



Our ref: AF: AW: 2007/084

6 October 2008

The Senate
The Chair, Standing Committee on
Environment Communications and the Arts
PO Box 6100, Parliament House
CANBERRA ACT 2600

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Attention: Anne McEwen Chair

By Express Post



Dear Ms McEwen

Senate enquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999* – response to submitter comments

We refer to your letter of 26 September 2008 addressed to Mr. John Casey of our Company.

We note that one submitter has commented adversely in relation to Juniper in the context of the enquiry and that you have afforded us the opportunity to provide a response to those comments, for which we thank you.

We wish to advise the Senate enquiry that the submitter's views are incorrect and do not represent the true status of the development or the works undertaken.

In summary:

1. Juniper does have approval to develop freehold land at Radical Bay, and as part of the development process has undertaken extensive research, consultation and discussions with relevant referral agencies (local, State and Federal), consultants, and other interested parties;
2. Juniper intends to comply with all requirements of its approvals and relevant legislation, and is very conscious of the importance of the area to the community as a whole;
3. Juniper has not bulldozed the site, nor undertaken any works without consent; and
4. whilst Juniper does not normally respond to rumour and innuendo, we can also assure the Senate that the development site is not currently listed for sale.

The following information is provided in support of this summary.

Approval

Juniper does have approval to develop the freehold site at Radical Bay. Extensive investigations and reports have been commissioned by Juniper in relation to that approval. Juniper has spent a number of years consulting with the various referral agencies and engaging appropriate consultants to advise us to ensure that the

development does not adversely impact on the surrounding areas and to ensure that we meet all required guidelines.

There are strict conditions to be complied with in relation to the development approval for Radical Bay and Juniper intends to comply with those conditions. This includes construction of the Radical Bay Road, ensuring continued access by the public to the Bay, as well as restrictions on heights of buildings, and protection of the surrounding environment (amongst many other items).

Juniper also intends to ensure that any development of the land includes obligations on future owners, by way of the body corporate by-laws, to abide by all applicable laws and requirements. This will include covenants such as limiting the type and density of lighting for beach facing buildings (so as not to accidentally interrupt turtle nesting), height limitations on buildings for minimisation of visual impact, prohibition in relation to interfering with native vegetation and so on.

Allegation of bull dozing and undertaking works without consent

When Juniper acquired the site at Radical Bay, it was a disused resort and contained the remnants of run down buildings, as well as escaped landscaping (non-native), and extensive weeds. The freehold area acquired by Juniper had already been cleared of both native and non-native vegetation, and did not contain any remnant vegetation.

The works undertaken by Juniper as a pre-cursor to its future development included removal of the disused resort and protection of the surrounding lands from escaped landscaping, weeds and non-native vegetation.

All of these works were notified to the DEWH prior to being undertaken, and the DEWH did not oppose those works. These works were also undertaken after direct discussion with the EPA, Local National Parks and Wildlife Officers, as well as the traditional owners of the area.

We can assure the Senate that Juniper has not bulldozed the site and has not undertaken any maintenance works without approval. In support of this assurance, we **enclose** a copy of a letter dated 15th September 2008 sent from our solicitors MacDonnells Law to the DEWH in response to similar allegations brought to our attention recently by the DEWH.

We have no hesitation in the Senate making our letter to the DEWH publicly available, in order that any public misconceptions are corrected.

Juniper is well aware of the special nature of Radical Bay and the importance of the area to the community as a whole; bulldozing the site certainly is not how Juniper conducts its operations at Radical Bay or elsewhere. We can assure the Senate that Juniper take their business and responsibilities seriously, and highly values its reputation.

We trust that the attached correspondence sufficiently details the position at Radical Bay in relation to Junipers approval to develop, and the maintenance works undertaken to date. We are happy to answer any further queries that the Senate may have in relation to this matter.

Yours faithfully


Alison Fleming
Corporate Lawyer

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Enc.

Our Ref: MAS:RHR:83038
Your Ref:

15 September 2008

Department of Environment, Water, Heritage and the Arts
GPO Box 787
CANBERRA ACT 2601

Attention: Drew McLean

**(EPBC 2002/713) Radical Bay, Magnetic Island
Allegations of Unlawful Clearing under the *Environmental Protection Biodiversity
Conservation Act 1999*
Juniper Property Holdings No. 7 Pty Ltd ACN 097 507 205 ("Juniper")**

We confirm we act for Juniper.

