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The EPBC Referrals Section
Department of Sustainability, Environment, Water, Population and Communities
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Preamble

The Clarence Environment Centre has maintained a shop-front in Grafton for over 22 years, and has a proud record of environmental advocacy, particularly relating to inappropriate development by Local Government. Hence the following submission.

Submission to the Federal Minister for the Environment on the Referral of Plans for Section 2 of the Yamba Bypass

Reference Number: 2013/6928 .

Introduction

Before embarking on this submission, we have to strongly protest the action by Clarence Valley Council to attempt to push this project through the Federal review system with no community consultation, using the excuse that it is: *“Due to the sensitive nature of the project with respect to the Lesser Swamp-orchid”*. At what stage were they planning to let the community know?

On page 3 of the referral we are given what is supposed to be a: “Detailed description of the proposed action”, describing it as *“the construction of Section 2 of the Yamba Bypass, a distance of approximately 430m”*. The fact that the project is described as Stage 2, followed by a later admission on page 3, (Section 2.7) that *“The proposal is designed to complement Section 1 of the Yamba Bypass”*, confirms that this referred project is part of a much larger development proposal. However, Section 1 impacts were assessed earlier this year in a separate approval process, and because the impacts on matters of national significance identified in section 1 were not deemed worthy of a referral, those cumulative impacts are hidden.

However, that is not the whole story. The driver of the Yamba Bypass (the purple line on the 2 figures on the following page, copied from Council's mapping) is a proposed 1,100 home residential subdivision being planned for West Yamba, and this road will provide access for that subdivision.

The West Yamba subdivision straddles Carrs Drive, south of the proposed bypass, extending from Orion Street to the west, to the eastern end of Cox Street (see Figure 1).

Several years ago, the West Yamba project developer gained approval to develop an industrial complex at the eastern end of Cox Street, but access was approved through bushland from Angourie Road, now known as Deering Street (see Figure 2). This was effectively the first section of the bypass to be assessed and constructed; the impacts from the loss of that remnant vegetation now consigned to history, and the cumulative impacts not considered.

A close examination of Figures 1 and 2 shows the proposed bypass running along a largely vegetated corridor, **which is essentially a flood-way, a drainage line** already restricted by fill introduced to allow all residential development north of the proposed bypass. That vegetation serves as a critical wildlife corridor joining the Clarence Estuary Nature Reserve to other large areas of remnant vegetation along Angourie Road and the Oyster Channel.

