



Approval

Pacific Highway Upgrade (Nambucca Heads to Urunga), NSW (EPBC 2013/6963)

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Proposed action

person to whom the approval is granted Roads and Maritime Services

proponent's ABN 76 236 371 088

proposed action To upgrade approximately 22 kilometres of the Pacific Highway, from Old Coast Road west of Nambucca Heads to the Waterfall Way interchange at Raleigh north of Urunga, New South Wales [See EPBC Act referral 2013/6963].

Approval

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved

Conditions of approval

This approval is subject to the conditions specified below.

Expiry date of approval

This approval has effect until 01/01/2031

Decision-maker

name and position Mahani Taylor
A/g Assistant Secretary
South-Eastern Australia Environment Assessment Branch

signature 

date of decision 21/11/13

Conditions attached to the approval

Mitigation/management for impacts to threatened flora & fauna

1. The person taking the action must not clear more than:
 - a) 171 ha of *Koala* habitat;
 - b) 184 ha of *Grey-headed Flying-fox* habitat;
 - c) 166 ha of *Spotted-tail Quoll* habitat;
 - d) 73 ha of habitat for the *Swift Parrot* and *Regent Honeyeater*, and
 - e) 36 ha of habitat for the *Cryptic Forest Twiner* and *Clear Milkvine*;
2. Within 30 days of the **completion of construction works**, the person taking the action must:
 - a) notify **the Minister** in writing of the **completion of construction works**; and
 - b) provide a report (supported by appropriate mapping) that clearly shows the location of all vegetation and **EPBC species** habitat cleared as a result of **the action**, and that demonstrates compliance with condition one.
3. The **person taking the action** must undertake progressive rehabilitation of **EPBC species' habitat** in areas where **temporary infrastructure** is to occur or, where **short term** impacts are anticipated. Where appropriate, the landscaping/rehabilitation of these areas must be done in a manner that provides for the needs and requirements of **EPBC species**.
4. At the **completion of construction works** and every three years thereafter for the life of this approval (or where the Minister has agreed in writing that further revisions are no longer required), a progress report assessing the effectiveness of restoring habitat on site (in accordance with condition 3) must be provided to **the Minister**.
5. Prior to **commencement of the action**, the person taking the action must engage a **suitably qualified expert** to:
 - a) map any occurrences of, and areas of habitat for, **EPBC species** that lie **adjacent to the construction zone**;
 - b) map the locations of known individuals of **Clear Milkvine** and **Cryptic Forest Twiner** that lie **adjacent to the construction zone**;
 - c) map any areas of **lowland rainforest of subtropical Australia** that lie **adjacent to the construction zone**; and
 - d) clearly mark **exclusion zones** along (or around) these areas on site.
6. To mitigate and reduce indirect impacts on the **exclusion zones** identified as a requirement of condition five, the **person taking the action** must:

- a) ensure that temporary and high visibility fencing will be erected to restrict access to **exclusion zones**. Temporary fencing must be of a design appropriate to deter the passage of vehicles or placement of construction materials, equipment and waste, in **exclusion zones** where accidental incursion could reasonably occur;
- b) implement measures to prevent the spread or establishment of new or additional weed species, soil or plant pathogens into these **exclusion zones** as a result of **construction**;
- c) implement stormwater management measures to prevent the unintentional diversion or discharge of stormwater during both construction and operation into **exclusion zones**; and
- d) implement targeted measures for managing construction impacts to **Cryptic Forest Twiner** and **Clear Milkvine** associated with dust, sedimentation and erosion.