We refer to your correspondence dated 16 June 2008 addressed to Juniper in relation to allegations by third parties that unlawful clearing may be occurring at Radical Bay, Magnetic Island.

Approvals Background

As DEWHA is aware, Juniper holds Townsville City Council approval for a Tourist Resort at Radical Bay and post referral of the project to the (then) Department of Environment & Heritage (now DEWHA), approval under the *Environmental Protection Biodiversity Conservation Act 1999* (EPBC Act) was granted for the development, subject to conditions, under correspondence dated 16 May 2005 (DEWHA Approval).

To assist in detailing this response and for DEWHA's refreshment, we request that DEWHA make available to itself the Preliminary Information Package, lodged with the Referral [EPBC 2002/713] that achieved the DEWHA Approval. We will **attach** extracts (where reasonable in size) and refer DEWHA to the contents of that extensive package of data.

The Allegation

Juniper has not been provided with specific details of the actual complaints made to DEWHA by the third parties. DEWHA's correspondence dated 16 June 2008 simply advises that DEWHA officers, after attending a site inspection on 5 June 2008, "*report extensive clearing and estimate that approximately 90% of the site is now cleared of vegetation.*"

Juniper will respond to this broad statement.

DEWHA has also noted its concern over statements made by Juniper's (then) legal representatives, Suthers Taylor Lawyers, under cover of correspondence dated 1 November 2005.

This correspondence is also discussed.

The Development Area

Firstly, we are clear of what area DEHWA refer to as the "site". As we expect DEHWA officers saw on their inspection fencing located at Radical Bay, we wish up front to confirm that the fencing does not indicate the actual boundaries of the development area.

The Development Site consists of five (5) parcels of freehold land:

- Lot 34 on CP EP825;
- Lot 74 on CP2327;
- Lot 129 on CP EP825;
- Lot 130 on CP EP825; and
- Lot 192 on CP EP1237

and there are also two (2) Permits to Occupy (Permits) that remained granted to Juniper after Juniper relinquished significant leasehold interests¹. These are:

- O/220288 – over Lots 4 and 5 on AP11603; and
- O/220659 – over Lots A and B on AP11602.

It should be noted that Juniper relinquished these areas expressly to return them to the State for protection of the vegetation they held and the two (2) Permit to Occupy were surveyed and issued to directly relate to the **cleared** areas of land that existed at that time.

We refer you to Schedule 1 **attached**, which shows the final development site boundaries, overlaid on an aerial photograph. This document is Figure 1 of the C & B Report: 'Assessment of World Heritage Values' contained at Appendix 5 of the Preliminary Information Package.

The Site Plan in Schedule 1 also clearly indicates the extensive building infrastructure and cleared areas that already existed in 2002.

Earlier survey plans (undertaken by a previous owner) obtained by Juniper also confirm the cleared areas had existed for some time. We **attach** a Brazier Motti Detail/Feature Survey of Radical Bay Drawing No. 6311/29 Rev. A dated 16 February 1998 in Schedule 2. You will note the most dominant vegetative feature are palm trees.

The Extent of Vegetation on Site

Firstly, at the time of Juniper's DEHWA Approval, the development site had been extensively cleared and included significant abandoned built infrastructure. The plans and surveys contained in Schedule 1 and 2 **attached** confirm this unequivocally.

¹ on Lot 170 on EP232, Lot 198 on EP1451, Lot 88 on CP855228 and Lot 185 on SP1451

In terms of the vegetation that did exist on site, detailed expert survey and investigation was undertaken and has been provided to DEWHA as part of the Preliminary Information Package. In particular, we refer you to the Report and Supplementary Report by Landscape Assessment, Management and Rehabilitation Pty Ltd: Dr Michael Olsen which is contained in Annexure 3 of the C & B Report in Appendix 5 of the Preliminary Information Package (the LAMR Reports). That LAMR Reports confirm that exotic flora species dominate the freehold land parcels and that there was no vegetation within those areas that could be regarded as remnant vegetation per the criteria of the *Queensland Vegetation Management Act 1999*. We refer DEWHA to the complete LAMR Reports (and other correspondence from EPA in the C & B Report). For ease of reference here however we **attach** in Schedule 3, LAMR Map of 'Vegetation Present on Proposed Resort Site', which indicates the extent of degraded freehold weed dominated vegetation. You will note that the same aerial photograph has been underlayed in the LAMR Map for consistency.

