

s22

From: s22
Sent: Thursday, 7 August 2014 3:59 PM
To: s22
Subject: FW: Fingal Head Coastcare Request [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

From: s22
Sent: Thursday, 7 August 2014 2:35 PM
To: s22
Subject: FW: Fingal Head Coastcare Request [SEC=UNCLASSIFIED]

Hi s22

Below is a record of my correspondence with s47F this afternoon.

Cheers,

s22
Marine & Freshwater Species Conservation
s22

From: s22
Sent: Thursday, 7 August 2014 2:34 PM
To: s47F
Subject: RE: Fingal Head Coastcare Request [SEC=UNCLASSIFIED]

Hi again

In case you need to contact the department again in the future, the following website has some contact details for compliance matters that might be useful:

<http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/report>

Email: compliance@environment.gov.au

Phone: (02) 6274 1372 or free call 1800 110 395

All the best.

Cheers,

s22
Marine & Freshwater Species Conservation
s22

From: s22
Sent: Thursday, 7 August 2014 1:27 PM
To: s47F
Subject: RE: Fingal Head Coastcare Request [SEC=UNCLASSIFIED]

Thanks s47F I'll ask our Compliance and Enforcement area to follow this up with you.

All the best.

Cheers,

s22

Marine & Freshwater Species Conservation

s22

From: s47F
Sent: Thursday, 7 August 2014 1:26 PM
To: s22
Subject: Fingal Head Coastcare Request

Hi s22

Thanks for your help with this. Details of the Lot numbers etc are below snf the applicants name is s47F

Location: Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740
No. 40 Queen Street, Fingal Head
Zoning: 2(a) Low Density Residential, 6(a)

Looking forward to hearing from you.

Cheers

s47F

s22

From: s22
Sent: Monday, 11 August 2014 1:01 PM
To: s22
Subject: FW: Case CAS-03437-X4W6B4 is referred to you CRM:0198187
[SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

FYI...

From: CIU Mail
Sent: Monday, 11 August 2014 12:11 PM
To: s22
Subject: [SEC=UNCLASSIFIED] Case CAS-03437-X4W6B4 is referred to you CRM:0198187

A new enquiry case has been created and is assigned to you for appropriate action. You do not need access to the department's Client Relationship Management System (CRMS) to action the enquiry.

Below are the details of the case for your attention.

- CRMS Case Number: CAS-03437-X4W6B4
- CRMS Case Title: Illegal clearing of trees
- Client's Contact Details: Email: , Name: s47F

INSTRUCTIONS:

A call was previously transferred to you by the Community Information Unit for response.

NON CRMS Users: No further action is required. This auto-generated email is for your records.

CRMS Users: Please access and action the case in CRMS. The phone activity can be viewed by clicking 'Closed Activities' on the left of the case screen within CRMS. Please add any relevant details about the phone enquiry to the 'Notes' field.

This is a CRMS auto-generated email.

Community Information Unit
Department of the Environment
Email: ciu@environment.gov.au

s22

From: s22
Sent: Monday, 11 August 2014 2:03 PM
To: s22
Subject: FW: Media dot points for 40 Queen st Fingal Head vegetation clearing [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Fact check pls.

Hi s22

RE: <http://www.echo.net.au/2014/08/fingal-head-locals-outraged-rare-tree-massacre/>

The compliance hotline has been taking calls on the above action all day now, it may be picked up nationally.

s22 prepped some TP's below in case they are required. For your wordsmithing, then clearing with s22

Whilst the Littoral Rainforest is EPBC protected matter, the threshold for significance on Littoral Rainforest is 0.4 hectare, and this clearing is below the threshold.

s22

From: s22
Sent: Monday, 11 August 2014 1:47 PM
To: s22
Subject: FW: Media dot points for 40 Queen st Fingal Head vegetation clearing [SEC=UNCLASSIFIED]

Hi s22

Media dot points for your clearance

- The Department reviewed the proposed action of vegetation clearing at 40 Queen Street, Fingal Head NSW in May 2014 following an enquiry from Tweed Shire Council.
- The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- Nationally listed threatened flora species and ecological communities are matters of environmental significance.
- The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.
- It is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance.
- The Department will not be taking any action in relation to this matter.

s22

[REDACTED]
Compliance Officer | Compliance and Enforcement Branch | Department of the Environment
GPO Box 787 CANBERRA ACT 2601

s22 [REDACTED] [@environment.gov.au](mailto:[REDACTED]@environment.gov.au)

s22

From: s22
Sent: Monday, 11 August 2014 5:01 PM
To: s22
Subject: FW: Media points for 40 Queen st Fingal Head vegetation clearing [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

From: Gaddes, Shane
Sent: Monday, 11 August 2014 4:52 PM
To: s22
Cc: s22
Subject: Media points for 40 Queen st Fingal Head vegetation clearing [SEC=UNCLASSIFIED]

Media team

Here are the cleared points for the vegetation removal at 40 Queen St Fingal, NSW:

- The Department of the Environment reviewed the proposed vegetation clearing at 40 Queen Street, Fingal Head NSW in May 2014 following an enquiry from Tweed Shire Council.
- The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance, protected under the *Environment Protection and Biodiversity Conservation Act 1999*.
- Nationally listed threatened species and ecological communities are matters of national environmental significance under the Act.
- The Department's review concluded that that this clearing is unlikely to result in a significant impact on matters of national environmental significance.
- The Department understands that the clearing involves the removal of less than 400 square metres of the critically endangered *Littoral Rainforest and Coastal Vine Thickets of Eastern Australia* ecological community.
- Under the Department's policy statement for this ecological community, the area to be cleared needs to be over 1,000 square metres to be considered likely to have a significant impact.
- As a significant impact on a nationally protected matter is unlikely the Department will not be taking any further action in relation to this matter.

regards

Shane Gaddes | Assistant Secretary | Compliance & Enforcement Branch | s22

s22

From: s22
Sent: Monday, 11 August 2014 12:57 PM
To: s47F
Subject: RE: Littoral Rainforest [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Completed

Hi s47F

Thank you for your advice.

Regards

s22

Compliance Officer | Compliance and Enforcement Branch | Department of the Environment
GPO Box 787 CANBERRA ACT 2601

s22 @environment.gov.au

From: s47F @planitconsulting.com.au]
Sent: Monday, 11 August 2014 12:42 PM
To: s22
Subject: RE: Littoral Rainforest [SEC=UNCLASSIFIED]

Hi s22

I have had the tree removal contractor engaged by the client confirm that no clearing has taken place outside the bounds of the subject property.

The contractor has been provided with a copy of the survey plan detailing the extent of the property and has been advised that no clearing on the adjoining Crown Reserve is permitted.

Cheers,



s47F
Town Planner

s47F @planitconsulting.com.au

Level 2, 11-13 Pearl Street, Kingscliff NSW 2487
PO Box 1623, Kingscliff NSW 2487

Development Consultants for Queensland - New South Wales - Northern Territory

For contact details for our Queensland & Northern Territory offices, visit www.planitconsulting.com.au

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From: s22 [redacted]@environment.gov.au]
Sent: Monday, 11 August 2014 11:38 AM
To: s47F [redacted]
Subject: RE: Littoral Rainforest [SEC=UNCLASSIFIED]

Hi s47F [redacted]

Please see below for the Departments advice sent to the NSW police today.

The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Nationally listed threatened flora species and ecological communities are matters of environmental significance.

The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.

Based on the information provided, it is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance. Consequently, the Department will not be taking any action in relation to this matter.

Regards

s22 [redacted]

Compliance Officer | Compliance and Enforcement Branch | Department of the Environment
GPO Box 787 CANBERRA ACT 2601

s22 [redacted]@environment.gov.au

From: s22 [redacted]
Sent: Monday, 11 August 2014 11:03 AM
To: s22 [redacted]
Subject: FW: Littoral Rainforest [SEC=UNCLASSIFIED]

Hi s22 [redacted]

Are you able to provide any details on this?

Thanks in advance :)

Cheers,

s22 [redacted]
Marine & Freshwater Species Conservation
s22 [redacted]

From: s22 [redacted]
Sent: Thursday, 7 August 2014 4:31 PM
To: s22 [redacted]
Cc: s22 [redacted]
Subject: FW: Littoral Rainforest [SEC=UNCLASSIFIED]

Hi s22 [redacted]

We looked at this matter in May this year, after correspondence from the Council. It was determined that the clearing wouldn't have a significant impact on any matters of MNES. s22 could give you more info when she returns from leave next week. Would you like us to respond to s47F on Monday?
Trish

s22 Assistant Director | EPBC Compliance Section | Compliance and Enforcement Branch
Department of the Environment
GPO Box 787 Canberra ACT 2601 s22 @environment.gov.au

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-----Original Message-----

From: s22
Sent: Thursday, August 07, 2014 01:36 PM AUS Eastern Standard Time
To: s22
Cc: s22
Subject: Littoral Rainforest [SEC=UNCLASSIFIED]

Hello

EPBC Act listed critically endangered ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia (Littoral Rainforest)

I've had a call out of the blue from s47F. Apparently a property owner, s47F, has a DA in with the local council to clear Littoral Rainforest on his property. Council were about to reject the DA but the owner has put in a late argument that he needs to clear for protection of property against fire. The caller, s47F noted that there are new laws in NSW allowing clearing within 10 m and clearing undergrowth within 50m.

s47F was not aware of a referral having been made under the EPBC Act and was concerned that the council would have to approve the clearing. s47F was also unsure of the size of the patch, but it sounds like it would be small (i.e. less 1 ha).

Location:

**Lot 7011 DP 1065741 Marine Parade, Fingal Head and Lot 367 DP 755740
No. 40 Queen Street, Fingal Head
Zoning: 2(a) Low Density Residential, 6(a)**

Littoral Rainforest occurs in a narrow coast band across three states: QLD, NSW and VIC. It's now very restricted in area and highly fragmented. Approximately 82% of patches are less than 10 hectares and only 19 patches (approximately 1%) are greater than 100 ha each. Please let me know if you need more info on Littoral Rainforest, I'm currently in the early stages of preparing a recovery plan for this EC.

s22
Marine & Freshwater Species Conservation | Wildlife, Heritage and Marine Division
DEPARTMENT OF THE ENVIRONMENT

GPO Box 787 CANBERRA, ACT 2601

s22

VI www.environment.gov.au



s22

From: s47F [redacted]@tweed.nsw.gov.au>
Sent: Monday, 11 August 2014 2:59 PM
To: s22 [redacted]
Subject: RE: Vegetation clearing on 40 Queen Street [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Hello s22 [redacted]

Thank you, sincerely appreciate your timely response on the matter.

