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### Submission to The Independent Review of the EPBC Act Response to Discussion Paper

#### Introduction

The Clarence Environment Centre (CEC) has maintained a shop-front in Grafton for over 30 years, and has a proud history of environmental advocacy. The conservation of the Australia's natural environment, both terrestrial and and marine, has always been a priority for our members, and we believe the maintenance of healthy ecosystems and biodiversity is of paramount importance.

As such we believe a robust EPBC Act to seriously protect Matters of National Environmental Significance (MNES) is absolutely crucial to stemming the extinction crisis facing Australia today.

#### Discussion

The current 10 yearly review aims to look at how the EPBC Act has been operating, and identify any changes needed ensure it meets its objectives, and a discussion paper has been released.

As a reminder, those objectives, as outlined in the original act, are as follows:

#### **3 Objects of Act**

##### **(1) The objects of this Act are:**

- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and**
- (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and**
- (c) to promote the conservation of biodiversity; and**
- (ca) to provide for the protection and conservation of heritage; and**
- (d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and**
- (e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and**
- (f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and**
- (g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.**

##### **(2) In order to achieve its objects, the Act:**

- (a) recognises an appropriate role for the Commonwealth in relation to the environment by focussing Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas; and**

- (b) strengthens intergovernmental co-operation, and minimises duplication, through bilateral agreements; and*
- (c) provides for the intergovernmental accreditation of environmental assessment and approval processes; and*
- (d) adopts an efficient and timely Commonwealth environmental assessment and approval process that will ensure activities that are likely to have significant impacts on the environment are properly assessed; and*
- (e) enhances Australia's capacity to ensure the conservation of its biodiversity by including provisions to:*
  - (i) protect native species (and in particular prevent the extinction, and promote the recovery, of threatened species) and ensure the conservation of migratory species; and*
  - (ii) establish an Australian Whale Sanctuary to ensure the conservation of whales and other cetaceans; and*
  - (iii) protect ecosystems by means that include the establishment and management of reserves, the recognition and protection of ecological communities and the promotion of off-reserve conservation measures; and*

It is important to note the opening statement assuring us that the Act will: *“provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance”*, is not strictly true, and should read, **“provide only for the protection of matters of national environmental significance”**. This point is stressed by the federal environment office whenever submissions are called for in relation to any assessment under the act, such as referrals of controlled actions.

It is also important to note that, under the Act, federal authorities are only required to, *“promote the conservation of biodiversity”*, not actually to protect or conserve it. **Protecting MNES only, while ignoring the rest of our species and ecosystems is useless, and turns what its name suggests, legislation that protects biodiversity, into something little more than a licencing tool to destroy MNES, and their surroundings.**

The question that needs to be asked is, how effective is the EPBC Act in actually protecting that minuscule proportion of species covered as MNES under the EPBC ACT?

To answer that question we only need to look at the statistics, which show that, **since its enactment in 1999, only 21 out of approximately 1000 projects (D/As) called in for assessment under the Act, have not been approved, due to unacceptable impacts.**

While it will be argued that the referrals process has achieved acceptable levels of amelioration and mitigation, and in some cases have ensured the provision of offsets, the following are the reality:

1. No matter what ratio of offsetting that is provided, there is always a net loss of biodiversity.
2. The offsetting through voluntary conservation agreements (VCA), which are supposedly 'in-perpetuity', can be overturned by agreement between the landowner and the minister of the day by a stroke of a pen. These VCAs provide no protection against the unstoppable march of progress, and the critical infrastructure it demands. Nor does the VCA protect that land from mining – All of which devalues the entire off-sets concept.
3. On the matter of amelioration and mitigation it should be noted that there is little, or no, compliance monitoring carried out by local, state, or federal authorities. The Clarence Environment Centre has, over the past 2 decades, pointed out numerous incidents where consent conditions have been ignored. So what value can we place on these measures.

Then there are those cases where no off-sets are required, We will be detailing that case study below.

4. The EPBC Act can only protect species, populations, or communities heading for extinction, and then only those that have been formally recognised by a threatened listing under the Act.
5. **Whichever way you look at it, over the past 20 years, 979 approvals out of 1000 have seen countless MNES destroyed or otherwise negatively impacted upon. The cumulative impact of that is massive, and cannot be ignored.**

**We assert that if, for example, a species of national significance is deemed to be heading for extinction if the current trend is not reversed, and the primary reason of that trend is loss of habitat, the loss of any further habitat will simply accelerate that downward trend.**

Another concern is the failure to consider climate change, the phrase does not rate a mention, nor does fire or land clearing. Under the Act land clearing can continue unabated as long as MNES are not damaged. Of course, there is no requirement for farmers or graziers to undertake an impact assessment or even look for those MNES. What does that say for the effectiveness of the EPBC Act which cannot protect the forests that are so absolutely crucial to our future existence on this planet.