Mitigation/management specific to the Koala and Spotted-tail quoll

- 7. The **person taking the action** must engage a **suitably qualified expert** to undertake pre-clearance fauna searches within all areas proposed for disturbance, including: hollow bearing trees, logs, existing culverts and bridges, no earlier than 48 hours prior to the removal of vegetation occurring in that area to ensure that the area is free of the **Koala** and **Spotted-tail Quoll**.
- 8. The **person taking the action** must implement measures to relocate and/or ensure the **appropriate care of** individuals of **EPBC species** that are identified during searches referred to in condition seven.
- 9. Prior to **commencement of the action**, the **person taking the action** must engage a **suitably qualified expert** to collect baseline data on **local populations** of the **Koala** and **Spotted-tail Quoll**. The data must address the likely densities and distribution of these species within all habitat areas outside the **construction** footprint that are likely to contain these species and that are likely to be adversely impacted by the **action** (as determined by a **suitably qualified expert**).
- 10. The **person taking the action** must construct and maintain **fauna crossings** and fencing in all areas that are likely to benefit the **Koala** and **Spotted-tail Quoll**.
- 11. The **person taking the action** must engage a **suitably qualified expert** to advise on the **design** and location of **fauna crossings**, fencing and road medians, for the purpose of maintaining habitat connectivity and facilitating the safe passage of the **Koala** and **Spotted-tail Quoll** across the **Pacific Highway**. A **suitably qualified expert** must also be engaged by the **person taking the action**, to design a comprehensive monitoring program that tests the **long term success** of these measures.
- 12. To inform the **long term success of fauna crossings**, fencing and road medians the **person taking the action** must engage a **suitably qualified expert** to prepare a strategy for monitoring and recording any road kill sightings of the **Koala** and **Spotted-tail Quoll** along the **Pacific Highway**. Prior to **commencement of the action**, the road kill monitoring and recording strategy must be implemented.

13. One year following the **completion of construction works**, the **person taking the action** must provide a report to **the Minister** detailing the success and/or failings of **fauna crossings**, fencing and road medians in achieving their intended purpose. The report must address (but need not be limited to):

- a) baseline data collected as a requirement of conditions nine and 12;
- b) the number, **design** and location of **fauna crossings**, fencing and road medians, accompanied by maps and photographs;
- c) details of a monitoring program to determine the **long-term success** of **fauna crossings**, fencing and road medians (including timing, duration, methodology, and performance objectives);
- d) the success of **fauna crossings** to date; and
- e) a comparison of data/results from other projects involving upgrades to the **Pacific Highway** regarding the **long-term success** of **fauna crossings** and/or fencing;

The report must be updated on a three-yearly basis until the **long-term success** of **fauna crossings** has been proven or **the Minister** has agreed in writing that further revisions are no longer required. All updated reports must be provided to **the Minister** within three years of the last report having being submitted.

14. Should monitoring associated with conditions 11 to 13 demonstrate that the use of **fauna crossings** and/or fencing is not achieving its intended purpose or is having a detrimental effect upon **EPBC species** (as determined by **the Minister**), **the Minister** may require that the **person taking the action** implement alternative forms of mitigation and/or corrective actions to address the relevant impacts to **EPBC species**. Such measures must be implemented as requested.

Threatened Flora Compensatory Measures

15. The **person taking the action** must implement a salvage and translocation program for all individuals of **Clear Milkvine** and **Cryptic Forest Twiner** that are proposed to be cleared as a result of **the action**. Translocation procedures must be developed and implemented by a **suitably qualified expert** in accordance with *Guidelines for the Translocation of Threatened Plants in Australia* prepared by the Australian Network for Plant Conservation.

16. One year following the **completion of construction works**, the **person taking the action** must provide a report to **the Minister** detailing the **long term success** of the translocation program. The report must include, but need not be limited to:

- a) background information on translocated species (in relation to ecological requirements and life history);
- b) the scope of the translocation program (with respect to timing, duration, methodology, and objectives, as well as comprehensive details on the recipient translocation site(s) and how they meet the ecological requirements of each species);
- c) details of a comprehensive monitoring program to determine the

long-term success of translocation; and

d) the success of translocation to date.