Kind Regards

s47F [redacted] | Biodiversity Planner/Project Officer



s47F [redacted] @tweed.nsw.gov.au | w www.tweed.nsw.gov.au
Civic and Cultural Centre Tumbulgum Road Murwillumbah NSW 2484 | PO Box 816 Murwillumbah NSW 2484

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Please consider the environment before printing this email. One tonne of paper is equivalent to 13 trees and 30 kL of water

From: s22 [redacted]@environment.gov.au]
Sent: Monday, 11 August 2014 11:43 AM
To: s47F [redacted]
Subject: Vegetation clearing on 40 Queen Street [SEC=UNCLASSIFIED]

Hi s47F [redacted]

Please see below for the Departments advice sent to the NSW police today.

The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Nationally listed threatened flora species and ecological communities are matters of environmental significance.

The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.

Based on the information provided, it is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance. Consequently, the Department will not be taking any action in relation to this matter.

Regards

s22 [redacted]

s22 [@environment.gov.au](mailto:environment.gov.au)

All official correspondence requiring a formal written response should be addressed to the General Manager, PO Box 816, Murwillumbah, 2484; or emailed to tsc@tweed.nsw.gov.au; or faxed to 02 6670 2429.

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www.tweed.nsw.gov.au

This email has been scanned by the MessageLabs Email Security System

s22

From: s47F [redacted]@police.nsw.gov.au>
Sent: Monday, 11 August 2014 12:48 PM
To: s22 [redacted]
Subject: Re: Vegetation clearing on 40 Queen Street [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks s22 [redacted] for the information.

s47F [redacted]
Senior Constable
Kingscliff

-----"s22 [redacted]@environment.gov.au> wrote: -----

To: s47F [redacted]@police.NSW.gov.au>
From: "Reid, Katherine" <Katherine.Reid@environment.gov.au>
Date: 11/08/2014 11:03AM
Cc: "s22 [redacted]@environment.gov.au>, "s22 [redacted]@environment.gov.au>
Subject: Vegetation clearing on 40 Queen Street [SEC=UNCLASSIFIED]

To whom it may concern

The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Nationally listed threatened flora species and ecological communities are matters of environmental significance.

The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.

Based on the information provided, it is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance. Consequently, the Department will not be taking any action in relation to this matter.

Regards

s22 [redacted]

Compliance Officer|Compliance and Enforcement Branch|Department of the Environment

GPO Box 787 CANBERRA ACT 2601

s22 [REDACTED]@environment.gov.au

All mail is subject to content scanning for possible violation of NSW Police Force policy, including the Email and Internet Policy and Guidelines. All NSW Police Force employees are required to familiarise themselves with these policies, available on the NSW Police Force Intranet.

s22

From: s22
Sent: Monday, 11 August 2014 1:12 PM
To: s47F @environment.nsw.gov.au
Subject: Vegetation clearing on 40 Queen Street, Fingal Head [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Flagged

Hi s47F

Following on from our telephone conversation earlier today regarding vegetation clearing on 40 Queen Street at Fingal Head today, please see below for the Departments advice sent to the NSW police.

The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Nationally listed threatened flora species and ecological communities are matters of environmental significance.

The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.

Based on the information provided, it is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance. Consequently, the Department will not be taking any action in relation to this matter.

Regards

s22

Compliance Officer | Compliance and Enforcement Branch | Department of the Environment
GPO Box 787 CANBERRA ACT 2601

s22 @environment.gov.au

NOTE FOR FILE – DOC 14 140812 DOC FILE NOTE

Case 1665 was previously closed in May 2014 and reignited following the owner of 40 Queen Street at Fingal Head s47F using the 10/50 rule to clear vegetation on the block. This occurred following Tweed Shire Council refusal of DA approval on two separate occasions during the past year. Local residents, Councillors and police were involved in a demonstration on site against the clearing on the morning of 11/8/14.

A number of telephone calls were received by EPBC Compliance section from the following people regarding the EC clearing:

s47F concerned citizen

s47F concerned citizen who has previously been in contact with s22 from Marine & Freshwater Species Conservation, Wildlife, Heritage and Marine Division

s47F Biodiversity Planner/Project Officer, Tweed Shire Council

Tweed Shire Council, Councillor s47F at 2pm

s47F from Planit Consulting on behalf of the owner s47F

Constable s47F, NSW Police

Senior Constable s47F, NSW Police

s47F from NSW Department of Environment

General advice provided to all parties was as follows:

The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Nationally listed threatened flora species and ecological communities are matters of environmental significance.

The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.

Based on the information provided, it is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance. Consequently, the Department will not be taking any action in relation to this matter.

s22

NSW Fingal Head vegetation clearing
Compliance Officer
EPBC Compliance
Compliance and Enforcement Branch

Date: 12/08/2014



Ref: CAS 1665

s47F

Principal Solicitor
NSW Environmental Defenders Office
Level 5, 263 Clarence Street
Sydney NSW 2000

Dear s47F

Thank you for your enquiries regarding the clearing of critically endangered ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia at 40 Queen Street, Fingal head.

As previously advised, the department reached the conclusion that the clearing of vegetation at the site would be unlikely to result in a significant impact and does not intend to pursue the matter further.

The email referred to in your letter does not mean that the Minister has made a decision under Section 75 (or any other part) of the *Environment Protection and Biodiversity Conservation Act 1999* that the clearing is not a controlled action. The difference is that the greater majority of departmental staff as part of their daily duties make (or input to) policy, procedural and process decisions.

Officers in the department's Compliance and Enforcement Branch, who are not delegates of the Minister, deal with hundreds of compliance incident reports each year. This entails making internal (policy, procedural, and process) decisions about how to most effectively deal with matters which are brought to the department's attention, having regard to available information and the application of the EPBC Act. These are not statutory decisions. Statutory decisions are those decisions made in accordance with provisions of the *Environment Protection and Biodiversity Conservation Act 1999* and other relevant legislation such as the *Administrative Decisions (Judicial Review) Act 1977*.

You have requested that the department provide to you (**certain documents relevant to the proposal**). To my knowledge this information is not in the public domain, hence access by third parties to such information would need to occur via a Freedom of Information (FOI) request - or via direct request to (**proponent**).

As no statutory decision currently exists in relation to the (**activity**), the department is unable to assist with your request for a statement of reasons. Beyond the explanation already provided to you, your next recourse would be to make a request for further information under the Freedom of Information Act. This can be done via a Freedom of Information application to the department's FOI coordinator, in which case I understand that a fee applies. The FOI Coordinator can be contacted via email (foi@environment.gov.au) for advice on how to make an application.

There are also options for third party actions under the EPBC Act such as injunctions (see Section 475 of the EPBC Act for example) in which case you would need to seek your own legal advice, at your own cost.

Please do not hesitate to contact (director name) if you wish to discuss this matter further by telephone on (number) or by email at compliance@environment.gov.au.

[text of letter]

Yours sincerely

Shane Gaddes
Assistant Secretary
Compliance and Enforcement Branch / Environment Assessment and Compliance Division
08 September 2014

8th September 2014

Dr Gordon De Brouwer
Secretary
Department of Environment
GPO Box 787
CANBERRA, ACT 2601

By email: Gordon.Debrouwer@environment.gov.au

cc s22 [redacted] [@environment.gov.au](mailto:[redacted]@environment.gov.au)

Dear Mr De Brouwer

Clearing of critically endangered ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia at 40 Queen St Fingal Head.

We act for Fingal Head Coastcare Inc. in relation to the above matter.

We refer to an email, which we have provided below, which was provided to us by our client, from s22 [redacted] of the Department dated 11 August 2014.

We are writing to seek your clarification as to whether the email represents a decision by the Minister for the Environment (by his delegate) under Section 75 (or any other part) of the *Environment Protection and Biodiversity Conservation Act 1999* that the clearing is not a controlled action.

If the email is a decision that the clearing is not a controlled action, or a decision of another type, on behalf of our client we request a statement of reasons in accordance with s13(1) of the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act).

We also request a list of documents which were before the Department and were relied on in making the decision.

The email of 11th August 2014

From: s22 [redacted] [@environment.gov.au](mailto:[redacted]@environment.gov.au)
Sent: Monday, 11 August 2014 11:43 AM
To: s47F [redacted]
Subject: Vegetation clearing on 40 Queen Street [SEC=UNCLASSIFIED]

Hi s47F [redacted]

Please see below for the Departments advice sent to the NSW police today.

The Commonwealth Government's involvement in any new development or action is limited to those that may have a significant impact on matters of national environmental significance which are protected under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Nationally listed threatened flora species and ecological communities are matters of environmental significance.

The Department of the Environment understands that the clearing at 40 Queen Street involves the removal of less than 400 square metres of the critically endangered ecological community of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.

Based on the information provided, it is considered that this clearing is unlikely to result in a significant impact on matters of national environmental significance. Consequently, the Department will not be taking any action in relation to this matter.

Regards

s22

Compliance Officer | Compliance and Enforcement Branch | Department of the Environment

GPO Box 787 CANBERRA ACT 2601

We look forward to receiving your timely response to the question of clarification and or the statement of reasons and list of documents within 28 days of receiving this request, pursuant to s13(2) of the ADJR Act.

If you wish to discuss this matter further, please contact s47F of our office on s47F

Yours sincerely,
EDO NSW

s47F

Principal Solicitor

Our Ref:

s22

From: s22
Sent: Wednesday, 1 October 2014 12:24 PM
To: s47F
Cc: s22
Subject: Littoral rainforest Queen St Fingal Head [SEC=UNCLASSIFIED]

Dear s47F

I refer to your emails to the Department of Environment's EPBC Referrals Section of 12 August 2014, 15 September 2014 and 30 September 2014 regarding the potential impact of a development at 40 Queen Street, Fingal Head, NSW, on matters of national environmental significance.