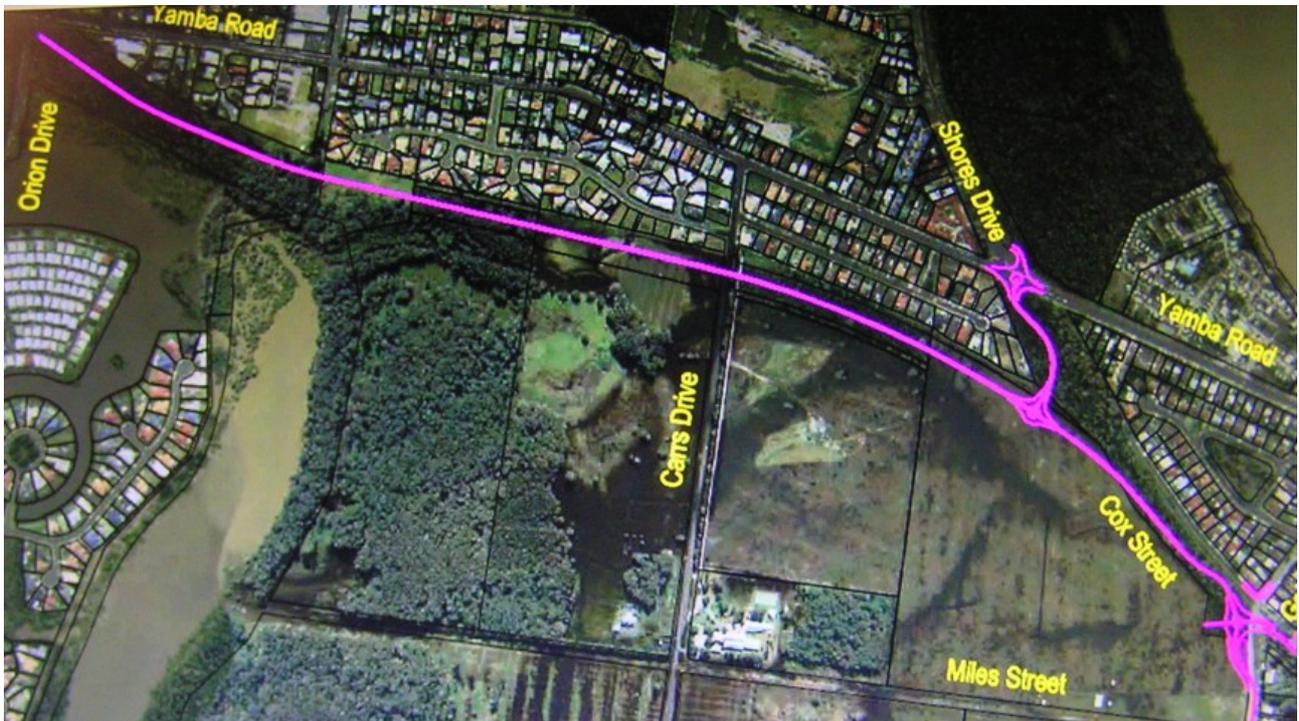


Figure 1.

Showing the western half of the proposed Yamba Bypass from Orion Street to the Golding Street roundabout at the eastern end of Cox Street

Section 2 of the bypass, currently referred under the EPBC Act for approval, is only that stretch between Angourie Road and Coldstream Street (see Figure 2) , less than 15% of the total bypass. Deering Street to Quarterdeck Place has already been constructed and Section 1, from Quarterdeck Place to Shores Drive, was assessed separately under NSW regulations earlier this year.

