

20/10/2023

The Hon Tanya Plibersek  
PO Box 2676  
Strawberry Hills, NSW, 2012

Dear Ms. Plibersek,

**Re - 'Significant Impacts' to Matters of National and Environmental Significance at the 'Wallum' development at 15 Torakina Road, Brunswick Heads, NSW. (DA 10.2021.575.1)**

I have lived and worked in Byron Shire for over 20 years as a restoration ecologist. Much of my work is to restore habitat in areas containing threatened species and threatened ecological communities.

I objected to the Concept Plan of this proposed development in 2011. All my concerns still remain valid today due to the proposed clearing of the Federally Listed Coastal Swamp Forest (of SE Qld and NE NSW) EEC and impacts on habitat for 10 federally listed threatened species including koala, Mitchell's rainforest snail and wallum sedge frog. Previous approvals for this site, pushed through by the NSW State Government transitional arrangements through Clause 34A (Biodiversity Conservation Savings & Transition Regulation), would not stand today as they fall well short of current State, Federal and Byron Shire Council's own requirements outlined in the Biodiversity Development Control Plan regarding environmental offsets, buffers and preservation of habitat.

In 2008 in the State Planning Director-General's Environmental Assessment Requirements for the site, stated "If your proposal includes any actions that could have a significant impact on matters of National Environmental Significance, it will require an additional approval under the Commonwealth EPBC Act. This approval is in addition to any approvals required under NSW legislation". The developers, Clarence Property, have failed to accurately self-assess the impacts on MNES and self-refer.

On the 12<sup>th</sup> of October, Byron Shire Council voted unanimously to acknowledge the impacts of the development on MNES, write to the Minister of Planning NSW to call the project in as well as seek legal advice to amend the current development application.

The development site is mapped almost entirely as various native vegetation communities (See Appendix 1). The Wallum development site is even more important now as a refuge for native species as just this week a bush fire has burnt over 750 Hectares of bushland including around 80% of the adjoining Tyagarah Nature Reserve. This hot destructive fire has burnt the canopy of large areas of forest, thus impacting foraging resources for herbivores and fruiting and nectar resources for other species. Old hollow bearing trees have also been lost.

Significant impacts (in bold) will occur to MNES due to:

- The MNES referral guidelines state “**a proposed urban development for a housing subdivision on an area which contains nationally listed threatened species or ecological communities, is likely to be significant and should be referred to the minister**”,

### Coastal Swamp Sclerophyll Forest of NSW and SE Queensland (CSSF)

A small area of around 0.3 Hectares of this EEC will be cleared (Appendix 1). It adjoins contiguous forest and is ‘high quality’ closest to the benchmark state (as outlined in the CSSF EEC guidelines). **Clearing** (an extreme threat to this EEC) and filling of a mapped first order drainage line is likely to **impact the hydrology of the adjoining contiguous EEC forest patches** (an extreme threat to this EEC). This **significant impact on a listed EEC**, is completely unnecessary as it only is to secure the developer an added yield of 4 small residential lots.

**Koala** – An area as small as 0.5 Ha of koala habitat loss can be a **significant impact** as outlined in the Koala referral guidelines. However, around 3 hectares of koala habitat is to be cleared (Appendix 2 and 3). These areas are mapped as koala habitat by the NSW Government and Byron Shire Council. These trees, which many are identified as old growth, now to be removed in the most recent approval, were to be retained as a previous condition of consent in 2012 due to their ecological value (Appendix 3).

The coastal koala population is highly fragmented and an **important population**, genetically distinct from koalas in the western portion of Byron Shire. The Brunswick River, just to the north, is also a genetic population boundary. The area to be cleared is an important corridor as it joins the most northern parts of this population (that is mapped as a persistent population) and links it to areas of the south. Furthermore, the M1 motorway just to the west of the site, as well as Simpsons Creek to the east are serious impediments to koala movement, further highlighting the importance of this koala habitat.

**Significant impacts** will occur as this loss of habitat will **reduce the area of occupancy of a species**. Further, the habitat loss will **interfere with the recovery of the species** as it impedes koala movement and this habitat loss is in contradiction to objectives laid out in the Federal National Recovery Plan for the Koala, NSW State Koala Strategy and the Byron Shire Council Koala plan of management.