Compliance officers have investigated into the potential application of the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) to recent clearing on the site and were unable to substantiate a contravention.

Regards

s22

Compliance and Enforcement Branch, Environmental Assessments and Compliance Division
Department of the Environment

s22

Report all Environmental Crime – 1800 110 395
compliance@environment.gov.au or investigations@environment.gov.au



Australian Government
Department of the Environment



Australian Government
Department of the Environment

Ref: EC14-000733

s47F

Principal Solicitor
NSW Environmental Defenders Office
Level 5, 263 Clarence Street
Sydney NSW 2000

Dear s47F

Thank you for your letter of 8 September 2014 on behalf of Fingal Head Coastcare Inc regarding the clearing of vegetation at 40 Queen Street, Fingal Head, NSW. The Secretary has asked me to respond on his behalf.

As previously advised, officers from the Department's Compliance and Enforcement Branch have finalised their inquiries into this matter. The Department considers that the clearing of vegetation at 40 Queen Street, Fingal Head, would be unlikely to result in a significant impact on the critically endangered ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia. In the absence of a likely significant impact on a protected matter, the action did not require referral under the *Environment Protection and Biodiversity Conservation Act 1999* (the Act) and as such the Department did not pursue the matter further.

As you are aware, the subject site is a residential block of approximately 1,000 square metres in size in the township of Fingal Head NSW. The majority of this property was previously cleared for a private residence prior to the ecological community being listed. In coming to a decision not to seek the referral of the proposed clearing it is relevant to consider the proposed action at its broadest scope and to consider the potential for the action to significantly impact on matters of national environmental significance.

In this case consideration was given to the small scale of the proposed works and the potential edge effects which may result on the larger adjacent component of the ecological community. Having considered a range of information available to the Department, Compliance officers did not consider that the proposed works would trigger a requirement for the Minister to use powers available to him to call in the action under section 70 of the Act.

The EPBC Act provides for the Department and public interest litigants to seek injunctive relief in circumstances when they are able to satisfy the courts that there is a real prospect that a contravention of national environmental law will result from a proposed action (s475 EPBC Act). The Department was not able to satisfy those tests in relation to this allegation. No potential or actual contravention of national environmental law was identified and no further action taken by the Department.

Departmental compliance and enforcement staff, as part of their duties, consider and provide advice on hundreds of matters like this each year. Compliance officers provide advice to proponents having regard to the information available about the action, the application of the relevant parts of the Act and any relevant policy statements. It should be noted that this activity plays an important education role and also ensures that businesses are not unnecessarily required to refer matters for assessment and decision when approval under the Act is not required.

The documents relied on in determining that a referral was not required in this instance included:

- information from the Department's publically available Species Profile and Threats Database
- EPBC Act Policy Statement 1.1 - Significant Impact Guidelines for Matters of National Environmental Significance
- referral precedents for proposals impacting on this ecological community, and
- the Department's Policy Statement 3.9 - Littoral rainforests and coastal vine thickets of eastern Australia.

All of the above information is available from the Department's website.

In your letter, you request that the Department provide a statement of reasons in relation to the clearing of vegetation at 40 Queen Street, Fingal Head. Unfortunately, the Act does not allow for a statement of reasons to be provided where no statutory decision has been made.

If you would like to discuss this matter further please do not hesitate to contact s22
A/g Director of the EPBC Compliance Section, on s22 or via email at
s22

Yours sincerely



Dean Knudson
First Assistant Secretary
Environmental Assessment and Compliance Division

17 October 2014



The Hon Greg Hunt MP
Minister for the Environment

MC14-035865

s47F

Principal Solicitor, EDO NSW
Level 5, 263 Clarence Street
SYDNEY NSW 2000

15 JAN 2015

Dear s47F

I refer to your letter of 5 December 2014 on behalf of Fingal Head Coastcare Inc concerning the clearing of a critically endangered ecological community at 40 Queen Street, Fingal Head, New South Wales.

Firstly, let me say that I appreciate the conservation and environmental work that the Fingal Head Coastcare Inc has undertaken in the Tweed Heads region assisting in the preservation of natural heritage, bushland and coastal areas.

I am advised by the Department of the Environment that officers from the Compliance and Enforcement Branch have finalised their inquiries into this matter. The Department considers that the clearing of vegetation at 40 Queen Street, Fingal Head, would be unlikely to result in significant impact on the critically endangered ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia. In the absence of a likely significant impact on a protected matter, the action does not require referral under *the Environment Protection and Biodiversity Conservation Act 1999* (the Act).

Not all actions impacting on nationally protected matters are likely to have a significant impact and require referral. For example, I draw your attention to the referred action (EPBC 2014/7383) that you mentioned in your letter. This action, also for proposed tree clearance under the NSW 10/50 vegetation clearing rule, was received by the Department on 3 November 2014. The proposed development was for an area of 900 square metres and was determined not to be a controlled action on 28 November 2014.

While I am sympathetic to the concerns raised in your letter, I regret that it will not be possible for the Australian Government to provide further assistance in relation to this matter.

Thank you for writing on this matter.

Yours sincerely



Greg Hunt

s22

From: s22
Sent: Friday, 5 December 2014 10:28 AM
To: MinisterialCorrespondence
Subject: FW: Clearing of EPBC Act listed Critically Endangered Ecological Community NE NSW - 10/50 Bushfire Code [SEC=UNCLASSIFIED]
Attachments: 141205 Minister Hunt EPBC Act Orders.pdf; APPENDIX 1 Fingal Ecological Report_final.pdf

Importance: High

Categories: Min Reply

EAACD

Minister reply

From: s47F [redacted] @edonsw.org.au]

Sent: Friday, 5 December 2014 10:06 AM

To: Greg.Hunt.MP

Cc: s22 [redacted]

Subject: Clearing of EPBC Act listed Critically Endangered Ecological Community NE NSW - 10/50 Bushfire Code

Dear Minister,

Please find a letter and its appendix **attached** for your attention and response.

It concerns the clearing of an EPBC Act listed Critically Endangered Ecological Community in NE NSW in purported compliance with the NSW 10/50 bushfire code.

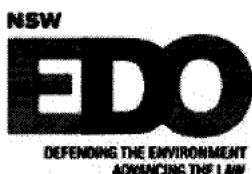
If you require any more information about this matter please do not hesitate to contact me.

Kind regards,

s47F

Principal Solicitor

①



s47F Principal Solicitor | EDO NSW
Level 5, 263 Clarence Street, Sydney NSW 2000 AUSTRALIA

s47F

W: www.edonsw.org.au

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NSW



DEFENDING THE ENVIRONMENT
ADVANCING THE LAW

EDO NSW

ABN 72 002 880 864
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
E: edonsw@edonsw.org.au
W: www.edonsw.org.au
T: + 612 9262 6989
F: + 612 9264 2414

5 December 2014

Hon. Greg Hunt MP
Minister for the Environment
GPO Box 787
CANBERRA
ACT 2601

Email: Greg.Hunt.MP@environment.gov.au
Cc: S22 [redacted]@environment.gov.au

Dear Minister

40 Queen Street Fingal Head, NSW – request for investigation and if necessary a s 480D determination

We act for Fingal Head Coastcare Inc. (FHCC) in this matter. FHCC has existed as an incorporated body for 28 years and has undertaken an extensive program of dune rehabilitation and re-vegetation works in that time.

We are instructed to respectfully request that you instruct your Department to investigate the clearing of critically endangered *Littoral Rainforest and Coastal Vine Thicket of Eastern Australia* at 40 Queen Street, Fingal Head NSW. If, as a result of investigations, you are satisfied that the clearing has had or is likely to have a significant impact on the ecological community, we further request that you consider appropriate action including the making of a remediation order, pursuant to s480D of the *Environment Protection and Biodiversity Conservation Act 1999 (Act)*.

Background

On 7 August 2014 Tweed Shire Council refused a Development Application for the demolition of an existing small dwelling, the subdivision of the lot into two lots and the construction of two new dwellings at 40 Queen Street Fingal Head.

On 11 August 2014 the owner of 40 Queen Street, Fingal Head arranged for approximately 340m² of critically endangered *Littoral Rainforest and Coastal Vine Thicket of Eastern Australia* to be cleared under the purported authority of the 10/50 Code of Vegetation Clearing which was established under the *Rural Fires Act 1997* NSW and commenced on 1 August 2014 (**10/50 Code**).

The clearing was not referred to the Commonwealth under the Act as a controlled action.

On behalf of our client we commissioned an independent ecological report authored by s47F [redacted] and s47F [redacted]. The ecological report concludes that the clearing is likely to have a significant impact on the *Littoral Rainforest and*

Coastal Vine Thickets of eastern Australia. The ecological report is attached as **Appendix 1** to this correspondence.

Ministerial action requested

We are instructed to draw the following matters to your attention:

- 1) The *Littoral Rainforest and Coastal Vine Thickets of Eastern Australia* is listed as a critically endangered ecological community under the Act.
- 2) The community exists in the context of already accentuated fragmentation and exposure to threats created by urban development. The Commonwealth Listing Advice for the community says¹:

What was once an almost continuous archipelago of patches of the ecological community along the eastern coast of Australia has been reduced and fragmented primarily by coastal development, sandmining and agriculture (Bradley & Merrilyn 1992). The resulting fragmentation and reduction in patch size render the ecological community more vulnerable to other threats including weed invasion, edge effects and fire.

and,

Past development actions, including sand mining and agriculture, have resulted in the decline and fragmentation of the ecological community across its range.

- 3) On page 6 the Listing Advice says:

Urban development is one of the main pressures on Australia's coastal environment (Beeton et al. 2006) where the ecological community continues to be threatened by vegetation clearance.

- 4) On page 21 the Listing Advice says:

The fragmented and linear nature of the patches, their small size and their small area to perimeter length ratios indicate that the ecological community is susceptible to disturbance including loss of fringing protective ecotones and has an inherently higher risk of extinction (Adam 1992).

- 5) That in this context the effect of ongoing patch size reduction and loss of integrity can and should be regarded as a significant impact on the whole community.
- 6) That as identified in the report of s47F and s47F there is very little suitable habitat left for this community.