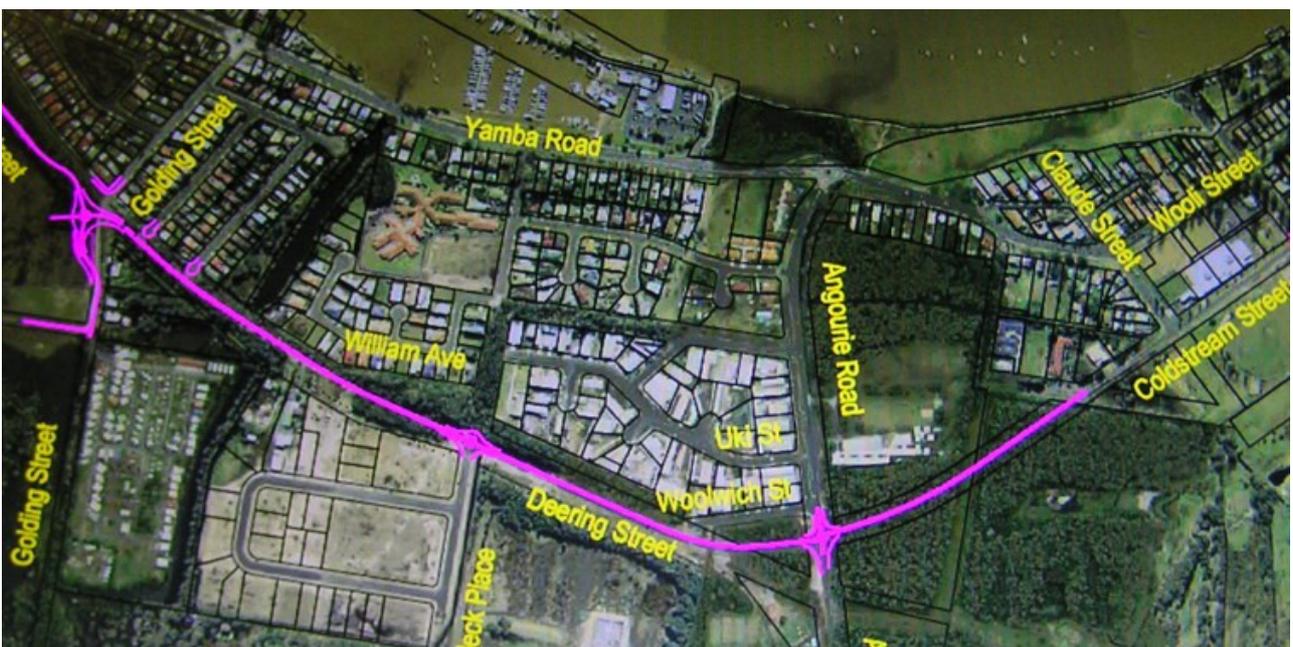


Figure 2

The eastern half of the Yamba bypass, from the Golding Street roundabout to Coldstream Street in the east.

However, completely ignored by both impact assessments to date, is the remaining western section from Shores Drive to Orion Drive (see Figure 1) (section 3 of the bypass?), which will be by far the most environmentally damaging and accounts for almost one third of the total length of the bypass.

This slice by slice habitat destruction, with never any attempt to consider the cumulative impacts of the whole is unacceptable, and we haven't even begun to consider the impacts of vegetation loss during construction of the West Yamba estate, a suburb with a use-by date because of sea-level rise.

A Brief History

As already mentioned, the need for the proposed bypass has been triggered by the proposed 1,100 lot West Yamba urban housing development. West Yamba was rezoned residential just 2 or 3 years ago by Clarence Valley Council which was pressured into making the development happen, based on the fact that the developer “*had an expectation, that the development would be approved*” from the former Maclean Shire Council.

Enormous amounts of funding was provided by the then Department of Environment, Climate Change and Water, which required all manner of studies on flooding and evacuation procedures, before eventually giving grudging approval, with new terminology like “vertical migration”, emerging, where two storey homes must be built to allow residents to move upstairs during floods.

The approval will see the raising of ground levels to .5m above the projected 2100 1 in 100 year flood level, and will require several metres of across the entire area, equating to hundreds of thousands of truck loads. What impact this will have on flood movements across the floodplain, and in particular the impact of constructing the bypass in an existing flood-way, is something that has not, in our opinion, been adequately addressed.

Direct impacts.

We strongly object to the continued use of the term “*potential impacts*”, even where endangered orchids stand directly in the path of the proposed road, their removal is described as the “potential loss”! The bulldozing of hollow-bearing habitat trees is **not**: “*Potential loss of habitat trees which may be used by micro-bat species, and den sites for the Squirrel Glider*”, it's the total loss of those landscape features.

The referral for Section 2 identifies the presence of Federally listed Lesser Swamp-orchid (*Phaius australis*) which the consultant agrees may be significantly impacted but suggests these impacts “*may be ameliorated by appropriate road design*”. The Referral admits that: “*No detailed design has yet been completed for the project*”, so to suggest the road design can somehow be manipulated within the narrow corridor, to avoid damage to the Orchids is clearly misleading.

The reality is, an unknown depth of swamp soil, which could well have acid sulphate problems, will have to be removed and the area filled to about 2m above current levels, The embankment batters will be extensive in themselves, and combined with table drains will extend the road footprint well beyond 30m. Clearly, both the direct impact and future edge effects will be significant, and the endangered *Phaius australis* will likely suffer 100% loss at that site.

Failure to consider cumulative impacts.

The Referral also identifies that the site contains habitat for Grey-headed Flying-fox, the impact on which, the consultant claims, “*are not likely to be significant due to the substantial extent of local resources for the species in the locality*”.

At no stage in the referral is there mention that the flora and fauna survey for Section 1 also identified the presence of Grey-headed Flying-fox, one of eight State TSC Act listed threatened fauna species identified on and adjacent to that site. These include Squirrel Glider, Yellow-bellied Sheath-tail Bat, Hoary Wattled Bat, Little Bentwing-bat, Fishing Bat and the Grey-crowned Babbler.