The conclusions in relation to the non remnant and exotic status of the freehold land were supported by the Queensland and Environmental Protection Agency, which amended its Regional Ecosystem mapping, and we **attach** in Schedule 4 an extract from the Queensland Regional Ecosystem mapping for Radical Bay indicating the cleared status of significant proportions of the freehold land parcels.

Essentially, the above means that even if clearing was required, (noting the already cleared status of the site), clearing of the freehold land parcels under that designation does not require approval under the *Queensland Vegetation Management Act 1999*, the applicable legislation covering such matters.

Given the non-freehold nature of the Permit to Occupy areas, and to ensure (even though the areas were substantially clear anyway) completeness again, the Environmental Protection Agency (EPA) and the then Department of Natural Resources and Mines (DNRM) granted Juniper in April 2004, four (4) tree clearing permits (Clearing Permits) numbered:

- 2004/001890;
- 2004/001889;
- 2004/001877; and
- 2004/001873;

The Clearing Permits specifically required and authorised Juniper to undertake clearing in accordance with the conditions prescribed by the Clearing Permits. These documents are contained in Appendix 1 of the Preliminary Information Package.

Quite obviously, the development site has been substantially cleared of native or non-noxious vegetation for a significant period of time, even well prior to Juniper's ownership and the DEWHA Approval. For other areas, Juniper either held Clearing Permits, or was not required to obtain one.

Works Undertaken by Juniper

There has been some activities by Juniper on the development site, and a maintenance program for the access road to it. Firstly, to ensure continued public and private access is

maintained to the development site (and the Radical Bay Esplanade), Juniper undertook minor maintenance works to the access road.

The nature of these works consisted of filling potholes, trimming back vegetation overhanging the road which posed a hazard to vehicles and walkers, and re-bitumening certain areas where significant surface degradation had occurred.

The correspondence to the (then) Department of Environment and Heritage (DEH) by Suthers Taylor Lawyers dated 1 November 2005 was specifically sent to notify DEH of these works.

At this point, it is also relevant to point out that DEWHA's quote of the extract of "*minor nature in relation to access maintenance*" from the 1 November 2005 Suthers Taylor Lawyers letter, when properly read in context, quite clearly refers to these road access maintenance works. The statement was not made in relation to any clearance works on the Development Site proper. Juniper submits that in relation to clearing vegetation, those works (ie, the trimming back of trees off the road for vehicular and pedestrian safety) were minor and were properly identified to DEH at that time.

On the development site itself, Juniper then after direct discussions with EPA, local National Parks and Wildlife officers as well as the traditional owners of the area:

- Removed the dilapidated remnants of the former resort buildings on the development site including the various cabins, the large central nightclub facility and food-hall and all other built infrastructure;
- Located, filled in and made safe numerous uncapped wells on site;
- Cleared trees in accordance with the terms of the Clearing Permits;
- Removed significant rubble/rubbish and vegetation debris piled up on site (see Survey Plan in Schedule 2); and
- Removed non-native vegetation, escaped landscaping features, weeds and noxious plants as identified in the LAMR Reports (and in accordance with Queensland legislation which requires removal of noxious species).

All these intended works were notified in the correspondence to DEH by Suthers Taylor Lawyers dated 1 November 2005, which (as has now been done) then also indicated the site would be fenced. Rather than fence the actual boundaries and thereby remove further vegetation, the fencing was located so far as was practicable in cleared areas.

All these works (bar the ongoing weed management and general site maintenance) were completed by early 2006. No other significant works have been undertaken on site since.

Juniper does acknowledge that to a casual viewer (whom it is assumed may be the third party complainant), the removal of the significant buildings on site and the noxious weed and non-native species would give a viewer a significantly altered landscape, in particular a very open one not previously seen. Given the longstanding use of this site (see Table A in the Preliminary Information Report) – this site has not been viewed by the public without buildings for well over 20 years. Juniper confirms however it has not been the result of significant or unlawful vegetation removal that has created this effect, and the actual

development site (ie, not just the area within the fences) still retains vegetation that Juniper was not lawfully permitted to clear to proceed with the development.