¹ *Advice to the Minister for the Environment, Water, Heritage and the Arts from the Threatened Species Scientific Committee (the Committee) on Amendments to the List of Ecological Communities under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), p.5*

The 10/50 Code provides an exemption for clearing that would otherwise be unlawful without assessment and approval, including clearing of threatened species (with the exception of mangroves and saltmarsh on public land). It is significant that no State approval or assessment is necessary and there is no mechanism which provides for the assessment of the cumulative effect of these clearing actions.

The 10/50 Code allows clearance of all trees within 10 metres of a dwelling in areas designated by the Rural Fires Service to be a 10/50 area. We note that unlike in Victoria where the equivalent 10/50 and 10/30 rules only apply outside the greater Melbourne area, in NSW there are no urban areas excluded from the operation of the 10/50 Code.

We note that the Commonwealth has received referrals from residents who propose to clear species associated with critically endangered communities under the 10/50 Code.

In particular we note referral 2014/7383 regarding *Littoral Rainforest and Coastal Vine Thicket of Eastern Australia* at 8 Lagoon Road Fingal Head, approximately 500m from 40 Queen Street.

Our client contends that the introduction of the 10/50 Code in NSW, particularly in coastal locations where there is a large urban/bushland interface, has created an unprecedented situation in which the impacts on threatened species by urban development can no longer be fully managed by conditions placed on development consents. The NSW Land and Environment Court recently upheld a decision of Hornsby Shire Council to refuse a development which would have impacted on the critically endangered Blue Gum High Forest (NSW listing) as the owner could have at any time cleared over half of the remnant forest which occurred on the property.²

In that case Commissioner O'Neill said (at 40):

However, the further encroachment of the building footprint to the south has a potential and significant impact for the remnant Blue Gum High Forest within the Restricted Development Area, because the proposal would enable the removal of any remaining tree within 10m of the building envelope, pursuant to s 100R of the Rural Fires Act 1997.

Appropriate remedy

We note that according to section 6 of the *Compliance and Enforcement Policy* (2013) your Department will examine every report of potential contravention of the Act, and:

- decide on appropriate action based on the public interest,
- ensure procedural fairness is applied,
- if necessary engage the opinion of experts on specific subjects,
- seek to discourage ongoing and future breaches.

² *Johnson v Hornsby Shire Council* [2014] NSWLEC 1215

On behalf of our client we request your Department investigate the clearing at 40 Queen Street, Fingal Head and if satisfied that a significant impact has, or is likely to, occur consider appropriate administrative action including issuing a remediation order pursuant to s 480D of the Act.

Given the lack of remaining suitable locations for littoral rainforest, as identified in the ecological report; the conclusions reached in the independent ecological report; and that the community is at serious risk of extinction, we submit that an order requiring the owner of 40 Queen Street to remediate the 340m² of rainforest cleared on 11 August 2014, is an appropriate remedy in the circumstances.

We note that in March 2011 an Order pursuant to s 480D was issued to Singleton Council after clearing 0.6ha of *Weeping Myall - Coobah - Scrub Wilga Shrubland of the Hunter Valley* a listed critically endangered ecological community under the Act, which was determined to have a significant impact on the community.

In our view the conditions attached to that order, including remediation, ongoing monitoring by a suitably qualified person acceptable to the Department for a five year period, and further works if necessary, would be appropriate to apply to 40 Queen Street.

We thank you for your attention to this matter and we look forward to your timely response.

Yours sincerely,
EDO NSW

s47F

Principal Solicitor

Our Ref: 1421169

Expert Report
Prepared for EDO NSW, acting for Fingal Head Coastcare Inc
s47F and s47F

27 November 2014

Executive Summary

s47F and s47F have been engaged by EDO NSW to provide expert advice in relation to the alleged clearing of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia (Littoral Rainforest) under the NSW 10/50 Vegetation Clearing Code of Practice (10/50 Rules) at 40 Queen Street, Fingal Head. The allegedly cleared vegetation was contiguous with remnant Littoral Rainforest on a Crown Reserve to the east, as evidenced from the appearance of the vegetation from air photos.

We find that the vegetation on the public land component of the Queen Street remnant has been shown to fit the criteria listed in EPBC Policy Statement 3.9 "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia" and is therefore Littoral Rainforest as described under the EPBC Act.

Photographs and documentation shows that vegetation has been removed from 40 Queen Street. The recently cleared vegetation on the subject site was formerly continuous with the Queen Street remnant and evidence supports a conclusion of similarity of vegetation throughout the remnant. The cleared vegetation is therefore also considered to be Littoral Rainforest.

We find that the clearing has had an impact that is of immediate and local importance to the ecological community. Longer-term ecological consequences are likely and the impacts of the clearing are likely to compound the effects of additional similar instances of clearing and disturbance in Littoral Rainforest locally. The local occurrences cannot be replicated at other latitudes and form a distinctive component of the spatial variation described for the nationally listed ecological community. The conclusion of adverse impact applies to the ecological community as a whole.

We consider the impact of the clearing to be significant.

Introduction

s47F and s47F have been engaged by EDO NSW to provide expert advice and to prepare a preliminary expert report in relation any impact of the alleged clearing of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia (Littoral Rainforest) under the NSW 10/50 Vegetation Clearing Code of Practice (10/50 Rules) at 40 Queen Street, Fingal Head (the subject site). We are asked to assess whether the alleged clearing constitutes a significant impact on Littoral Rainforest under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). In compiling this report, we have read and agree to be bound by the *Expert Witnesses In Proceedings In The Federal Court Of Australia Practice Note CM7*.

EDO NSW acts for Fingal Head Coastcare Inc., who are concerned that Littoral Rainforest, a community listed as critically endangered under the EPBC Act, may have been cleared without appropriate regard to the requirements of the EPBC Act. The alleged clearing was conducted under the 10/50 Rules which, in summary, allow the clearing of all trees within 10 m of a residential property and clearing of underlying vegetation, such as shrubs, within 50 m of a residential property in a 10/50 Vegetation Clearing Entitlement Area. We are advised by EDO NSW that Fingal Head Coastcare Inc. do not suggest that the clearing did not meet the requirements of the 10/50 Rules. However, the 10/50 Rules do not exempt actions from obtaining the necessary approvals under the EPBC Act.

Our opinion relies on a field inspection by s47F of the premises at 40 Queen Street Fingal Head, including adjacent public land, undertaken on 16 September 2014; a second visit to the same location by s47F and s47F on 15 November 2014; and documents provided by the EDO NSW (listed in Annexure A).

Our qualifications and experience are set out in CVs provided at Annexure B.

An area termed the Queen Street remnant has been identified by Tweed Shire Council (TSC) (Planning Committee Report May 2014, Figure 25), who estimate the total area of the remnant as 3,400m².

The "subject site" is the section of the remnant that is located at 40 Queen Street. The remainder of the remnant is termed the "public land component of the Queen Street Remnant". The area of the portion of the remnant located on private land at 40 Queen Street was estimated by TSC at 340 m².

1. Please describe the findings from your site visit, including the vegetation and any evidence of clearing observed in the area.

A field inspection of the subject site and surrounds was undertaken by s47F on 16 September 2014. The area at 40 Queen Street Fingal was observed from public land on the western street front boundary and the eastern boundary within the littoral rainforest on vacant Crown Land.

Trees had been cut down in, and cut material removed from, an area surrounding the existing house and extending to the west of the house. Observation with the naked eye resulted in a count of 22 stumps, some of which had diameters in the estimated range 20-40cm. Additional small stumps could have been present and not visible when viewing from the lot boundaries. There was a large pile of recently mulched vegetation to the west of the clearing close to the boundary of the lot with Queen Street.

Most of the clearing appeared to have taken place recently, as judged by the fresh appearance of cut stump surfaces and colour in the bark remaining on the stumps. We are informed by EDO NSW that Fingal Head Coastcare Inc have alleged that clearing from this site took place on 11 August 2014; the appearance of the stumps was consistent with clearing of vegetation in the timeframe identified by Fingal Head Coastcare Inc. A very large stump in the foreground, when looking from Queen Street, and apparently cleared earlier

than the recent clearing event, was also observed. The cut surface of the stump did not appear to be fresh. The count of 22 stumps includes freshly cut stumps only.

s47F [redacted] photographed the clearing on the subject site from the western and eastern boundaries (Annexure C P1 -3).

The stumps were not re-counted on the second visit s47F [redacted] and s47F [redacted] on 15 November 2014. A brief inspection confirmed the general observations of the clearing and noted re-sprouting of a number of the stumps.

Further information on the vegetation in the surrounding area is provided below.

2. In your opinion, is the vegetation community that occurs in the area of the subject site Littoral Rainforest as described under the EPBC Act? In formulating your response, please consider the EPBC Policy Statement 3.9 "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia: A nationally threatened ecological community".

"In the area of the subject site" is taken to refer to the public land component of the Queen Street remnant, formerly continuous with the vegetation (now cleared) on the subject site.

Observations and available documentation are used to compare the vegetation community with the criteria listed in the EPBC Policy Statement 3.9, as follows:

The ecological community occurs in the following bioregions identified in the Interim Biogeographic Regionalisation of Australia (IBRA): Cape York Peninsula (from Princess Charlotte Bay southwards), Wet Tropics, Central Mackay Coast, South Eastern Queensland, NSW North Coast, Sydney Basin and South East Corner.

The ecological community occurs in the Interim Biogeographic Regionalisation of Australia (IBRA): South Eastern Queensland.

Patches of the ecological community typically occur within two kilometres of the east coast, or on offshore islands, or adjacent to a large body of salt water, such as an estuary, where they are subject to maritime influences.

The location is within two kilometres of the east coast. The Queen Street remnant is less than 200m from the coast (estimated from the scaled photograph at TSC Feb 2014 Locality Plan p 359).

The Littoral Rainforest and Coastal Vine Thickets of Eastern Australia typically has tall trees as part of the canopy, but not always. The height of the canopy plants varies depending on the degree of exposure and can range from one to 25 metres. Emergent trees may be present above the canopy, for example species from the genera Araucaria (Bunya and Hoop pines in the northern bioregions only), Banksia or Eucalyptus. The ground layer of the vegetation typically is sparse.