### **A Case in Point.**

The following is a collection of extracts from the Clarence Environment Centre's submission to the referral to the federal department of environment of a DA to clear 14ha of forested land at Iluka in northern NSW for a residential development. That proposal was shown to negatively impact, not only on MNES, 4 species, but matters supposedly protected under international treaty, 2 species, and a world heritage rainforest where 6 bird species and 3 microba species, listed as contributing to the "Outstanding Universal Value (OUV) of Gondwana Rainforest of Australia, have been confirmed by the proponent's consultant as occurring on the development site. Despit all of that, the project was granted approval with no offsets required. In approving the proposal, not only did the Referrals team ignore all recommendations made in submissions, but also ignored concerns expressed by the NSW Environment Department and the IUCN..

## **SUBMISSION**

**(Referral - EPBC 2017/8003?)**

**to Department of Environment and Energy Referrals re Stephens Holdings' (Ocean Park Consulting) "Preliminary Documentation" report**

The Clarence Environment Centre has previously identified the following matters of **National Environmental Significance** that trigger the need for Commonwealth Assessment and Approval. they are:

1. World Heritage properties;
2. Nationally threatened species and communities;
3. Migratory species.

Despite the proponent's earlier insistence that the potential impacts of the Hickey Street proposal are insignificant, and therefore did not justify a referral under the EPBC Act, the Department of Environment and Energy determined otherwise and called in the project as a Controlled Action. This has now resulted in the placing of the document, "**Final Preliminary Documentation - Iluka Residential Subdivision, Hickey Street, Iluka**", on public exhibition for comment.

As stated above, the Clarence Environment Centre has previously identified three of those matters of **National Environmental Significance** that trigger an assessment under the EPBC Act” they are:

- \* World Heritage properties;
- \* Nationally threatened species and communities;
- \* Migratory species.

All were covered in our submission (Reference No 2017/8003) delivered to the proponent, Stevens Holdings, on 23<sup>rd</sup> August, 2017.

**For some reason, a number of species of national significance, and one ecological community identified by the CEC, all acknowledged in the project's DA as occurring on the site, have been ignored in Ocean Park's “Preliminary Documentation”.**

Because we strongly believe the impacts on those matters are equal to, if not greater than the species that have been assessed, we have included them in the following submission.

## Discussion

The proposed development will cause the direct loss of some 14 hectares of native forest vegetation, which the proponent admits supports matters of national significance, EPBC Act listed threatened flora and fauna, migratory species, and Outstanding Universal Values of World Heritage parks.

The development, if approved, will sever a crucial east-west wildlife movement corridor (see plan below) that currently lies wedged between urban residential areas to the south and a golf course to the north. We believe the loss of that habitat and connectivity it provides, and its replacement with 141 residential blocks adding between 350 to 450 residents, some 300 motor vehicles, and many hundreds of dogs and cats to the small community, will pose a serious threat, not only to those matters of national significance, but to all native wildlife that currently utilise the site.



**Green hatching shows the minimum width of the broken wildlife movement corridor**

## Impacted matters of National Environmental Significance

### World Heritage Area

The IUCN (the International Union for the Conservation of Nature) has expressed concerns regarding the high impacts of adjacent land-use on the outstanding universal values of the Gondwana Rainforests World Heritage Areas. **The one specific issue** mentioned in their outlook, published in 2014 (but based on an assessment conducted in 2012), was in direct relation to the Iluka Nature Reserve.

See [http://www.worldheritageoutlook.iucn.org/search-sites/-/wdpaid/en/12202?p\\_p\\_auth=2MV0kDQ8](http://www.worldheritageoutlook.iucn.org/search-sites/-/wdpaid/en/12202?p_p_auth=2MV0kDQ8)

The current threats to the World Heritage area (listed in the Full Assessment, under Threats, and then, Current Threats) include the following:

#### ***Housing/Urban Areas - High Threat***

***“Incompatible land-use on adjoining properties and pressure for residential and tourist development due to increasing urbanization and population pose a high threat. Diversity in local government zoning policies creates a potential for inconsistent planning”*** (Periodic Report, 2003).