Alleged Breach of DEWHA Approval

We note in DEWHA's correspondence dated 16 June 2008, DEWHA raised concern that to date it has not received any plans as required in accordance with condition three (3) of the DEWHA Approval.

This is correct. However, it should be noted that condition three only requires that plans are to be submitted to DEWHA for approval by the Minister **prior** to the commencement of construction of the Proposed Development. To date, **no construction** of the Proposed Development approved by DEWHA has commenced by Juniper and therefore, Juniper has not breached this condition by not yet providing such documentation.

Conclusion

Put simply, Juniper has been asked by DEWHA to provide information in relation to third party allegations that it has "cleared 90% of the site" purportedly in breach of the DEWHA Approval.

Juniper has confirmed that at no stage was the actual development site significantly vegetated in the first place, with the disused resort facilities, uncontrolled public access and carparking and significant building and vegetative debris littering a site that had been extensively cleared by previous owners.

We confirm Juniper has undertaken some works on the Development Site, as articulated in this correspondence and all has been:

- To remove building infrastructure and debris, already felled vegetation, escaped or non-native vegetation, landscape features or noxious weeds;
- Articulated to DEWHA prior to commencement under cover of correspondence dated 1 November 2005, by Juniper's legal representatives, Suthers Taylor Lawyers;
- In accordance with the Clearing Permits issued specifically for the purpose of clearing approved areas; and
- In accordance with the terms and its obligations under its Permits to Occupy, issued by DNRM and negotiated between Juniper, the EPA and DNRM to maintain the areas.

Juniper instructs that it has at all times undertaken clearing of vegetation on the Development Site lawfully and in accordance with permits and approvals obtained or granted as required.

Juniper does not believe any breach of its DEWHA Approval has occurred.

We look forward to receiving confirmation that investigations into these allegations are to be finalised and Juniper and Suthers Taylor Lawyers have no further case to answer to. We request that DEWHA confirm that no further action will be taken by DEWHA in this regard.

Should you wish to discuss the foregoing, please do not hesitate to contact Moya Steele at your convenience.

Yours faithfully

MacDONNELLS

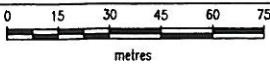
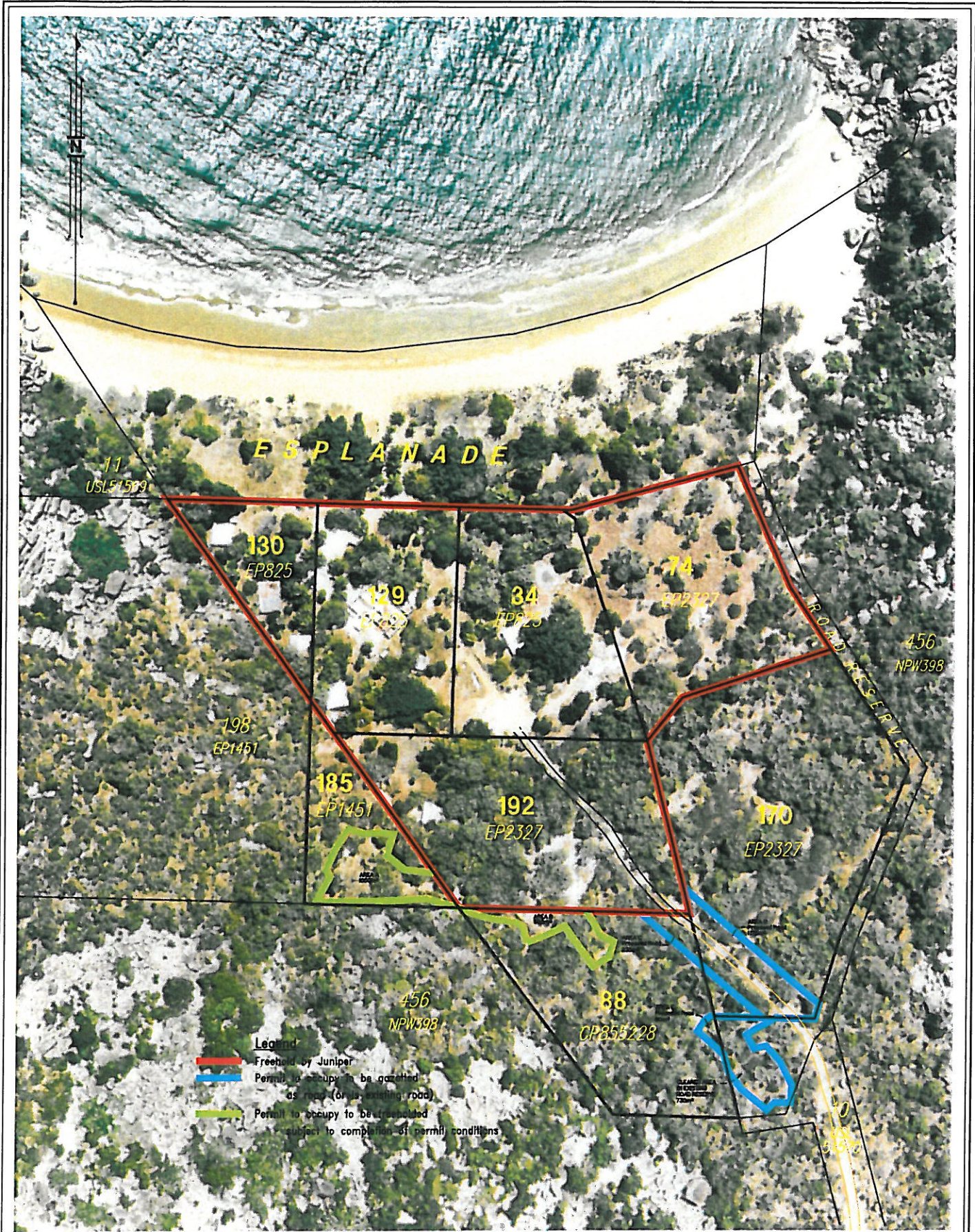
MacDonnells