The canopy height is variable and is estimated to range up to 15m. There are no emergent trees and the lower and ground storeys are sparse.

There are a range of plant life forms including trees, shrubs, vines, herbs, ferns and epiphytes (plants that are supported by or grow on other plants). To the north, most plant species diversity is in the tree and shrub layers rather than in the lower layer. The opposite, where the ground layer is typically more diverse, generally occurs from the Sydney Basin Bioregion southwards.

The species list for the public land component of the Queen Street remnant (Annexure D) demonstrates the presence of a range of vegetation forms, being trees, shrubs, vines, herbs, ferns and epiphytes. Located at a latitude intermediate between the extremes described above, the vegetation under consideration exhibits moderate species diversity in both the upper and lower strata.

Plants with drought tolerant and succulent features are generally more common in littoral rainforest than in more inland rainforest types.

Plants with fleshy leaves included *Hoya australis*. Otherwise, plants with succulent features were not observed. Detailed study would be required to distinguish features indicating drought tolerance and no specific information is available.

Trunks often host lichens (but rarely mosses) and canopy stem sizes tend to be smaller compared to that in more inland rainforest. Ground ferns and epiphytes are lower in diversity in littoral rainforests compared to many other rainforest types. Feather palms, fan palms and large leaved epiphytes are generally rare.

Plant species are mainly rainforest species and can be regionally predictable.

We did not observe lichens nor mosses on tree trunks. Canopy stem sizes were observed to be generally smaller compared with those in more inland rainforest, but it is not possible to distinguish between rainforest type and stage of development as a determinant of stem size. Ground ferns and epiphytes were low in diversity. Feather palms, fan palms and large leaved epiphytes were sparse or absent.

The difficulty in defining rainforest, and rainforest species, in Australia, has been set out (Lynch A.J.J., Neldner V.J. 2000. Problems of placing boundaries on ecological continua – options for a workable national rainforest definition in Australia. *Australian Journal of Botany* 48: 511–530). These authors defined rainforest plant species as “those adapted to regenerating under low-light conditions experienced under the closed canopy or in localised gaps caused by recurring disturbances which are part of the natural rainforest ecosystem, and are not dependent on fire for successful regeneration.”

The comparison indicates that 39 of the total 49 species listed for the public land component of the Queen Street remnant are also listed on the Listing Advice's list of diagnostic species “Flora Species of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia by Bioregion” for Southern South Eastern Queensland and NSW North Coast. Additional species present in the remnant but not listed on the Listing Advice are also considered to be

rainforest species – the Listing Advice notes that the list of diagnostic species is not exhaustive and acknowledges that additional rainforest species may be encountered.

It is concluded that most species present are *regionally predicted rainforest species*.

The minimum patch size needs to be 0.1 hectares (1000 m²)

The patch size is 3,400m² (TSC May 2014 page 303 and TSC February 2014 Figure 25 page 304). The area refers to the whole of the Queen Street remnant including the (now cleared) vegetation on the subject site.

The cover of transformer weed species is 70 per cent or less. Transformer weeds are highly invasive taxa with the potential to seriously alter the structure and function of the ecological community.

Transformer weeds of the Southern South Eastern Queensland and NSW North Coast are listed in "Flora Species of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia by Bioregion". Listed transformer weeds recorded in September and November 2014 were *Asparagus aethiopicus*, *Chrysanthemoides monilifera* subsp. *rotundata*, *Ipomoea cairica*, *Lantana camara*, *Ochna serrulata*, *Schefflera actinophylla* and *Senna pendula* var *glabrata*. The total weed cover was estimated at <10% and almost completely confined to the mid and ground storeys, mainly on edges. The cover of transformer weeds is therefore well below the threshold of 70%.

Of the native plant species present in the patch, at least 25 per cent of these must occur on the indicative plant species lists for the associated bioregion of this ecological community

Annexure D indicates that 39 of the total 49 species listed for the public land component of the Queen Street remnant are also included on the list of indicative species "Flora Species of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia by Bioregion" for Southern South Eastern Queensland and NSW North Coast. The listed indicative species make up 80% of the total native species recorded i.e. greater than 25%.

The minimum patch size needs to be 0.1 hectares (1000 m²)

The whole remnant is estimated to be 3,400 m² in area and the public land component is estimated to be 3,060 m².

CONCLUSION

The vegetation on the public land component of the Queen Street remnant has been shown to fit the criteria listed in EPBC Policy Statement 3.9 "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia" and is therefore Littoral Rainforest as described under the EPBC Act.

Tweed Shire Council (February 2014) supports the view that the remnant fits the criteria in the EPBC Act.

3. In your opinion, is the vegetation community that occurs, or that previously occurred, on the subject site Littoral Rainforest? Please explain how you formed this opinion.

Our site inspection supported the concern that vegetation has been recently cleared from the subject site. Vegetation was present only as stumps, some of which were re-sprouting, at the time of the inspections.

The vegetation formerly present on the subject site is described in Planit (2013), who list most of the species present in the community they name as Community 2 Mid-high/tall open-closed Littoral Rainforest.

Observations and available documentation are used to compare the vegetation community that existed on the subject site prior to clearing with the criteria listed in the EPBC Policy Statement 3.9, as follows:

The ecological community occurs in the following bioregions identified in the Interim Biogeographic Regionalisation of Australia (IBRA): Cape York Peninsula (from Princess Charlotte Bay southwards), Wet Tropics, Central Mackay Coast, South Eastern Queensland, NSW North Coast, Sydney Basin and South East Corner.

The ecological community occurs in the Interim Biogeographic Regionalisation of Australia (IBRA): South Eastern Queensland.

Patches of the ecological community typically occur within two kilometres of the east coast, or on offshore islands, or adjacent to a large body of salt water, such as an estuary, where they are subject to maritime influences.

The location is within two kilometres of the east coast. The Queen Street remnant is less than 200m from the coast (estimated from the scaled photograph at TSC Feb 2014 Locality Plan p 359).

The Littoral Rainforest and Coastal Vine Thickets of Eastern Australia typically has tall trees as part of the canopy, but not always. The height of the canopy plants varies depending on the degree of exposure and can range from one to 25 metres. Emergent trees may be present above the canopy, for example species from the genera Araucaria (Bunya and Hoop pines in the northern bioregions only), Banksia or Eucalyptus. The ground layer of the vegetation typically is sparse.

The structural classification used by Planit (i.e. mid-high/tall indicates that the height could have potentially ranged within 6.01-20m. The height ranges indicated by the canopy height classes (mid-high and tall) are set out in Walker, J. and Hopkins, M.S., 1990. ('Vegetation' in *Australia Soil and Land Survey Field Handbook*, 2nd edition, Inkata Press, Melbourne.)

Tree Report (2013) tabulates heights of trees proposed for removal on the subject at that time as varying up to 10m. Planit (2013) describe the lower strata as having principally been removed.

There are a range of plant life forms including trees, shrubs, vines, herbs, ferns and epiphytes (plants that are supported by or grow on other plants). To the north, most plant species diversity is in the tree and shrub layers rather than in the lower layer. The opposite, where the ground layer is typically more diverse, generally occurs from the Sydney Basin Bioregion southwards.

The species list for the subject site (Planit 2013) demonstrates the presence of a range of trees, shrubs and vines. Lower strata had essentially been removed prior to the clearing and epiphytes were apparently absent.

Plants with drought tolerant and succulent features are generally more common in littoral rainforest than in more inland rainforest types.

Plants with succulent features were not listed nor described in reports documenting the vegetation that previously occurred on the subject site. No opinion can be offered with regard to the drought tolerance of the species present.

Trunks often host lichens (but rarely mosses) and canopy stem sizes tend to be smaller compared to that in more inland rainforest. Ground ferns and epiphytes are lower in diversity in littoral rainforests compared to many other rainforest types. Feather palms, fan palms and large leaved epiphytes are generally rare.

Plant species are mainly rainforest species and can be regionally predictable.

Planit (2013) does not note lichens nor mosses on tree trunks. Canopy stem sizes reported are generally smaller compared with those in more inland rainforest, but it is not possible to distinguish between rainforest type and stage of development as a determinant of stem size. Ground ferns, feather palms, fan palms and large leaved epiphytes were not reported by Planit (2013).

The comparison of the species list for the subject site (Annexure D) with the list of region-specific littoral rainforest species indicates that 19 of the total species listed for the subject site are also listed on the list of indicative species "Flora Species of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia by Bioregion" for the Southern South Eastern Queensland and NSW North Coast.

It is concluded that most species present are *regionally predicted rainforest species*.

The minimum patch size needs to be 0.1 hectares (1000 m²)

The subject site was part of a patch of total size 3,400m² (TSC May 2014 page 303 and Figure 25: TSC February 2014 page 2).

The cover of transformer weed species is 70 per cent or less. Transformer weeds are highly invasive taxa with the potential to seriously alter the structure and function of the ecological community.

Transformer weeds of the Southern South Eastern Queensland and NSW North Coast region are listed in the "Flora Species of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia by Bioregion". Transformer weeds formerly present (Planit 2013) include Umbrella Tree *Schefflera actinophylla*, Mickey Mouse Plant *Ochna serrulata* and Asparagus Fern *Asparagus aethiopicus*. Planit (2013) conducted the survey on which their report was based on 24 October 2013, and did not note weed species in the upper strata of the vegetation. The weeds they identified were in the lower strata (shrub and ground covers) which were principally removed or occupied by leaf litter over sand or occupied by a variety of maintained ornamental and weed species. The layers were described as sparse, with leaf litter completely dominant in the shaded areas. At the time of our inspections, the weeds had essentially been removed in conjunction with the clearing.

Transformer weeds occupied much less than 70% cover at the times of Planit's (2013) survey and also at the time of our inspections.

Of the native plant species present in the patch, at least 25 per cent of these must occur on the indicative plant Species Lists for the associated bioregion of this ecological community

Annexure D indicates that 19 of the total 20 species listed for the subject site are also listed on the list of indicative species "Flora Species of Littoral Rainforest and Coastal Vine Thickets of Eastern Australia by Bioregion" for Southern South Eastern Queensland and NSW North Coast. The listed indicative species make up 95% of the total native species recorded i.e. greater than 25%.