**Wallum Sedge Frog** – From the **DEECW Wallum Sedge Frog Referral guidelines**: “Populations along the mainland coast are becoming highly fragmented and may be at greater risk of local extinction because of the decreasing likelihood of immigration, genetic influx and reduced resilience against the effects of adverse environmental events (e.g. fire, flood or drought).

Under wet conditions (i.e. resulting from significant rainfall events), the wallum sedge frog is known to utilize heathlands, grasslands, woodlands and forests, which adjoin breeding habitats, in wallum environments and on near-coastal alluvial (clay) plains. These non-breeding habitats provide landscape connectivity and may play an important role in maintaining landscape hydrology and the quality of water in suitable breeding habitats.

An **important population** of a species listed as vulnerable under the EPBC Act, such as the wallum sedge frog, is one that is necessary for the species' long-term survival and recovery. The wallum sedge frog is highly restricted in terms of its habitat requirements: populations and suitable habitats are extensively isolated across the species' distribution. **Therefore, the department considers that a large majority of wallum sedge frog populations may meet the important population criteria** For example, small, isolated populations occurring along the mainland coast, may be essential for maintaining the dispersal, breeding and genetic diversity of the species over the long term”.

The development will see over 3 hectares of wet heath Wallum Sedge Frog habitat (as defined by the guidelines above) cleared, buried in fill and built on.

**It is a significant action to**

**-adversely affect habitat critical to the survival of a species, and**

**- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline,**

Further, uncleared adjoining habitat will be impacted by the development and have a **high risk of significant impacts as deemed to occur if,**

- A change in the ecological character or function of the natural environment within 100 m of habitat for an important population of wallum sedge frogs (e.g. through actions such as the clearing or burning of vegetation, or the drainage, flooding, or infilling of wetlands)
- Actions resulting in the alteration of the existing natural hydrological regime and/or surface water or groundwater quality within 100 m of habitat for an important population
- The fragmentation of connective habitat corridors between breeding habitats, or within 500 m of breeding habitats, resulting in the isolation or fragmentation of one or more important populations

**Mitchell's Rainforest Snail** - Associated with Swamp Sclerophyll forests and Byron Shire Council has mapped an area within the estate as 'Potential habitat – very high'. This is a listed Critically Endangered species and destruction of potential habitat and changing of hydrological flows **will interfere with the recovery of the species**

**Other MNES likely to be impacted -**

The MNES guidelines state, if there is scientific uncertainty about the impacts of your action and potential impacts are serious or irreversible, **the precautionary principle is applicable**. Accordingly, **a lack of scientific certainty about the potential impacts of an action will not itself justify a decision that the action is not likely to have a significant impact on the environment.**

**Glossy Black Cockatoo** – known feed trees in use currently (in Oct 2023) will be removed. The October 2023 fire has reduced adjoining habitat.

**Long Nosed Potoroo** – recorded on site in 2011 and believed to be still extant in the area. Most of the potoroos' known range was burnt in the October 2023 fire.

**Regent Honeyeater** – Over 6 hectares of wallum habitat and scribbly gum flowering resources to be cleared. This habitat is now even more critical due to the recent fire.

**Swift Parrot** - Over 6 hectares of wallum habitat and scribbly gum flowering resources to be cleared. This habitat is now even more critical due to the recent fire.

**Grey-headed Flying-fox** - Over 6 hectares of wallum habitat and scribbly gum flowering resources to be cleared. This habitat is now even more critical due to the recent fire.

**Australasian Bittern** – changes of drainage, unknown impacts

The community and Government agencies such as NSW OEH and Byron Shire Council have been concerned about the impacts of this development for over 20 years. Appendix 4 shows the ecological concerns raised by OEH. Although many of their concerns on threatened species have been ignored, highlighted in green is a Statement of Commitment by the developer to protect the CSSF that has been revoked.

This development by stealth, has seen ecological values once to be protected now squandered. The developer's disregard for the natural environment and the NSW Planning department's lack of due diligence and prioritising developers rights over public interest and biodiversity protection is seriously concerning.

This DA has had a history of lack of transparency and there is ridiculous amounts of reports for over 20 years highlighting serious concerns that are buried in the piles of paperwork. I am willing to share supporting documents from various Government agencies and concerned ecologists to demonstrate this development's impacts are **very significant on MNES**.