The IUCN is clearly concerned about urban encroachment, but is probably unaware that recent legislative requirements in NSW **actually require public land managers, including the National Parks and Wildlife Service, to develop “Strategic Fire Management Plans”** where their land abuts residential areas. This results in regular hazard reduction, either by too frequent burning, a listed Key threatening Process, mechanical slashing, or both. This is an emerging threat to all forest types, exacerbating the threats, particularly in National Parks which, ironically, are created to protect those natural values.

In the case of the Hickey Street development, it will mean changes to the management of the vegetation in the adjoining nature reserve, and hence the contiguous forests of the Bundjalung National Park, and Iluka's World Heritage littoral rainforest, all lying to the east of the site.

Therefore we assert that that immediate area will be impacted by 3 Key Threatening Processes as a direct result of the proposed development:- a range of **“edge effects”**, and the mandatory hazard reduction that will involve **“too frequent fire”**, and/or **“clearing of native vegetation”**. Add to that the high probability of increased **“predation by cats and dogs”**, and increased **invasion by exotic weeds**, and we agree with the IUCN's assessment that the development is incompatible with World Heritage values, and pose a significant additional threat to the Nature Reserve's heritage status.

The consultant, Ocean Park's preliminary documentation quotes UNESCO as acknowledging most of the IUCN's concerns, stating (page 17) that: ***“UNESCO – 24 June – 6 July 2012 identifies potential impacts on Gondwana Rainforests of Australia to be associated with impacts of climate change, high levels of visitation, fire management, and effects of invasion by pest species and pathogens”***. Not surprisingly, the consultant makes no mention of the high level of threat through ***“Incompatible land-use on adjoining properties and pressure for residential and tourist development due to increasing urbanization and population”***, which were identified by the IUCN.

The consultant reports that: ***“The distance from the subdivision Lot 99 DP823635 eastern property boundary to the indicative line of the extent of the Littoral Rainforest situated within the Iluka Nature Reserve is some 220m”***. This is barely the length of two football fields, clearly not an adequate buffer in our opinion (and that of the IUCN). However, in relation to this matter, Ocean Park Consulting makes the following assessments:

- ***“The proposed development does not in any way influence the existing institutional arrangements for the management of the Iluka Nature Reserve”***. As already pointed out, with the development of a residential zone, comes the mandatory fire management which will **“influence the existing institutional arrangements”**.

- *“It is considered **unlikely** that the proposal will result in a significant adverse impact on the constituent bird OUVs (Outstanding Universal Values). **Importantly, the interaction of this species with the World Heritage estate is unlikely to be interrupted or diminished**”.*  
This assessment is made for each of the 9 species listed as OUVs.

The multiple use of the word “unlikely”, suggests a degree of uncertainty on behalf of the consultant's assessment which, in our opinion, is warranted. We believe, the 200m wide gap created in an existing wildlife movement corridor, would both “interrupt and diminish” the ability for wildlife movement, **and therefore “interrupt and diminish” the interaction of these species with the World Heritage estate.**

- *“These species are all highly mobile (some even migratory) and therefore able to exploit widely separated resources. The additional fragmentation of habitat is unlikely to prevent or interrupt localised movements of these birds. Therefore, the connection of habitats for these OUVs with Iluka Nature Reserve's World Heritage property will not be severed”.*  
The fact that Littoral Rainforest, and 8 of the 9 nominated OUVs is clear evidence of the existing connectivity of the site with the World Heritage area. To suggest removing a 14ha slice of forest, severing that corridor, will not have significant impact, is absurd.

While the mobility of these species is not questioned, we assert that many of these birds show a preference for the safety of relatively dense under-storey habitat. They are reluctant to cross open spaces as it leaves them vulnerable to predators, particularly raptors, and even other aggressive species like Butcher Birds, Magpies, Kurrawongs, and even some larger Honeyeaters, that tend to be territorial. Nocturnal species like microbats are likewise open to predation by owls, and would also be reluctant to venture across wide open spaces.

- *“In relation to World and National Heritage Values this preliminary documentation considers appropriate ameliorating and offsetting measures that reflect the OUV, integrity, and management and protective arrangements of the Iluka Nature Reserve.*

*Avoidance and mitigation measures to ameliorate the potential impacts are;*

- delivered by the layout of the proposal,*
- by the retention of the best habitats on the site,*
- by the ongoing conservation management of those retained areas, and*
- by direct actions during the clearing and construction phases.*
- These actions are further supplemented by the implementation of a number of offsets on site that involve replanting of trees and replacement of specific habitat features”.* This attempt to sell the methods to be used to remove 14ha of wildlife habitat as being beneficial to the World Heritage estate, is truly astounding.