CONCLUSION

The vegetation on the subject site was formerly continuous with, and formed part of, the Queen Street remnant. We have formed the opinion that the public lands component of the remnant is Littoral Rainforest (above). The appearance of the vegetation from air photos (TSC February 2014 Figure 25 page 304) is consistent with an overall similarity of vegetation throughout the remnant (including the subject site). In addition, we have viewed ground-view photographs of the site prior to clearing (Planit 2012 and 2013 and Tweed Shire Council 2014).

Tweed Shire Council February, May and August 2014 identifies the vegetation on the site as Littoral Rainforest (EPBC Act).

Therefore, in our opinion, vegetation on the subject site prior to clearing has been shown to fit the criteria listed in EPBC Policy Statement 3.9 "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia" and is therefore Littoral Rainforest as described under the EPBC Act.

4. In your opinion, does any clearing undertaken constitute a significant impact to Littoral Rainforest? In formulating your response, please consider both the EPBC Policy Statement 3.9 "Littoral Rainforest and Coastal Vine Thickets of Eastern Australia: A nationally threatened ecological community" and the EPBC "Matters of National Environmental Significance: Significant impact guidelines 1.1".

The question is addressed in the context of an Ecological Community that has been listed nationally as critically endangered, having been assessed as at risk of extinction. That is, the natural composition and function of the ecological community have been significantly depleted across its full range.

Littoral Rainforest is characterised by floristic and structural features that reflect the maritime influence on the ecological community. In addition, the ecological community is recognised as exhibiting floristic variation across its latitudinal range, reflected in the provision, as an attachment to the Listing Advice, of species lists characteristic of the community at bioregional level. The Listing Advice also recognizes that "whilst species can be regionally predictable, there may be considerable variation in the composition of individual stands of the ecologically community within any given bioregion." Locally, Floyd (1990, pp 50, 53) recognises at least two floristic sub-alliances of littoral rainforest in the Tweed LGA.

The Listing Advice thus defines Littoral Rainforest with reference to both the unifying characteristics of the ecological community, and the spectrum of variation within the ecological community. An assessment of impacts on the ecological community should therefore consider not only impacts identifiable as acting on the community as an entity occupying niche habitat over an extensive length of Australia's east coast, but also impacts that operate locally with potential to affect the integrity of local and bioregional variants within the community.

Littoral Rainforest "was once an almost continuous archipelago of patches of the ecological community along the eastern coast of Australia and has been reduced and fragmented primarily by coastal development, sandmining and agriculture" (Listing Advice citing Bradley and Merrilyn 1992).

In the past, the forests have been able to survive and recover from natural storm damage without the present stresses of reduced area, exotic weeds, recreational activity and mining and other damage to protective dunes. Occupying an environment which is marginal for rainforest development, the environmental stresses of the coastal situation are likely to operate to exacerbate any small impacts on the community (Adam, P., 1994. *Australian Rainforests*. Oxford University Press, Kettering).

The community is now considered to have been reduced below a threshold that will allow its natural recovery to function to ensure its persistence (Listing Advice) i.e. intervention and management is required to effect recovery. The Threatened Species Scientific Committee found that the ecological community is typically fragmented with small patch sizes coupled with demonstrable threats, and that the very severe reduction in the integrity of the ecological community, make it critically endangered. The listing aims to prevent any further decline and to promote and assist recovery (EPBC Policy Statement No 39).

At the time of Federal listing, however, consistently collected data of the present extent was not available to quantify the reduction in extent of the community across its range.

Littoral rainforests, in New South Wales as a whole, are estimated to be reduced to less than one quarter of their original area as a result of sandmining, clearing and coastal

development (Department of Environment and Planning, 1988. *Littoral Rainforests: State Environmental Planning Policy N° 26*. New South Wales Government).

At the local level (Tweed LGA), 102 ha of Littoral Rainforest have been mapped. The minimum area mapped was generally down to 0.15 ha (Tweed Vegetation Management Plan 2004 Volume 2 Technical Reports, Section 2).

The existing extent and distribution of Littoral Rainforest in Tweed LGA cannot be compared quantitatively with pre-European settlement levels, but Floyd 1990 (Floyd, A.G., *Australian Rainforests in New South Wales* Volume 2, Surrey Beatty, Chipping Norton, p 50) describes a good example of Littoral Rainforest which extended from Bogangar to Kingscliff before the protecting high dunes were removed during sand-mining in the late 1950s and early 60s. By November 1960, only 2 ha remained while the remainder, to the east of the Coast Road, had been removed. Floyd describes additional small Tweed occurrences of Littoral Rainforest at Cook Island, Ukerabah Island and the Tweed estuary adjoining the island, Hastings Point, Lower Cudgera, Mooball Beach and Wooyung. TSC's mapping demonstrates the small area, isolation and usually narrow linear configuration of the remaining remnants.

The assessment of significance of impact is therefore carried out for an ecological community that has been depleted across both its national range and locally. At each step of the assessment, consideration is given to both the local and national contexts.

The criteria set out for the assessment of the significance of impact in "Matters of National Environmental Significance: Significant impact guidelines" (MNES Guidelines) are addressed as follows:

An action is likely to have a significant impact on a critically endangered or endangered ecological community if there is a real chance or possibility that it will:

- *reduce the extent of an ecological community*

The direct impact of the clearing of vegetation from the subject site has resulted in the reduction of the extent of the ecological community in the Queen Street remnant by approximately 10%. Indirect impacts will also accrue, including the attrition of the newly created edge, to result in a further reduction. The impact on the area of the ecological community nationally, is very small.

However, the clearing is one of a number of comparable actions, undertaken or proposed, that have been documented locally and recently and will act together to produce an area reduction and indirect impacts flowing from vegetation removal and associated disturbance. An instance of proposed clearing of Littoral Rainforest known from the locality is as follows:

6-8 Lagoon Road Fingal Head

Referral (4 November 2014) under the EPBC has been made to remove 7 mature littoral rainforest trees from this site.

http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=7383

The cumulative impacts of all clearing are likely to have a severe adverse impact on the ecological community locally.

It is likely that similar clearing events occur more widely in space and time, so that impacts accumulate locally, bioregionally and nationally. The Listing Advice provides a general overview of the pressures on the coastal strip, including urban development, that is stated to pose a continuing threat by way of vegetation clearance. The threat is stated as likely to intensify over time since human population is predicted to increase along the eastern coast of Australia.

- *fragment or increase fragmentation of an ecological community, for example by clearing vegetation for roads or transmission lines.*

The ecological community is already highly fragmented. Edge effects are one component of the impact of fragmentation. The clearing has smoothed a formerly irregularly-shaped edge and has thus decreased the edge to core ratio. On the other hand, however, the clearing has created a newly disturbed and exposed edge section so that edge effects on the remnant will be intensified over a distance of approximately 14 m. At the community level, continuous vegetation will not be severed and the removal of the protruding edge of the vegetation polygon is unlikely to exacerbate the existing separation of vegetation patches. The cleared vegetation was located on the western edge of the remnant – no similar vegetation is present further to the west as an expanse of water intervenes.

The clearing has not produced new fragmentation and is unlikely to have the effect of exacerbating the existing fragmentation of the ecological community either locally or nationally. A small section of a newly exposed edge will, however, be subject to intensified edge effects.

- *adversely affect habitat critical to the survival of an ecological community*

The MNES Guidelines note 'Habitat critical to the survival of a species or ecological community' refers to areas that are necessary:

for activities such as foraging, breeding, roosting, or dispersal

for the long-term maintenance of the species or ecological community (including the maintenance of species essential to the survival of the species or ecological community, such as pollinators)

to maintain genetic diversity and long term evolutionary development, or

for the reintroduction of populations or recovery of the species or ecological community.

Such habitat may be, but is not limited to: habitat identified in a recovery plan for the species or ecological community as habitat critical for that species or ecological community; and/or habitat listed on the Register of Critical Habitat maintained by the minister under the EPBC Act.

There is no Recovery Plan for the Littoral Rainforest ecological community, hence no critical habitat has been identified in such a document. No critical habitat for Littoral Rainforest has been listed on the Register of Critical Habitat maintained by the Minister under the EPBC Act. Critical habitat may, however, be otherwise identified (MNES Guidelines).

The clearing of vegetation has alienated an area of land formerly occupied by Littoral Rainforest and with the assumed intention of preventing the re-establishment of Littoral Rainforest in the future (as evidenced by a previous development application described in the Statement of Environmental Effects June 2012). The small area of suitable habitat for Littoral Rainforest on the Australian east coast is a major limitation to the recovery of the ecological community, since, as well as historical clearing for forestry, agriculture and sand mining, much land previously occupied by Littoral Rainforest has been developed for urban, tourism and recreational purposes. The irreversible clearing of habitat for developments inhibits future recovery.

Compensatory planting has not been undertaken to offset the loss of area of the ecological community. Hypothetically, should such planting have been intended, there are very limited options available to accommodate the replacement of the cleared vegetation.

Habitat critical to the survival of the ecological community locally i.e. within two kilometres of the coast or adjacent to a large salt water body, such as an estuary and, thus, influenced by the sea (Listing Advice) has been adversely impacted. As the local occurrence forms a distinctive component of the spatial variation described for the nationally listed ecological community, the conclusion of adverse impact applies to the ecological community as a whole.

- *modify or destroy abiotic (non-living) factors (such as water, nutrients, or soil) necessary for an ecological community's survival, including reduction of groundwater levels, or substantial alteration of surface water drainage patterns*

The availability of land suitable for littoral rainforest is a major limitation to the recovery of the ecological community. The area of the subject site that has been cleared provides essential substrate for growing the plant species making up the framework of the community. The land still exists and generally retains the water and soil characteristics that are suitable for the community, should it be allowed to re-establish. The above-ground biomass of the community has, however, been removed from the subject site (though a mulch pile remained at the time of our inspections). The effect of removal and/or relocation of the above-ground vegetation has been to remove nutrients formerly held in the plants making up the Littoral Rainforest on the subject site.