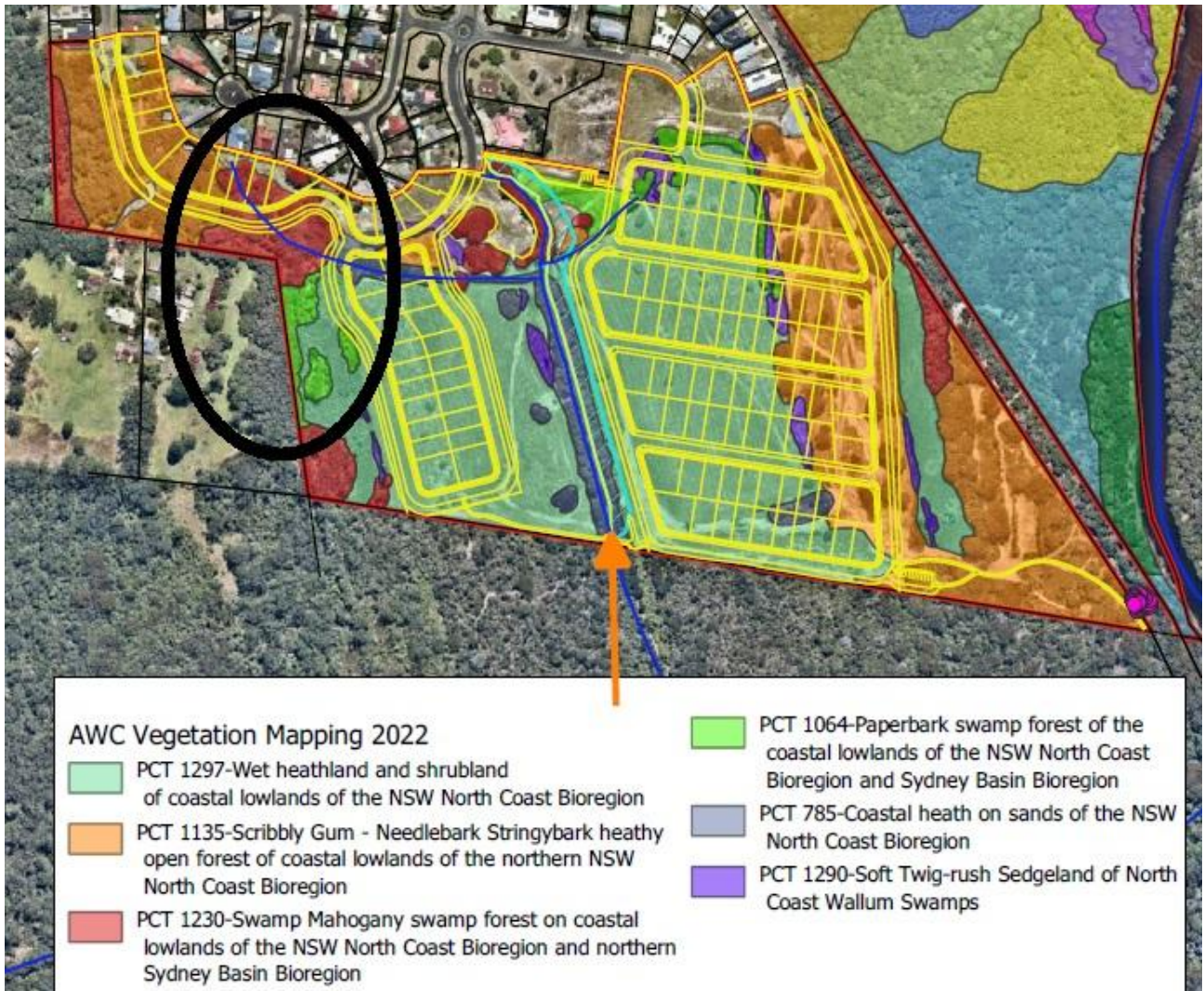
Yours sincerely,

A handwritten signature in black ink that reads "David Rawlins". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

David Rawlins  
50 Tristran Parade,  
Mullumbimby Creek

**Appendix 1, - Current lot map lay out overload with vegetation communities, from AWC 2021 Vegetation Management Plan.**

(Red area within black oval is swamp mahogany CSFF EEC and primary koala habitat)





**Appendix 2, Byron Shire Council Koala Plan of Management mapped koala habitat.**  
BSC KPOM has been approved by the NSW State Government.

