeze Estate' South West Rocks NSW 2431**

Alexander Bradstock Tall TeeBee Holdings Pty Ltd

The NSW Government will be in no way liable for any loss, damage or injury arising as a result of your use or reliance on the Biodiversity Values Map, nor will it be liable for any indirect or consequential punitive or special damages or loss of profit.



1:8,000 at A4

GDA 1994 New South Wales Lambert

Data sources: Base imagery data supplied by Nearmap

Prepared by: Nicole Day  
Date prepared: 14/02/2024



Positional variances between data sources used for the map may occur due to differences in scale, date or method of collection.



## **Appendix B – Independent opinions on the current validity of the 2007 Connell Wagner Report**

Karl Robertson

Biodiversity Australia

Via email: karl.robertson@biodiversityaust.com.au

21<sup>st</sup> February 2024

Dear Karl

**RE: Saltwater Development South West Rocks – Wallum Froglet Habitat**

---

**Site context**

Saltwater Development is a residential subdivision covering approx. 110ha located in South West Rocks on the North Coast of NSW. AWC ecologist Gareth Davies undertook a site assessment of the entirety of the undeveloped site with a particular focus on Stages 5 and 6. The survey was completed on 11 and 12<sup>th</sup> of November 2023 following an extreme rain event in the prior week. The focus of the survey was to ascertain the presence and distribution of Wallum Froglets (*Crinia tinnula*). Habitat assessment was a generally qualitative exercise aiding selection of potential management zones and future monitoring points. Previous studies on the site including Connell Wagner (2007), while not directly assessed at the time, were used to provide useful context.

**Soil/Landscape**

While no direct soil assessment was undertaken by AWC it is noted that the general soil properties observed over the site include sandy deposits with an influence of organic matter. It is unlikely that without active human development soil characteristics would have altered since the 2005 Local Environment Study prepared for Kempsey Shire Council (Connell Wagner 2005). The findings of this report reflect observations made by AWC.

**Vegetation**

The report by Connell Wagner (2007) describes and splits the site into seven qualitative vegetation communities. In the 16 years between this report and AWC's assessment it is understandable changes are likely to have occurred in extent, distribution and structure of the defined vegetation communities. Nonetheless, the Connell Wagner report remains a fair representation of the current vegetation on site.

Differences were noted, however, in the boundaries between Sedgeland, Scribbly Gum Woodland and Mixed Sedge Heath adjacent to Saltwater Lagoon. Although the original mapping is relatively broad scale an expansion in regenerating Mixed Sedge

Water | Ecology | Management

25 Leslie St  
Bangalow NSW 2479

p. (02) 6687 1550  
e. [info@awconsult.com.au](mailto:info@awconsult.com.au)  
w. [awconsult.com.au](http://awconsult.com.au)

Heath was noted. This has formed a dense patch bordered on the east by Sedgeland and in the north and west by Shrubland disrupting the predominance of Scribbly Gum Woodland in this area. A sub-category of Mixed sedge Heath (Regenerated) would suitably describe this area. Scribbly Gum Woodland mapping is still representative south of Saltwater Lagoon and in the southwest of the site.

Further extension of thin swathes of Shrubland was noted along drainage lines across the site. Notably, presence of Wallum Froglet was observed to be associated with these vegetated drainage lines. Shrubland mapped in the south is representative of the observed vegetation.

### **Distribution of known population**

Wallum Froglet occurrence and distribution is generally limited to poorly drained wallum heath in low-lying wetland areas. Connell Wagner (2007) states:

*In this context, the vegetation associations on poorly drained swampy soils are considered to offer suitable habitat for the Wallum Froglet both within the study site and adjoining lands.*

Much of the site, particularly in the central and western areas is evidently subject to vegetation management with slashing removing any diversity in height structure and increasing openness comparative to the expected natural state of the communities. Nonetheless, observations recorded across the site show that with suitable conditions (ie. following heavy rain, warm/humidity evenings) the site is well utilised by Wallum Froglets. This is likely due to the linkages provided by vegetated drainage lines and ponding following heavy rain. Surface water was noted in a patchy distribution across the site one week after approximately 100mm rain. Disturbed/managed areas across the site therefore still provide quality dispersal and potential breeding habitat.

This finding confirms the suspicions of Connell Wagner (2007) who remain cautiously optimistic to the likely utilisation of slashed areas by the species noting research finding the species displays tolerance to “recoverable disturbances such as slashing” (Darkheart 2004; Darkheart 2006). The extensive observations by AWC confirm the 2007 report’s suggestion that:

*the area of potential Wallum Froglet habitat identified on-site would fulfil most aspects of the species’ lifecycle requirements, including foraging, breeding and shelter.*

### **Conclusion**

Site assessment by AWC in November 2023 has confirmed much of the same results as Connell Wagner (2007) despite the 16 year gap between surveys. Surveying for



Wallum Froglets in ideal conditions led to confirmation of suggestions the site provides widespread suitable foraging, dispersal and breeding habitat due to its ephemeral flood prone nature in combination with connected suitable habitat stretching from Saltwater Lagoon throughout the majority of the site. Soil and landscape factors have remained largely unchanged while vegetation has not changed materially with regard to the suitability for the species.