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Enclosures.



Schedule 1
Plan of Resort Site



SCALE 1:1500 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

IMPORTANT NOTE

Cadastral boundaries are obtained by title dimensions and digitising from existing cadastral maps. These boundaries have not been verified and are approximate only.

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DRAFTING CHECKED	
CAD 7700-3B.DWG	

DESIGNED	
SURVEYED	
FIELD BK.	LEVEL DATUM
SHEET SIZE A3	SHEET OF SHEETS 1
SCALE 1:1500	

JUNIPER PROPERTY HOLDINGS No.7 PTY LTD

TITLE
RADICAL BAY RESORT SITE PLAN

CAIRNS OFFICE PO Box 1949 CAIRNS QLD 4870
TEL: (07) 4031 1336 FAX: (07) 4031 2942
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PROJECT MANAGEMENT
PLANNING
ENVIRONMENTAL SERVICES
SURVEYING



C&B GROUP

C&B CONSULTANTS PTY LTD
ACN 055 031 066

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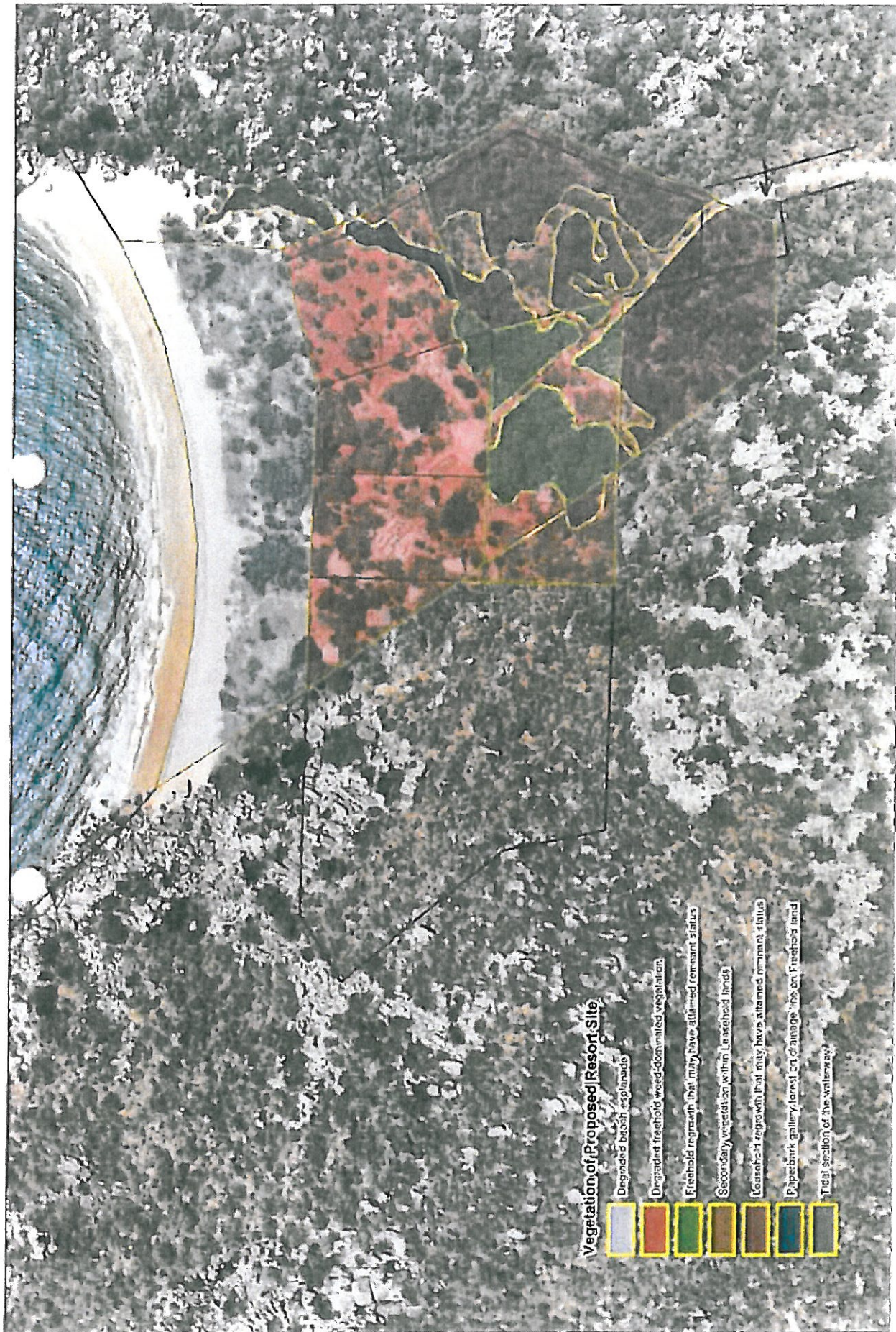
Schedule 2

Brazier & Motti – Detail/Feature Survey Radical Bay



Schedule 3

Vegetation Present on Proposed Resort Site



Vegetation of Proposed Resort Site

- Degraded beach grasslands
- Degraded treehold weed-dominated vegetation
- Treehold regrowth that may have attained remnant status
- Secondary vegetation within treehold lands
- Coarsest regrowth that may have attained remnant status
- Paperbark gallery forest or drainage lines on Freshet land
- Tidal section of the waterway



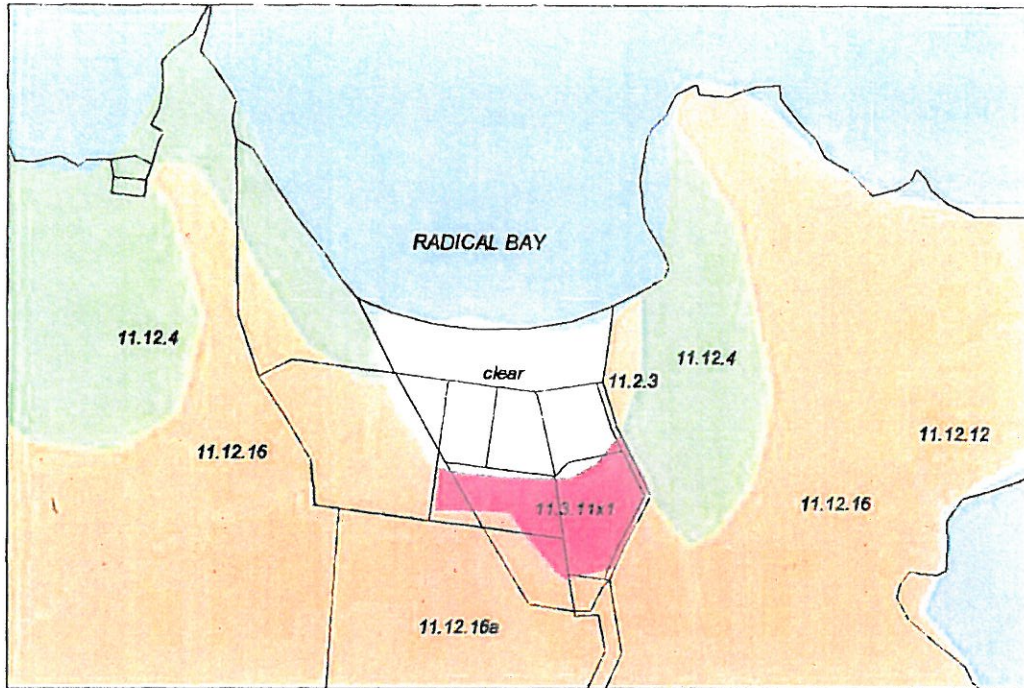
Vegetation Present on Proposed Resort Site