(Blue is persistent population, green is important koala habitat corridors with lack of data to determine if a persistent population)





<ul style="list-style-type: none"> <li>Impact of the stormwater detention basin on flood levels (or visa versa) has not been addressed.</li> <li>Roads – layout/hierarchy does not appear to provide for bus routes. Further discussion required with Council's Traffic Engineer concerning intersection with Old Pacific Highway which may need upgrading.</li> </ul>	<p>For events with basin overflow the flood levels in the overall catchment area (as per flood study) will govern the water level in the basin until the downstream and upstream water levels are equal. At this stage the basin will become part of the overall flood event and act as backwater storage.</p> <p>The basin will have a retardation effect on flows from rainfall events with runoff volumes less than that needed to fill the basin. This will have a moderating effect on downstream flood levels (refer to Appendix C).</p> <p>Bus routes have been nominated. Refer to comments above and Appendix E.</p> <p>Bus stops and footpaths will be provided to Council's standards and detailed as part of the CC submission.</p>
<p><b>OFFICE OF ENVIRONMENT &amp; HERITAGE (28.10.11)</b></p> <ul style="list-style-type: none"> <li>OEH able to support proposal subject to amendments to the draft Statement of Commitments. These amendments relate to biodiversity values, Aboriginal cultural heritage and estuary &amp; foreshore management and are summarised below .</li> </ul> <p><b>1. Biodiversity Conservation Issues</b></p> <ol style="list-style-type: none"> <li>The layout should be redesigned to ensure that key areas of Koala habitat and movement corridors in the north-west of the site, including primary Koala habitat, be maintained and re-established to ensure that direct, indirect and cumulative impacts on Koala are avoided.</li> <li>The layout should be redesigned to increase avoidance of significant tree removal by expanding proposed revegetated/rehabilitated conservation areas at both the east and west of the development area. The proposed retained/rehabilitated/revegetated buffer to the large Swamp Sclerophyll Endangered Ecological Community (EEC) in the eastern portion should be expanded further to the west to incorporate the drainage line to the west and all trees indicated in the EA as being high to very high conservation value trees.</li> <li>The impact of the loss of any significant conservation value trees not avoided through layout redesign (see 2 above) should be calculated and a suitable offset determined.</li> <li>The establishment of a range of nest boxes should be a condition of approval for any hollow bearing trees that cannot justifiably be avoided. These should be matched to an inventory of quantity and habitat qualities of any removed hollows at a minimum 2:1 ratio, located in strategically important connectivity corridors to be established. This commitment should be incorporated within the proposed Vegetation Management Plan (VMP). The commitment should also be made in the VMP that any suitable hollows approved for removal are to be scattered throughout revegetation / conservation areas to function as potential habitat for ground dwelling fauna (particularly the <i>Planigale maculata</i>).</li> </ol>	<p>All biodiversity issues are discussed in the amended EcA (Appendix B). The comments in the EcA are produced below.</p> <p>The majority of Koala habitat in the north-west of the site is considered Secondary habitat. The loss of old growth koala food trees will be offset through revegetation. Refer to EA Vol. 1, <b>SECTION 4.2.5.5</b>. Connectivity throughout and in proximity to the site (<b>FIGURE 33</b>) will not be affected. Refer to EcA Vol. 1, <b>SECTION 5.3</b></p> <p>The conservation area in the west of the site has been expanded to include Lots B157, 158 &amp; 159 (Refer to Lot B146 on <b>FIGURE 8</b>). Some small losses of the Swamp sclerophyll forest EEC are unavoidable in the east of the site. With the implementation of the VMP (see EcA Vol.1, <b>SECTION 4.2.2.4</b>) there will be a long-term net gain of 1.33ha of Swamp sclerophyll forest.</p> <p>Refer to EcA Vol. 1, <b>SECTION 4.2.3</b>. <b>FIGURE 13</b> identifies the number and species of trees to be removed under the current layout. In total, 253 Conservation Significant trees will be removed, in addition to 332 trees mapped as 'No Conservation Significance'. Trees that are to be removed will be offset as part of rehabilitation works on the site at a minimum offset ratio of 2:1.</p> <p>Refer to EcA Vol. 1, <b>SECTION 4.2.3.5</b>. Hollows contained within trees to be removed will be retained and placed within revegetation/ conservation areas to function as potential habitat for ground-dwelling fauna. Nest boxes will be strategically placed in retained trees to replace removed hollows at a 2:1 ratio.</p>