Yours sincerely,



Gareth Davies  
Ecologist



Damian McCann  
Senior Ecologist  
BAAS: 19080

## References

Connell Wagner (2005). *South West Rocks Local Environmental Study*. Unpublished report for Kempsey Shire Council by Connell Wagner, Newcastle.

Connell Wagner (2007) *South West Rocks LES Investigations: Detailed Wallum Froglet Study* Unpublished report for Kempsey Shire Council by Connell Wagner, Newcastle.

Darkheart Eco-Consultancy (2004). *Flora and Fauna Survey of Missen land, Boundary Street Port Macquarie*. Unpublished report prepared by Darkheart Eco-Consultancy, Port Macquarie.

Darkheart (2006). *Flora and Fauna Survey and SEPP 44 Assessment for Jimneva land, Dunbogan*. Unpublished report prepared by Darkheart Eco-Consultancy, Port Macquarie.

---

## Capabilities

- › Water Sensitive Urban Design
- › Expert Witness for environmental stormwater issues
- › Pollutant modelling
- › Urban stormwater management
- › Design of large-scale water quality systems in agricultural landscapes
- › Technical training on the design construction and management of stormwater infrastructure
- › Wetland, terrestrial and landscape ecology
- › Ecological Design and Rehabilitation
- › Stream management and rehabilitation

## Qualifications, Training and Accreditations

- › B App Sci – Social Ecology
- › B Sci Hons – Ecology
- › Riverstyles Geomorphic Assessment Framework
- › Graduate Certificate in River Restoration and Management
- › Masters of Environmental Management
- › Certified Biodiversity Assessor (BAM) (BAAS19080)
- › Certified Environmental Practitioner (CEnvP) (CEnvP)

## Professional Experience

Damian has over 20 years experience in the environment and stormwater fields with specialist expertise in stormwater management, catchment and water cycle management ecological restoration, geomorphology, environmental assessment.

Damian has held management positions with Australian Wetlands for over 20 years, and a Director of Australian Wetlands Consulting since 2009.

He has led multi-disciplinary teams on a wide array of projects throughout Australia, including the preparation of industry best practice guidelines, catchment management plans and design and construction supervision on Federally funded infrastructure projects.

Damian is member of the SQIDEP Technical Review Panel Established by Stormwater Australia.

Damian is unique in his ability to identify environmental solutions which are pragmatic and workable, drawing upon principles of ecology and bio-engineering.

## Selected Projects

- › Stormwater Quality Strategy for the West Byron Estate including consideration of pollutant loading limits of the Belongil Estuary
- › Bennelong Pond Stormwater Improvement Works, Review of Environmental Factors and Construction Supervision, Sydney Olympic Park
- › Astrolabe Park Wetland Design and Construction Supervision for EnviroPacific and Sydney Water
- › Babinda Creek Wetland Design - 10 ha constructed wetland and 45 ha floodplain restoration. Integrated water quality improvement and ecological restoration works as part of protecting the Great Barrier Reef

- 
- › Springfield Lakes Estate - retained advisor from 2009 to 2019 on WSUD, creek lines, wetlands and lakes for 10,000 lot estate
  - › Nerang River Estuary Study - leading a multi-disciplinary team to carry out an in depth investigation of water quality, riparian vegetation, geomorphology and aquatic ecology along 20km of waterway and over 400ha of lakes and canals.
  - › Stormwater Quality Strategy for Shoal Point Estate, Mackay, including consideration of pollutant loading limits of tidal wetlands
  - › Preparation of the Tweed Urban Stormwater Management Plan
  - › Tallebudgera Catchment Creek Catchment and Estuary Management Plan
  - › Expert Witness in Aquatic Ecology for Gold Coast City Council.
  - › Expert Witness in Ecology for Byron Shire Council.

## Conferences and Training

- › At least 1 paper and presentation at each conference:
- › Stormwater Industry Association National Conference 2018 - Nominated for Best Integrated Stormwater Design
- › NSW Stormwater Industry Association State Conference - Awarded Excellence in Integrated Stormwater Design (2017)
- › Advanced plant identification training – 5 days, University of NSW (2017)
- › 8th Australian Stream Conference, (2016)
- › Wetland Design and Management Seminars, Sydney, Albany, Brisbane, Townsville (Presenter) (2016, 2017, 2019, 2020, 2021)
- › International WSUD Conference, Sydney (2015)
- › International WSUD Conference, Gold Coast (2013)
- › QLD Stormwater Industry Association State Conference (2009, 2012, 2014, 2017)
- › Riverstyles Geomorphic Assessment Framework, Macquarie University, (2013)
- › International Society for Wetland Scientists / River Symposium – Brisbane (2011)
- › Biodiversity Assessment Method (BAM) training (2018)