Nor is there any mention of the fact that the significant area of vegetation that will be removed to construct Section 1 of the bypass, is not only a part of the identified, “*substantial extent of local resources for the species in the locality*”, but constitutes a vital wildlife corridor between three major portions of forested land in the vicinity that make up that local resource, including the Estuary Nature Reserve, which will be completely isolated when Section 1 of the bypass is constructed.

Nor is there any mention, or consideration, of the significant loss of that “*substantial extent of local resources*”, which will occur during the development of the West Yamba suburb and rural residential precincts.

It should also be noted that the Federally listed Scented Acronychia (*Acronychia littoralis*) was also identified in Section 1 during initial surveys, but since disputed by the consultant undertaking the Species Impact Statement, who surveyed the plant during November, a period when no fertile material is likely to be present. This leaves a large question mark on the identity of the tree in question, which is still under investigation by the Clarence Environment Centre, with specimens currently with the Royal Botanic Gardens in Sydney. The upshot of the consultant's claims that the tree was incorrectly identified however, is that plans for Section 1 were not referred to the Federal Minister for assessment under the EPBC Act.

In conclusion, the cumulative impacts on Flying Foxes, or any other threatened species, are not considered in either the Species Impact Statement for Section 1 or the Referral of Section 2. When the earlier Deering St section of the Bypass was assessed, that too made no mention of cumulative impacts of any of the other sections or the proposed urban expansion.

We strongly believe the cumulative impacts of the entire development must be taken into consideration, and not considered in isolation.

Floodplain definition

Under “Hydrology and Water Flows”, the Section 2 site is described as “*low lying, prone to inundation and has a high water table*”. We believe a better description would be “swamp”. This is supported by an admission, Section 3.3 (a), that “*Swamp sclerophyll forest occurs throughout the proposal area*”, and, in Section 3.3 (f), that “*the proposal area comprises relatively flat land on the coastal floodplain*”.

Swamp Sclerophyll Forest on coastal floodplain is listed under the Threatened Species Conservation Act (TSC Act) as an endangered ecological community (EEC). However, one of the key criteria for any floodplain EECs is that they occur on alluvial soils where floodplains are flat depositional landforms laid down in the lower catchments by sediments brought down with flood waters from the upper reaches, “*characterised by active erosion and aggradation by channelled and overbank stream flow with an average recurrence interval of 100 years or less*”.

Given that the West Yamba precinct is flat plain, and is regularly inundated by water overflowing the banks of the Clarence River (3 times in the past 3 years), we strongly agree with the above Section 3.3 statements that it is a true coastal floodplain.

However, when undertaking the Species Impact Statement for Section 1, and having to assess the impacts on swamp sclerophyll and other coastal floodplain forest, the consultant accepts broad-brush mapping by Morand (2001) '**indicating**' that, "*soils at the site lie within the physiogeographic region of the Bundjalung Dunefield comprised of the Iluka soil landscape (all north of the Clarence River Estuary, much of which is not flood-prone) of Aeolian origin, with soils derived from Quaternary (Holocene and Pleistocene) sand sheets. Soils within the landscape are Aeric Podzols and Aquic/Semiaquic Podzols (Morand 2001).*

This hair-splitting, with apparently no soil testing undertaken to prove the case one way or the other, has been used by the consultant to argue that the forest is not an EEC, and therefore has no conservation value and need not be protected. We believe it is imperative that soil testing of the West Yamba development site should be undertaken as a priority action before any further approvals are considered.

While accepting that the Swamp Sclerophyll EEC is not a listed Matter of National Environmental Significance, we believe it's high conservation value, in that it provides known habitat for a range of federally listed species, should be taken into consideration.