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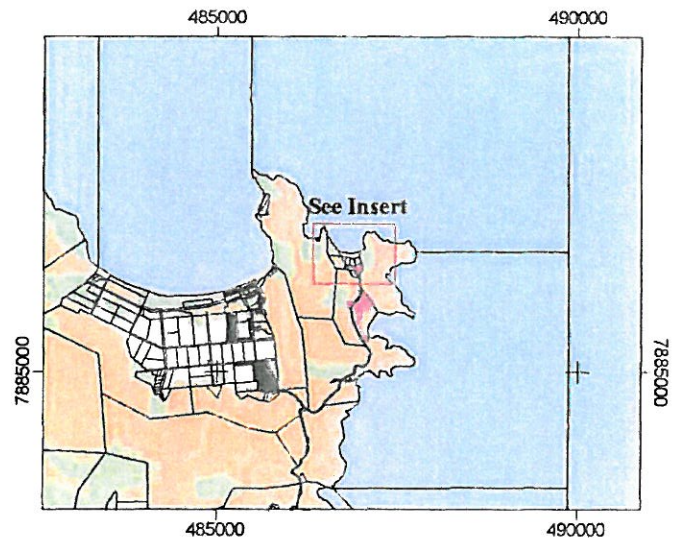
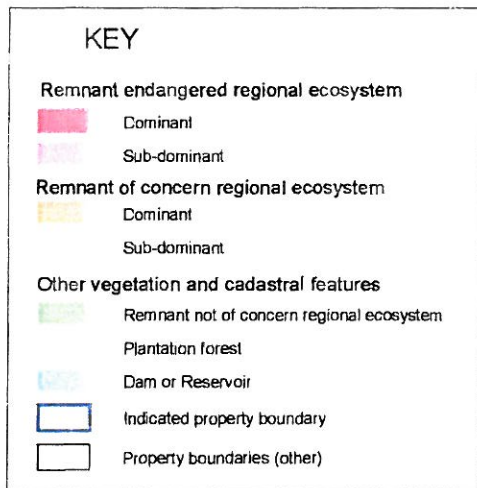


Schedule 4

Extract from the Queensland Regional Ecosystem Mapping for
Radical Bay



INSET: Not To Scale
 For the display of Regional Ecosystem Mapping codes only.
 Not to be used for the determination of boundaries



RADICAL BAY - MAGNETIC ISLAND

NON-STANDARD EPA Regional Ecosystem Mapping (Version 3.0) and Recent Map Modification T116 (Approved 30/9/2002)

GDA

Important Notice:
 The information
 herein is NOT an
 Official Record and
 its ACCURACY is
 NOT GUARANTEED.

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Horizontal Datum: Geodetic Datum of Australia 1994 (GDA94)

Regional ecosystem (RE) numbers

Defined map areas (polygons) are labelled with the regional ecosystem (RE) numbers. The bioregion of the RE has been truncated for display on the map.

eg. the Central Queensland Coast number 8.2.2 is shown as 2.2. REs of other bioregions occurring on this map have the full number.
 eg. the Brigalow Belt number - 11.9.2.

Data Source
 1999 Regional Ecosystems: version 3.0 and Map Modification T116



0 1000 2000 3000 4000 5000 Meters

1: 100 000

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 PROJECTION: Universal Transverse Mercator Zone 55
 HORIZONTAL DATUM: Geodetic Datum of Australia 1994 (GDA94)