Abiotic factors necessary for the survival of the the ecological community locally has been adversely impacted, and, as the local occurrence forms a distinctive component of the spatial variation described for the nationally listed ecological community, the conclusion of adverse impact applies to the ecological community as a whole.

- *cause a substantial change in the species composition of an occurrence of an ecological community, including causing a decline or loss of functionally important species, for example through regular burning or flora or fauna harvesting.*

The clearing has removed specimens of species that are represented in the adjacent public land component of the Queen Street remnant. There is thus no evidence that any species has been directly removed from the remnant as a whole.

Removal of individuals from very small populations, however, has potential to reduce the numbers of affected species to below levels required to maintain demographic processes (such as pollination and seed dispersal). Detailed information is not generally available to predict specific impacts, but the clearing has removed reproductively mature Littoral Rainforest trees. The case of *Archidendron hendersonii* (Vulnerable, TSC Act 1995) provides an illustration. A tree of 9m in height and diameter at breast height (dbh) of 250mm (Tree Report 2013 page 5) has been removed. In the adjacent public land component of the remnant, the species appeared to be represented only by a single sapling and a seedling (14 November 2014 inspection). The plants were too small to be producing seed. Opportunities for regeneration of *Archidendron hendersonii* will now be substantially delayed and will depend on the chance conditions required for development of the plants present and regeneration from seed produced in the future.

A decline in species or loss in functionally important species is likely as a result of the removal of mature Littoral Rainforest trees and other impacts on demographic processes which are difficult to predict. As the local occurrence forms a distinctive component of the spatial variation described for the nationally listed ecological community, the conclusion of adverse impact by way of species decline applies to the ecological community as a whole.

- *cause a substantial reduction in the quality or integrity of an occurrence of an ecological community, including, but not limited to: assisting invasive species, that are harmful to the listed ecological community, to become established*

The clearing will cause a reduction in the quality and integrity of the community by exposing the western edge to potentially salt-laden wind and providing a front for invasion of weeds. Transformer weed *Asparagus aethiopicus* and invasive succulents were observed in the gardens on the western boundary of the remnant. Transformer weeds, *Ipomoea cairica*, *Lantana camara*, *Ochna serrulata*, *Schefflera actinophylla* and *Senna pendula* var *glabrata* were observed in low numbers on the western boundary.

Additional light will encourage growth of these weeds, which will impact on the vegetation to the east (weed invasion of edges of small and fragmented forests is documented in many examples e.g., for an Asian tropical forest, Turner *et al.*, 1996. A century of plant species loss from an isolated fragment of lowland tropical rain forest. *Conservation Biology* **10**, 1229-1244).

Wind affects coastal vegetation by

- increasing evapo-transpiration and so producing water stress,
- causing physical damage to canopies and sometimes breaking branches and trunks, and
- carrying salt onto foliage, resulting in osmotic damage to plant cells (e.g. for mangroves, P. Hutchings and P. Saenger, 1987. *Ecology of Mangroves*. University of Queensland Press, Saint Lucia).

The consequence of the newly exposed edge is likely to be dieback of rainforest trees which have formerly been protected by the cleared vegetation. Other edge effects will be

intensified. Edge effects, mediated through changes to microclimate, are likely to include increased light intensity, changes to air and soil temperatures and moisture stress, penetrate substantial distances into remnants (e.g. Turton, S. M. and Freiburger, H., 1997. Edge and aspect effects on the microclimate of a small tropical rainforest remnant on the Atherton Tableland, Northeastern Australia. In *Tropical Forest Remnants: Ecology, Management and Conservation of Fragmented Communities*. Laurence WF and Bierregaard RO (eds.), University of Chicago Press, Chicago pp. 45 to 54).

The clearing has caused a substantial reduction in the quality and integrity of an occurrence of the ecological community.

- *interfere with the recovery of an ecological community.*

The clearing will interfere with the recovery of the ecological community as the remnant has been reduced in size, there is increased exposure to wind and other edge effects where the vegetation has been removed, weeds will compete with native seedlings, mature rainforest trees which provided a seed source have been lost and other demographic processes are likely to be adversely affected.

The action is contrary to actions that have been set out as being necessary to facilitate recovery.

For instance, regional priority actions for the recovery of the community (identified in the Conservation Advice) include:

- protect areas of native vegetation, which contain remnants of the listed ecological community
- repair, expand and connect existing remnants of the listed ecological communities through appropriate rainforest rehabilitation methods.

Local priority actions include measures to identify, protect and monitor occurrences of Littoral Rainforest.

The action has not been accompanied by mitigation to minimise threats nor replacement plantings to compensate for the reduction in vegetated area.

Summary and Conclusion

The natural composition and function of Littoral Rainforest have already been significantly depleted locally and across the full range of the ecological community.

The alleged clearing has been demonstrated to have produced impacts on Littoral Rainforest at the local level which include:

Direct impacts

- The clearing has removed approximately 10% of the total remnant reducing the extent of the remnant.
- Mature rainforest trees have been removed

The action has not been accompanied by replacement plantings to compensate for the reduction in vegetated area.

Indirect impacts

- A new edge has been exposed – attrition of trees on the new edge is likely
- Edge effects mediated through changes in micro-climate will be intensified
- Weed invasion will be intensified
- Disrupted demographic processes are likely to lead to impacts on species composition

The action has not been accompanied by threat mitigation to reduce the impacts of the exposure of a new edge, and nor to manage weed invasion.

Cumulative impacts

The clearing is one of a number of comparable actions, undertaken or proposed, that have been documented locally and recently and will act together to produce an area reduction and indirect impacts flowing from vegetation removal and associated disturbance.

Recovery

The clearing constitutes an action that is contrary to actions that are stated as necessary to facilitate recovery.

In summary, we find that the clearing has had an impact that is of immediate and local importance to the community. Longer-term ecological consequences are likely and the impacts of the clearing are likely to compound the effects of additional similar instances of clearing and disturbance in Littoral Rainforest locally. The local occurrences cannot be replicated at other latitudes and form a distinctive component of the spatial variation described for the nationally listed ecological community. The conclusion of adverse impact applies to the ecological community as a whole.

We consider the impact of the clearing to be significant.

5. Provide any further observations or opinions which you consider to be relevant, having regard to the circumstances of this matter.

We have no further observations to provide.

Signed

s47F

s47F

27 November 2014

s47F

s47F

27 November 2014

ANNEXURE A - LIST OF DOCUMENTS PROVIDED

1.	Federal Court Practice Note CM7	4 June 2013
2.	Review of Existing Vegetation – No. 40 Queen St, Fingal Head NSW Lot 367 DP 755740	February 2012
3.	Statement of Environmental Effects - Proposed Two (2) Lot Subdivision Lot 367 DP 755740 No. 40 Queen Street, Fingal Head NSW	June 2012
4.	Review of Existing Vegetation - 40 Queen Street, Fingal Head for s47F	October 2013
5.	Tree Report – 40 Queen St Fingal Head Report Compiled for s47F	30 October 2013
6.	Tweed Shire Council Planning Committee Report (May 2014)	1 May 2014
7.	Tweed Shire Council Planning Committee Report (August 2014)	7 August 2014
8.	10/50 Vegetation Clearing Code of Practice	2014
9.	EPBC Policy Statement 3.9 Littoral Rainforest and Coastal Vine Thickets of Eastern Australia: A nationally threatened ecological community	2009
10.	EPBC Matters of National Environmental Significance: Significant impact guidelines 1.1	2013
11.	Pre-clearing photograph of subject site from road (taken by Fingal Head Coastcare Inc)	Prior to 11/8/14
12.	Pre-clearing photograph of subject site from public reserve (taken by Fingal Head Coastcare Inc)	Prior to 11/8/14
13.	Pre-clearing photograph of subject site from public reserve (NE corner) (taken by Fingal Head Coastcare Inc)	Prior to 11/8/14

Annexure C - Photographs taken 16 September 2014 by **s47F**



P1 View from Queen Street boundary 16 September 2013



P2 View from Queen Street boundary 16 September 2013



P3 View from eastern boundary 16 September 2014

Annexure D - List of flora species at Queen Street, Fingal

E = Endangered, V = Vulnerable

Species	Common name	Status TSC Act	Status EPBC Act	EPBC Act listed	Queen Street remnant	40 Queen Street
<i>Acacia melanoxylon</i>	Blackwood			#		
<i>Acacia sophorae</i>	Coastal Wattle				x	
<i>Acronychia imperforata</i>	Beach Acronychia			#		
<i>Alphitonia excelsa</i>	Red Ash			#	x	
<i>Aphelandra chinensis</i>	Rough-leaved Plant			#		
<i>Archidendron hendersonii</i>	White Lace Flower	V		#	x	x
<i>Arytera divaricata</i>	Loogeta					
<i>Austromyrtus dulcis</i>	Midyim Berry				x	
<i>Banksia integrifolia subsp. integrifolia</i>	Coast Banksia				x	
<i>Casuarina glauca</i>	Swamp She Oak				x	
<i>Casuarina pauciflora</i>	Swamp She Oak					
<i>Cordyline congesta</i>	Palm Lily			#	x	
<i>Cryptocarya toleda</i>	Sinking Cryptocarya					
<i>Cryptocarya triplinervis var. triplinervis</i>	Three-veined Laurel				x	
<i>Cupanopsis anacardioides</i>	Tuckeroo				x	
<i>Danhamia celastroides</i>	Orange Boxwood					x
<i>Dianella caerulea</i>	Blue Lily				x	
<i>Diospyros fasciculosa</i>	Grey Ebony			#		x
<i>Eleocharis obovatus</i>	Hard Quandong					
<i>Endiandra sieberi</i>	Hard Corkwood			#	x	
<i>Exocarpos latifolius</i>	Broad-leaved Balfour				x	
<i>Ficus coronata</i>	Sandpaper Fig			#	x	
<i>Ficus obliqua</i>	Small Fruited Fig			#	x	
<i>Ficus watkinsiana</i>	Strangling Fig			#	x	
<i>Flagellaria indica</i>	Whip Vine					
<i>Geitonoplesium cymosum</i>	Scrambling Lily			#	x	x
<i>Glochidion ferdinand</i>	Cheese Tree					
<i>Harpullia hillii</i>	Blunt-leaved Tulip			#	x	
<i>Hibbertia scandens</i>	Colden Guinea Flower			#	x	
<i>Hoya australis</i>	Native Hoya			#	x	
<i>Lissae australis</i>	Brown Bolly Gum					
<i>Lomandra longifolia</i>	Spiny-headed Mat-rush				x	
<i>Lonicera linearis</i>	Brush Box				x	
<i>Macaranga tanarius</i>	Macaranga			#	x	x
<i>Mallotus discolor</i>	Yellow Kamala				x	