Also astounding is the consultant's attempt to depict (page 121) the development's:

- close proximity to access the Iluka Nature Reserve (World Heritage area); and*
- close proximity to the Bundjalung National Park and associated facilities”,*

as sustainable design principles.

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## **Nationally Threatened Species and Communities**

### **1. Koala (Vulnerable EPBC) *Phascolarctos cinereus***

The proponent's consultants record the following threats to Koalas, as identified by the NSW Office of Environment and Heritage, that are relevant to the proposed Hickey Street development:

- *Vehicle strike*
- *Loss, modification and fragmentation of habitat*
- *Predation by roaming or domestic dogs*

- *Poor understanding of population distribution and trend*
- *Poor understanding of animal movements and use of habitat*

The “Final Preliminary Documentation” then makes the following comments:

On page 61, Ocean Park Consulting acknowledges that: *“The proposal has the potential to impose both direct and indirect impacts on this species as a result of loss of habitat, fragmentation of habitat, degradation of habitat, and introduction of additional known threats such as dogs, cars and swimming pools.”* These are all threats that are driving Koalas towards extinction, yet the consultant argues that they are not significant because. *“the region is overwhelmingly dominated by vegetated lands; an overwhelming majority of that vegetation is reserved”*. Of course there is also the clinching argument that, *“the subject site is small in this context, contributing less than 0.7% of the vegetation in the region”*.

**We assert that, if loss of habitat is combining to drive Koalas to extinction, even a further 0.7% loss is a significant threat, and therefore unacceptable.**

Other comments used to down-play the significance of the Iluka Koala population include:

Page 19 contains the statement that: *“There is to be new planting along the new street / road verges to facilitate movement of fauna – particularly Koala through the developed landscape”*. Readers would be excused for thinking the developers were undertaking the development on cleared land and doing Koalas a favour by planting trees on new road verges. The original DA said those trees would be feed trees, but when it was pointed out that Eucalypts are not recommended as street trees because they drop limbs, the word “feed” has now been dropped.

Page 19 also contains the statement that: *“The development includes fire management by providing greater access to vegetation retained areas and includes water supply fire hydrants to augment fire management activities”*.

Again the inference appears to be that by clearing 14 hectares of flammable forest, this would be beneficial by lowering the threat of bushfires, which also kill Koalas, and create easier access to fire fighters. No mention of the additional 140 households that will be living in close proximity to the surrounding forests, and the threat posed to them from bushfire.

On page 39 we are told that: *“To prevent Koalas climbing into enclosed yards and potentially being attacked by dogs, external boundary fences will be designed to be Koala-proof”*.

This fencing prescription was added as a result of criticism, particularly from the CEC, of the original DA's promise to provide: *“Open style fencing that will not impede Koala movement”*

Page 45 contains an acknowledgement that: *“Potential habitat for the Koala on site is recognised”*. A consultant's camera trap captures an image of a Koala; numerous recognised Koala feed tree species are confirmed by the consultant as growing across the site, so **“potential”** habitat is recognised! What would it take to have them recognise **“actual”** habitat?

On page 60 there is the contentious claim that: *“The Koala population of the region has been well studied by researchers from NSW National Parks and Wildlife Service (e.g. Lunney et al. 2002, Moon 1990), and consultants for Council (e.g. BioLink 2012). These studies reported that Iluka supported a very large population of Koalas in the 1970s, and documented its inexorable decline since”*. The original DA totally ignored the latest 2012 Biolink findings, which made the comment that: *“Amongst the anecdotal records are indications of at least one breeding female. Such data establishes that the suggestion of the demise of the Iluka population as reported by Lunney et al (2002) and the Recovery Plan (DECC 2008) has been premature”*. Again it was the CEC that criticised the consultant's focus on the negative aspects of the Lunney report, while completely ignoring the latest information.