Migratory species

The referral tells us that: "*Four listed migratory species were recorded within the proposal area (Rainbow Bee-eater, White-bellied Sea-eagle, Satin Flycatcher, and Rufous Fantail), with potential for several other migratory species to occur within the locality on an opportunistic and seasonal basis*". If the consultant had been honest, other species identified by specialist bird ecologists, Dr Greg Clancy and Russell Jago, when undertaking the flora and fauna survey of section 1, would have appeared on that list, including the Bar-tailed Godwit (*Limosa lapponica*); Whimbrel (*Numenius phaeopus*); Rainbow Bee-eater (*Merops ornatus*), and Terek Sandpiper (*Xenus cinereus*), all of which were recorded by the team on or adjacent to the bypass alignment.

The claim that: "*Impacts to any listed migratory species (or their habitat) is likely to be low, as no habitat of importance would be removed for the project*" is, in our opinion unacceptable. With "loss of habitat" identified as being a major driver in the continued decline of almost all threatened species, any further loss must be considered significant.

Alternative option

Despite claims to the contrary, the current Yamba Road is a viable alternative route. Also, given Council's claim that: "*the Bypass is desired by Council in the immediate term future and has been accounted for to some extent by the construction of the Yamba Industrial area at Deering Street*", there is already cleared land immediately south of the proposed Bypass route between the now constructed Deering Street and Shores Drive, which could easily be acquired to allow easy access from the West Yamba subdivision onto Yamba Road and west to Maclean, and the Yamba township via Angourie Road to the east. It is our strong belief that Section 2, and the section west of Shores Drive, should never be constructed, due to the excessive environmental impacts they would impose.

The Referral's recommendation for the: "*Establishment of offset habitat at secure locations to compensate for the loss of vegetation/habitat from the site in accordance with Councils Biodiversity Management Strategy such that there is a net gain in vegetation/habitat*", cannot be supported. Offsets, such as BioBank sites simply place a covenant on existing habitat, a covenant that can be overturned at any time with the Environment Minister's agreement, or where critical infrastructure is required, or even by a mining company which wants to exploit the area. These types of offsets always result in a net loss of biodiversity.

Council's Record of responsible environmental management

Section 6.1 asks the question: “Does the party taking the action have a satisfactory record of responsible environmental management?”, to which the response is in the affirmative, something we would not agree with. Section 6.4 asks: “Has the party taking the action previously referred an action under the EPBC Act, or been responsible for undertaking an action referred under the EPBC Act? To which, the response points to North Coast Water's referral of plans for the Coffs Clarence Regional Water Supply project (Shannon Creek dam).

The West Yamba approval is a clear case in point where an approval should never have been granted (see details of the proposal for a suburb with a use-by date above). Only two months ago Council approved the clearing of a remnant patch of old-growth floodplain forest at Iluka for the extension of a caravan park. That extension will see a wildlife corridor, with records of Koalas and Squirrel Gliders on site, destroyed, following less than one day's flora and fauna assessment that did no recorded call play-back, no trapping, no spot-lighting at night, no ultrasonic bat call detection, nothing.

Clarence Valley Council was advised that, given the recent Koala activity at the Iluka site, the proposal should be referred to the Federal Minister for the Environment for approval. A letter requesting advice on whether a referral was required was posted to the Minister, dated Christmas Eve, 2012, requesting a response within 14 days. Needless to say, no response was received, and all the Koala habitat on the site will now be destroyed.

We suggest that the Referrals section examine its records relating to North Coast Water's record in relation to the referral of plans for the Regional Water Supply's Shannon Creek dam (*EPBC reference number is 2005/2191*), which commenced in 2006, and check whether federal consent conditions have been complied with. Should you need additional information on that, or either of the other matters, the Clarence Environment Centre will gladly provide further input.

No we do not believe the Council had a good environmental record.

Yours sincerely

John Edwards
Honorary Secretary

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8.2

Person preparing the referral information (if different from 8.1)

Individual or organisation who has prepared the information contained in this referral form.

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Declaration

I declare that to the best of my knowledge the information I have given on, or attached to this form is complete, current and correct.

I understand that giving false or misleading information is a serious offence.

Signature

Date 4/07/2013