<p>5. The development layout should be redesigned to protect and buffer all environmentally significant areas including threatened species, endangered ecological communities and their habitats with a minimum 50 metre vegetated buffer.</p> <p>6. Greater attention should be given in the overall layout to biodiversity connectivity within the site:</p> <p>i. north-west to south-west (ie. Stage 4a corridor in Figure 33) – Further information should be provided before approval regarding the safeguards proposed within the 'environmental lifestyle' lots to ensure the environmental values are maintained in perpetuity, or alternatively, these lots should be rehabilitated and incorporated into an environmental protection zoning and dedicated to Byron Shire Council (subject to their approval) as a protected natural area. These two lots should be further connected and revegetated, incorporating any mapped primary koala habitat (Byron Shire Council mapping) and managed for conservation purposes.</p> <p>ii. south-west to south-east – The layout should incorporate a 50 metre vegetated buffer to the property to the south, to be provided from west to east (largely through natural but also assisted regeneration as appropriate), and managed to achieve improved landscape connectivity function for threatened mammals and other fauna known from the site.</p> <p>7. The layout should be redesigned to avoid impact on Wallum Froglets and their habitat, and include a naturally regenerated vegetated buffer of 50 metres either side of the central drainage channel, maintained in perpetuity in conservation tenure. Alternatively:</p> <p>i. clarity should be sought in relation to the consistency of the current proposal and the proposed Wallum Froglet Compensatory Habitat Plan with the need to avoid impacting upon threatened species habitat and the alteration of natural waterways key threatening process; and</p> <p>ii. adequate alternative offsets should be provided to the satisfaction of OEH, following an assessment of impacts of the proposal using its biometric offset calculation tools (BBAM) or,</p> <p>iii. an independent assessment be made by a suitably qualified acid frog specialist as to the viability of the Wallum Froglet Compensatory Habitat proposal, with specific reference made to the results of data collected for the Tugun by-pass.</p> <p>8. The documentation provided should be made consistent and updated to reflect current taxonomic and distributional understanding in regard to the use of the terminology for 'scribbly gum' (ie. E. signata, rather than 'racemosa').</p>	<p>A minimum buffer width of 145m will be provided to Coastal saltmarsh communities on the site. Swamp oak floodplain forest will have a minimum buffer width of 243m. The minimum buffer width to Swamp sclerophyll forest on coastal floodplain will be 15 m, but buffers will generally exceed 30m as indicated in <b>FIGURE 20</b> – Vol. 1. Simpsons Creek will be buffered at a minimum of 162m. A minimum 8m buffer will be provided on either side of the central drainage channel, however, buffers to this channel are generally in excess of 10m in accordance with the NSW Water Management Act (2000) (<b>FIGURE 20</b> - Vol. 1).</p> <p>Refer to <b>SECTION 5.3</b> and <b>FIGURE 8</b> – Vol. 1. Four (4) lots adjacent to the 'environmental lifestyle' lot (now B146) have been removed from the Stage 4a corridor. Environmental values in 'environmental lifestyle' lots (B146 &amp; B156) will be maintained in perpetuity with a Section 88B instrument. The s.88B instrument will confine the location of the building envelope to unconstrained areas of these lots and prohibit any clearing of protected trees (refer to EA Vol. 1, <b>SECTION 4.2.3.4</b>). This requirement is included in the revised draft Statement of Commitments (refer to Appendix H).</p> <p>Connectivity is provided from the west to east by the western corridor shown in <b>FIGURE 33</b> – Vol. 1. This vegetated corridor is immediately adjacent to the southern property boundary. No further requirements for the provision of corridors within the subject site are considered necessary. Refer to Eca Vol. 1, <b>SECTION 5.3.5.5</b>.</p> <p>Discussion in WFCHP of this issue (refer to Appendix B).</p> <p>Refer to <b>SECTION 4.2.5.8</b> – Vol. 2. The loss of Wallum froglet habitat will be offset through the creation of compensatory habitat areas (<b>FIGURE 30</b> – Vol. 1). These areas will be designed to provide additional core breeding and forage habitat areas on the subject site and will be created in accordance with a Wallum Froglet Compensatory Habitat Plan (see <b>APPENDIX 9</b> – Vol. 2).</p> <p>See Above.</p> <p>Agreed</p>
--	--