Even now, despite finally acknowledging that the Biolink report exists, the consultant still claims: ***“Therefore, this population has been declared functionally extinct (Lunney et al, 2002)”***. Adding comments like: ***“the CKPoM (a 2008 document which was based on the Lunney report) has determined that the Iluka area no longer contains a breeding population”***, and that, ***“BioLink (2012) ... “inferred” the presence of at least one breeding female***. The use of the term “inferred, clearly designed to suggest there was no truth to the report, despite the pair being photographed in an Acacia on the development site by a local resident. Another very young Koala was photographed in 2017, and seen by numerous residents, clinging to the side of a house, again close to the subject site

On page 61, under the heading, ***“Direct loss of foraging habitat”***, the consultant's report acknowledges that: ***“The proposed footprint will permanently remove potential foraging habitat for the Koala in the 216 trees identified within the footprint that are preferred food tree species, and 39 supplementary food trees”***. A total of 255 Koala feed trees! And they call that ***“potential foraging habitat”***? But then then again the clincher: ***“This represents 0.6% of the 2,067 hectares of potential suitable habitat estimated to occur in the region”***. It's always the same argument, there is always plenty of habitat left, so the wildlife won't miss this little 14ha hole in their environment. **The cumulative impacts resulting from the hundreds of DAs that are presented annually across the North Coast of NSW, all making the same claim, is never considered. Why not?**

## **Discussion**

Koala numbers have dwindled across the Iluka peninsular due to a combination of factors including fire, habitat loss, vehicle strike, dog attack, stress-induced diseases, most of which will be exacerbated by the proposed development. This alone should ensure no approval is granted to allow further clearing, not to mention the addition of hundreds more cars, and dogs, and the added stress to the remaining Koalas.

### **Recent confirmed Koala sightings near the DA site include:**

5/1/17. On a power pole in Elizabeth St, some 250 metres from the subject.

10/2/17, 16/4/17, 19/4/17 on private property in Elizabeth St, including a young Koala photographed clinging to the side of a house, again close to the subject site

10/02/17 a sighting the animal was situated in a Paperbark tree (*Melaleuca quinquenervia*), a known feed tree.

16/04/17 sighting of a Koala in a Cypress Pine (*Callitris columellaris*) and

19/04/17 sighting of a Koala in Pink Bloodwood (*Corymbia intermedia*).

In conclusion, we believe the proposed Hickey Street development will have seriously negative impacts on the local Koala population just when the population is showing signs of recovery.

## **2. Spotted-tailed Quoll (Endangered EPBC) *Dasyurus maculatus***

The Preliminary Documentation report tells us that the survey undertaken at the Hickey Street site, which included stagwatch, spotlight, community survey, camera trap, predator scats, and hair funnels, was adequate for the species. The fact that no Quolls, or traces of the animals were found, is used to down-play any threat to the species through the plan to bulldoze 14ha of forest.

The Report does however acknowledge that: ***“Potential habitat for the Spot-tailed Quoll on site is recognised”***. Yet despite that admission, the consultant down-plays that potential habitat for Quoll on the development site, asserting: ***“The potential habitat on site is not high quality, given the abundance of degraded vegetation, and the absence of den sites”***. The report also casts doubt on the veracity of the publicly-available databases, pointing out (page 63) that all but 2 of the records came from a community survey, concluding that: ***“Therefore, the locations and time of observations may be unreliable and may include multiple records of the same animal”***.



We should point out that one of the longest running and extensive fauna surveys ever undertaken in the Clarence Valley, that for the Shannon Creek dam which resulted in a 1,400 page Species Impact Statement, also failed to find any trace of Quolls. However, post construction surveys undertaken by Clarence Valley Council using motion detection cameras, have recorded multiple sightings of this highly cryptic animal, all across their 5,000ha holding. Quolls are very shy and hard to detect.

At Iluka, there is a 2004 Bionet Wildlife Atlas record for Quoll, sited across Iluka Road to the east, less than four hundred metres from the Hickey Street site and, according to the project's DA, there are ***“16 records from the broader study area”***. That DA also quotes the fact that ***“Spotted-tailed Quolls require large areas of relatively intact vegetation for foraging (NSW NPWS 1999)17 and is an opportunistic hunter and scavenger”***, but went on to say: ***“The Spotted-tailed Quoll is unlikely to occur, but if so, is most likely to use the site as a movement corridor”***.

We know from the Office of Environment and Heritage website, that ***“Spotted-tailed Quolls favour rainforest, closed canopy Eucalyptus forest, creek and river forest habitats but will also venture into adjoining woodlands and open pasture-land in search of food”***. Also that the Quoll, ***“is subject to threatening processes that generally act at the landscape scale (eg habitat loss or degradation)”***, and that: ***“Their large home ranges can extend for several kilometres in each direction from a smaller core range, and the range of a male quoll often overlaps those of several females”***. All of this information is acknowledged in the report.

Clearly, Quolls favour closed canopy forests for den sites, and that preferred habitat type occurs both to the east and immediately west of the Hickey Street development site. However it is equally clear that they require a wide area of relatively intact forest of various types for foraging purposes, all of which are equally important to the Quolls wellbeing.