Species	Common name	Status TSC Act	Status EPBC Act	EPBC Act listed	Queen Street remnant	40 Queen Street
<i>Melicope elleryana</i>	Pink Doughwood			#		x
<i>Myrsine variabilis</i>	Muttonwood			#	x	x
<i>Notelaea longifolia</i>	Large Mock Olive			#	x	x
<i>Pandanus sordidus</i>	Pandanus			#	x	
<i>Pandorea pandorana</i>	Wonga Vine			#	x	
<i>Pittosporum undulatum</i>	Sweet Pittosporum			#	x	x
<i>Plancherium bilunatum</i>	Ekhorn			#	x	
<i>Podocarpus elatus</i>	Plum Pine			#	x	
<i>Polyscias hirsutissima</i>	Orange Bread			#	x	
<i>Polyscias elegans</i>	Celery Wood			#	x	
<i>Pseudanacardium variegata</i>	Pastel Flower			#	x	
<i>Psychotria loniceroides</i>	Hairy Psychotria			#	x	
<i>Shoeburynia psidioides</i>	Native Guava			#	x	
<i>Smilax australis</i>	Smilax			#	x	x
<i>Symplocos quadrivalvis</i>	Peppercorn			#	x	
<i>Syzygium australe</i>	Brush Cherry			#	x	x
<i>Syzygium hemilampra</i> subsp. <i>hemilampra</i>	Broad-leaved Lilly Pilly			#	x	
<i>Syzygium luehmannii</i>	Riberry			#	x	
<i>Syzygium rugosum</i>	Burroob			#	x	
<i>Syzygium oleosum</i>	Blue Lilly Pilly			#	x	x
<i>Syzygium smithii</i>	Lilly Pilly			#	x	

* listed on "Identification Guidelines For Endangered Ecological Communities Littoral Rainforest" as *Cryptocarya triplinervis*,

** listed by Planit (2013) as *Rapanea variabilis*

The list for the Queen Street remnant refers to species recorded by s47F and s47F for the public land component of the Queen Street remnant (preliminary list).

The list for 40 Queen Street is extracted from Planit (2013).

s22

From: s22
Sent: Wednesday, 17 December 2014 11:45 AM
To: s22
Cc: s22
Subject: Greens MR on Littoral Rainforest - Fingal Head [SEC=UNCLASSIFIED]

Follow Up Flag: Follow up
Flag Status: Completed

FYI the Greens have issued an MR on the Fingal Head clearing issue we discussed with Compliance in August:

<http://nsw.greens.org.au/news/nsw/rainforest-clearing-under-1050-laws-breached-commonwealth-protections-%E2%80%93-report-says>

RAINFOREST CLEARING UNDER 10/50 LAWS BREACHED COMMONWEALTH PROTECTIONS – REPORT SAYS

Monday, Dec 15th, 2014

A highly critical [report](#) on the clearing of hundreds of square metres of critically endangered littoral rainforest in the Tweed has been referred to the Federal Environment Minister for his urgent intervention. The clearing was carried out under controversial NSW 10/50 laws, and the report finds it has had a [significant adverse impact](#) on the one of the Tweed's last pockets of critically endangered rainforest.

Letter from the EDO to the Federal Minister for the Environment See the EDO correspondence and reporting in the Sun Herald [here](#).

Despite the report's findings of significant damage to this critically endangered rainforest the Coalition's Federal Environment Minister is still refusing to take any action.

The clearing occurred on 11 August 2014, less than 2 weeks from the commencement of the controversial 10/50 code and only days after the council had refused a DA on the site because of its impact on the critically endangered Littoral Rainforest and Coastal Vine Thicket.

An independent ecological report into the clearing has identified it as likely having a significant impact on an ecological community at serious risk of extinction. The NSW Environmental Defenders Office has referred the matter to the Federal Environment Minister requesting he make urgent remediation orders.

The 10/50 laws have seen at least one other property owner at Fingal Head seek approval from the Federal Minister to clear rainforest trees on their land. That application remains pending.

Greens MP, David Shoebridge said:

“The NSW Government has so badly bungled these laws that the only remaining protection is the Federal Minister, who must now intervene to ensure that no more critically endangered vegetation is lost.

“Because the land owner thought they had carte blanche to clear the land under the 10/50 laws, there was no application made and no one checking to ensure this critically endangered rainforest was protected.

“Council’s attempt to protect this rainforest was undone by the State Government’s botched laws which have put the landowner at risk of significant costs and penalties under the Commonwealth EPBC Act.

“It’s not just this one site that is impacted by the 10/50 laws. This appalling law is opening thousands of sites across the state to damaging clearing without any formal oversight.

“The loss of critically endangered littoral rainforest on this single site alone is reason enough to halt the operation of the code across NSW,” Mr Shoebridge said.

Kay Bolton, President of Fingal Coastcare Inc who commissioned the report said:

“The Tweed has one of the richest and most diverse environments in Australia which makes it such a precious place to live, but unless we act to protect that environment we will lose it.

“This is one of the last remaining pockets of littoral rainforest in the Tweed, and the report makes it clear that this is a unique ecological community that must be preserved.

“The state government pushed these 10/50 laws through parliament without thinking what impact they will have across the rest of the state, and the impact has been devastating.

“There was never any bushfire risk on this property and this clearing shows just how open to abuse the 10/50 laws are,” Ms Bolton said.

The report found:

- The vegetation cleared was critically endangered Littoral Rainforest and Coastal Vine Thicket
- Clearing had a significant impact on this unique pocket of Tweed littoral rainforest
- The cumulative impact of allowing such clearing would have a significant impact on littoral rainforest across the country

s22

From: s22
Sent: Monday, 12 January 2015 2:42 PM
To: MinisterialCorrespondence
Subject: MC15-002761 - Significance of Vegetation Cleared at No. 40 Queen Street Fingal Head NSW
Attachments: Microsoft Word - I05chunt.pdf

ACTION: AA

NOTES (if required): N/A

s22

Departmental Liaison Officer
Office of the Hon Greg Hunt MP | Minister for the Environment

s22

Parliament House, Canberra, ACT 2600

From: Corporate Email [mailto:tsc@tweed.nsw.gov.au]
Sent: Friday, 9 January 2015 2:57 PM
To: Greg.Hunt.MP
Subject: Support for Review of Decision in Relation to Significance of Vegetation Cleared at No. 40 Queen Street Fingal Head NSW

Dear Minister Hunt
Please find attached Council's letter regarding the above.

Tweed Shire Council
Community and Natural Resources



p (02) 6670 2400 | f (02) 6670 2429 | e tsc@tweed.nsw.gov.au | w www.tweed.nsw.gov.au
Civic and Cultural Centre Tumbulgum Road Murwillumbah NSW 2484 | PO Box 816 Murwillumbah NSW 2484

Customer Service: (02) 6670 2400 or 1300 292 872 ABN: 90 178 732 496

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8 January 2015

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Murwillumbah NSW 2484

Please address all communications
to the General Manager

ABN: 90 178 732 496

Mr Greg Hunt MP
Email: greg.hunt.mp@environment.gov.au

Dear Minister

**Support for Review of Decision in Relation to Significance of
Vegetation Cleared at No. 40 Queen Street Fingal Head NSW**

I am writing to support the request from Fingal Head CoastCare Inc (FHC), through the Environmental Defenders Office (EDO), for the Department to review the decision made in relation to the significance of vegetation cleared at 40 Queen Street, Fingal Head, NSW recently.

As a critically endangered ecological community under the *Environment Protection and Biodiversity Conservation Act 1992*, any reduction in patch size of the *Littoral Rainforest and Coastal Vine Thickets of Eastern Australia* should be regarded as a significant impact to the community as a whole.

Council notes that ongoing cumulative impacts arising from urban development have contributed to the current conservation status of this community and are recognised in the Listing Advice as contributing to the risk of extinction. For this reason, Council supports reconsideration of the size threshold applied in determining significance in both this instance and any future similar situations.

This is also consistent with Council's findings in consideration of the merits of a development application for this site that was refused on 7 August 2014.

If you require any further information in relation to this matter, please contact s47F Council's Unit Coordinator Natural Resource Management, on s47F.

Yours faithfully

s47F

Directory Community and Natural Resources

cc: s47F President Fingal Head CoastCare
s47F Principal Solicitor Environmental Defenders Office



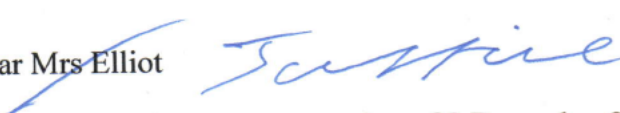
The Hon Greg Hunt MP
Minister for the Environment

MC14-036874

The Hon Justine Elliot MP
Member for Richmond
PO Box 6996
TWEED HEADS SOUTH NSW 2486

15 JAN 2015

Dear Mrs Elliot


Thank you for your representation of 8 December 2014 on behalf of s47F President of Fingal Head Coastcare, concerning tree clearing at 40 Queen Street, Fingal Head in New South Wales.

I am advised that in May 2014 and August 2014 the Department of the Environment examined the proposed and subsequent removal of up to 340 square metres of the critically endangered ecological community Littoral Rainforest and Coastal Vine Thickets of Eastern Australia at the 40 Queen Street property.

On both occasions, the Department concluded that this small amount of clearing would be unlikely to result in a significant impact on the ecological community as a whole, and as such national environment law does not apply to this activity. While I am sympathetic to the concerns raised by s47F there is no basis for the Australian Government to intervene in this matter.

Thank you for bringing s47F concerns to my attention.

Yours sincerely


Greg Hunt