The “Preliminary Documentation” report does recognise the possible use of the corridor, but denies any impact, and instead focuses on the usual, “only a small piece of bush that will be lost” argument, stating these, ***“small scale losses of potential habitat are unlikely to result in a significant adverse impact”***. Claiming only ***“0.8% of the area of habitat estimated as available within the region”***, will be lost.

On the other hand we strongly believe that the consultant's dismissal of the relatively intact forest corridor on the development site because it ***“is not high quality habitat”***, is unacceptable. The complete removal of 14ha of forest which will sever that corridor, which connects to prime habitat on either side, constitutes significant habitat loss and degradation, **the key threat identified by the OEH that is driving the Quoll to extinction.**

### **3. Grey-headed Flying-fox (Vulnerable EPBC) *Pteropus poliocephalus***

With an active Flying-fox colony which includes the Grey-headed species, only a few hundred metres away at the time the surveys were undertaken (we understand that colony might no longer be in residence), it was surprising to read that ***“Grey-headed Flying-fox not recorded during survey”***. At least it is acknowledged that: ***“Potential habitat for the Grey-headed Flying-fox on site is recognised”*** (the original DA didn't even consider the species).

There is little doubt that if any of the *Myrtaceae* tree species, *Eucalyptus*, *Corymbia* etc; Banksia, or Melaleuca species are flowering, that Grey-headed Flying-foxes would be present at night, especially during the summer months.

The report identifies threats to the species from the development including loss, fragmentation, and degradation of foraging habitat, all factors known to be contributing to the species' decline. Therefore, we believe the proposed removal of some 14 hectares of the species' foraging habitat will have a considerable impact on the species at a local level, and the DA should be rejected.

#### 4. Scented *Acronychia* (Endangered EPBC) *Acronychia littoralis*

A small sub-population of *Acronychia littoralis* consisting of some 30 stems is located on the eastern (Iluka Rd) side of the subject site. A 2012 letter from Royal Botanic Gardens confirms their identity. A Bionet Wildlife Atlas recording from 2006 also correctly shows their position on the subject site.

We make these points because, despite being given precise location details, the applicant's consultant (Keystone Ecological Pty Ltd) has failed to fully acknowledge their occurrence. In fact the Preliminary Documentation Report states: ***“The presence of this species on site was not confirmed, although potential habitat is recognised”***. Their ecologist originally claimed the plants were the common *Acronychia oblongifolia*, and then suggested, they might be hybrids. Then later (in the second DA) they claimed there was ***“tantalizing evidence to suggest that this specimen (the one held at the Sydney Herbarium) may have been collected from the Landcare works area”*** across the road; just some of the tactics used to cast doubt on the identification of those trees.

On page 46, we are informed that: ***“Significant survey effort was undertaken in relation to this species”***, with ***“Targeted survey undertaken during the required months, with total targeted survey on site being at least 110 person hours”***.

In our opinion, ***“significant survey effort”*** is a gross understatement. An extraordinary level of effort has gone into attempting to **disprove** the previous reports that one of three *Acronychia* species found on site is *A. littoralis*. Even specimens from a Port Macquarie population were collected for comparison.

All this has allowed the consultants to conclude (page 159. Keystone Ecological Report) that: ***“There are no reliable, verified records of this species from the site or its immediate surrounds”***. We believe that the subsequent acknowledgement (page 160) that more than 10ha of potential habitat for the species is likely to be destroyed by the project, is the likely reason for this clearly excessive “survey effort” to question their identity.

The trees in question are no secret and, we understand, the Royal Botanic Gardens confirmation of their identity pre-dates the surveys undertaken for the development. The trees in question have been tagged and examined, they have flowered and fruited several times since the first surveys were undertaken for the development.

The reality is that the consultants have been working on and around the site for more than 3 years, and while they claim to have been unable to confirm the species' identity, they have also been unable to disprove that they are the protected *Acronychia littoralis*.

**As a result the Precautionary Principle, whereby scientific uncertainty should not be used to justify actions that would destroy the identified 10ha of potential habitat, should be applied.**

On page 20 the report acknowledges that: ***“Soil borne pathogens and weeds have been identified as a threat to this species”***, and then goes on to state: ***“Relevant management approaches have been included in the Habitat Management Plan”***. We have not sighted that management plan, but the control of the spread of soil-borne pathogens can only be properly achieved by strategies that include the use of foot baths or disinfectant spray on footwear and vehicle tyres. It would be interesting to see how the management plan proposes to impose that on Iluka's residents. Clearly these are motherhood statements, designed to impress those charged with granting approval, but actions that are impossible to implement in reality.

## 5. Littoral Rainforest (Critically Endangered Ecological Community EPBC)

Littoral rainforest and coastal vine thickets of eastern Australia is listed as critically endangered under the Environment Protection and Biodiversity Conservation Act 1999.

Page 42 of the Preliminary Documentation report contains the results of the flora survey conducted by Keystone Ecological, describing the vegetation communities on the Hickey Street site, including what is described as highly disturbed (the land was sand-mined 50-60 years ago) Pink Bloodwood – Brush Box open forest with weeds “and regenerating Littoral Rainforest vines and trees”.

The following was also referenced in the DA “Recovering Littoral Rainforest patches have been identified as occurring in the western, northern and eastern sections of the Hickey Street site (Dr Mark Fitzgerald, 2005)”.

The NSW Office of Environment and Heritage (OEH), when assessing for the Hickey Street Development Application, was highly critical of the Flora and Fauna Impact Assessment, stating: “The OEH observed several small stands of regenerating rainforest vegetation with closed canopy along the western, northern and eastern boundaries of the subject site. It is stated in the Flora and Fauna Impact Assessment (FFIA) that no parts of the vegetation on the subject site had a closed forest structure. However, the OEH considers that the sampling methodology applied in the FFIA may have been too coarse to have accurately assessed the density of canopy cover within the small pockets of regenerating rainforest vegetation. It should be noted that viable stands of littoral rainforest can be as small as 0.1 hectares. Furthermore, the regenerating littoral rainforest patches on the subject site are likely to be viable given that the site is not isolated in terms of genetic exchange with relatively large remnants of littoral rainforest within the nearby Iluka Nature Reserve.”

While Littoral Rainforest received no assessment in the original DA, the OEH comments ensured it did receive attention in the subsequent DAs, with a partial acknowledgement as follows: “Based on a further site inspection and review of some of the studies referenced in the submissions, it is believed that at least the north-eastern section of vegetation meets the criteria for littoral rainforest.” This latest comment infers that the consultant disagrees with Fitzgerald and others in regard to the community's occurrence elsewhere on the site, i.e. western, eastern and northern boundaries, thus supporting the proponent's decision to designate some 3 hectares as park B in the north-eastern corner of the subject site.

With all of the above in mind, we were somewhat surprised to read, page 70 of the Preliminary Documentation, that: “the site itself does not support Littoral Rainforest”. What can we say? The evidence presented by everyone but the consultant shows that **Littoral Rainforest is in fact present at a number of locations on the Hickey Street site. With their proximity to relatively large remnants of littoral rainforest within the nearby Iluka Nature Reserve, connectivity, in terms of genetic exchange should be assured, ” Therefore, in our opinion, Littoral Rainforest should have been assessed under the Referral rules.**

We also believe that trying to protect small patches of threatened communities, surrounded by, and in very close proximity to, urban residential areas, is ineffective, as it fails to allow for any natural expansion of those communities, and simply exposes them to the range of edge effects and weed invasion that always occurs in these situations.

Littoral Rainforest is critically endangered under the Act, and we strongly believe that all recovering pockets should be protected, along with substantial buffer zones to allow for expansion.

## **Migratory species protected under International treaties**

The Commonwealth Department of Environment and Energy is responsible for the protection of migratory species listed under the EPBC Act and international treaties. Two such species, the White-throated Needletail (*Hirundapus caudacutus*) and Rainbow Bee-eater - *Merops ornatus*, were recorded by the the proponent's ecologist at the Hickey Street site, the latter nesting at the time. However, despite their impacts being assessed in previous DAs, they receive no mention in the Preliminary Documentation for the referral.

The Clarence Environment Centre commented on both species in our submission to the referral, so are **not sure why they have been ignored in this instance**. Nevertheless we will repeat comments made in our earlier submission.

### **White-throated Needletail *Hirundapus caudacutus***

The Hickey Street proposal's Flora and Fauna Impact Assessment, undertaken for the original DA, (**Appendix2: Fauna Details**) notes with regards to White-throated Needletail that there is in fact, ***“Suitable potential habitat on site”***, and the birds were: ***“Observed flying overhead during fauna surveys”***. Also, there was deemed to be ***“Low likelihood to use terrestrial habitats of the subject site”***, with a recommendation that ***“Further impact assessment required”***.

While there was a recommendation for further assessment, we found none in any subsequent DAs, Also we believe the above comment ***“Low likelihood to use terrestrial habitats of the subject site”*** indicates a lack of understanding of this species by the consultant, as these birds seldom roost, eating, drinking, sleeping, and possibly even mating on the wing, and only breaking that routine when nesting during the breeding season in the northern hemisphere. The very fact they were sighted is likely because they were foraging above the canopy at the time, with these birds known to brush against foliage to force insects to take flight, so making it easier to feed off them. This in turn confirms that there is suitable insect-generating habitat on the site, which we believe is sufficient evidence to show the planned removal of 14ha of that habitat would have a significant impact on the species. We certainly cannot accept the above assertion of ***“low likelihood to use terrestrial habitats”***, as a justification for claiming there will be no significant impact.

### **Rainbow Bee-eater - *Merops ornatus***

The Flora and Fauna Impact Assessment for the original DA acknowledges that the Rainbow Bee-eater ***“was observed foraging and nesting on site”***, along with the comment that: ***“Further impact assessment required.”*** However, again we could find no such further assessment in later DAs.

With the species known to nest on site, it is clear that approval for the project should have been referred and approval sought from the Federal Environment Minister.

## **Nominated Outstanding Universal Value (OUV) Constituent Species of Gondwana Rainforest of Australia (Iluka Nature Reserve).**

There are six bird species listed as supporting the OUV of the Iluka Nature Reserve which require assessment under the referral. They are:

- **White-eared Monarch (*Monarcha leucotis*)**; not recorded on or near site during survey, but potential habitat detected.
- **Wonga Pigeon (*leucosarcia melanoleuca*)**; also listed as threatened under NSW legislation; recorded on site by a camera trap
- **Wompoo Fruit-Dove (*Ptilinopus magnificus*)**; also listed as threatened under NSW legislation; heard calling on-site

- **Rose-crowned Fruit-dove (*Ptilinopus regina*);** heard calling on on site and observed nearby in Iluka Nature Reserve
- **Superb Fruit-dove (*Ptilinopus superbus*);** listed as threatened under NSW legislation, heard calling on-site.
- **Rufous Fantail (*Rhipidura rufifrons*);** listed as a migratory species under the EPBC Act, observed foraging and nesting on site.

All but one are also listed as threatened under NSW legislation, and all but one were recorded on site during surveys undertaken for the Hickey Street development's DA

The identified potential impacts as a result of the proposed Hickey Street development on all six species are listed in the report as:

- Habitat clearing and fragmentation,
- Obstruction to fauna movement,
- Increased mortality,
- Weed invasion,
- Increased predation by domestic pets;

Despite those admissions, the consultant declares (page 21): ***“It is considered unlikely that the proposal will result in a significant adverse impact on the constituent bird OUVs. Importantly, the interaction of this species with the World Heritage estate is unlikely to be interrupted or diminished.”***

As well as the six constituent bird species, three micro-bat species are also nominated as contributing to the OUV of the Iluka Nature Reserve's World heritage forest. They are

**Eastern Free-tail Bat (*Mormopterus norfolkensis*;** listed as a Vulnerable species under NSW legislation; calls were recorded on site

**Little Bentwing Bat (*Miniopterus australis*)** listed as a Vulnerable species under NSW legislation; calls were recorded on site, and

**Eastern Long-eared Bat (*Nyctophilus bifax*)** listed as a Vulnerable species under NSW legislation; calls were recorded on site

According to the Preliminary Documentation, all five of the above listed threats identified as impacting the constituent bird OUVs, as a result of the proposed development, also apply to these micro-bat species, along with an additional threat - light pollution

Again the consultant concludes: ***“The small scale impacts of the proposal, coupled with the ameliorative and compensatory measures to be implemented, mean that the proposed development is unlikely to result in significant adverse impacts on the local populations of these species”.***

It is ironic that the OEH's management stream for these species shown in full, page 25 of the DAs Addendum Assessment, shows the number one aim in the effort to recover these species is to: ***“Liaise with relevant landholders and managers to protect, rehabilitate, enlarge and reconnect habitat”.*** Yet here we have a proposal, applying to completely 'disconnect' prime habitat on either side of the subject site without a murmur from that agency, despite public pleas from the community.

\* \* \*

We appreciate the opportunity to comment on the review of the EPBC Act, and sincerely hope that an effective Act is developed as is so urgently required as we move forward in uncertain times.

Yours sincerely  
John Edwards (Honorary Secretary)