17. The report (required of condition 16) must be updated on a three-yearly basis or until **the Minister** has agreed in writing that further revisions are no longer required, to provide further insights on the **long-term success** of translocation. All reports must be provided to **the Minister** and made available on the **person taking the action's** website for the life of this approval.

18. With reference to the **Department's offset policy**, the **person taking the action** must provide for **the Minister's** approval a Threatened Flora Offset Strategy (TFOS) for the **Clear Milkvine** and **Cryptic Forest Twiner**, within one year from the date of this approval. **The Minister** will only approve the TFOS if it demonstrates how a threatened flora offset meeting no less than 90% of the direct offset requirements (as determined by **the Department** in accordance with the offset user guide) will be legally secured in perpetuity within two years of the date of this approval.

Note: At the time the offset required by condition 18 is submitted for approval, the person taking **the action** may ask **the Minister** to consider that the salvage and translocation program required by condition 15, meet 10% of the offset requirements for the **Clear Milkvine** and **Cryptic Forest Twiner**

19. The **person taking the action** must provide a plan for the management and delivery of the offset requirements of the threatened flora offset to **the Minister** for approval no later than 30 June 2015. The Threatened Flora Offset Management Plan (TFOMP) must include, but need not be limited to:

a) map(s) and **shapefiles** that clearly define the location and boundaries of the offset;

b) details on the **quality** of the offset;

c) information about **Clear Milkvine** and **Cryptic Forest Twiner** (in relation to ecology, biology and conservation status) to inform appropriate management actions;

d) performance objectives and management actions that will enable maintenance and enhancement of the **Clear Milkvine** and **Cryptic Forest Twiner** offset and habitat covered by the plan;

e) demonstration that any management actions to be undertaken will not adversely impact **EPBC species** (for example, this may apply to herbicide usage);

f) a description of funding arrangements or agreements including work programs and responsible entities;

g) an assessment of the baseline population and distribution for **Clear Milkvine** and **Cryptic Forest Twiner** within the offset, including:

i. the number of plants protected and their location;

ii. plant and habitat condition; and

iii. age classes.

h) measures for regular monitoring of the status of individuals of **Clear Milkvine** and

Cryptic Forest Twiner and their habitat as measured against the baseline population and distribution, including:

- i. fluctuations in population size and distribution;
 - ii. life-cycle patterns;
 - iii. habitat requirements; and
 - iv. response to disturbances and/or management actions.
- i) provisions to revise the approved TFOMP in response to the findings of research associated with condition 20 (h).

The approved TFOMP must be implemented.

Threatened Fauna Compensatory Measures

20. Within three months from the date of this approval, the ***person taking the action*** must provide to ***the Minister***, a strategy that details how, and when, the Norton Offset Site and Griffin Offset Site (as described in the ***referral*** documentation) will be ***legally secured*** for conservation for the duration of the impact by the ***person taking the action***.

21. Within one year from the date of this approval, the ***person taking the action*** must provide to ***the Minister*** for approval, a plan for the management of the Norton Offset Site and Griffin Offset Site. The Norton and Griffin Offset Management Plan (NGOMP) must be targeted to the ecological requirements of the ***Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent Honeyeater*** and ***Swift Parrot*** and build upon the ideas and concepts described in the ***referral***. The plan must include, but need not be limited to:

- a) map(s) and ***shapefiles*** that clearly define the location and boundaries of the offset sites;
- b) details on the ***quality*** of the offset with reference to all ***EPBC species*** this plan is intended to protect;
- c) information about the ***Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent Honeyeater*** and ***Swift Parrot*** (in relation to ecology, biology and conservation status) to inform appropriate management actions;
- d) the results of targeted field surveys within both offset sites (undertaken at any ecologically appropriate time of the year) to assess habitat suitability and presence/absence of individuals in relation to the ***Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent Honeyeater*** and ***Swift Parrot***;
- e) clear performance objectives and management actions that will enable maintenance and enhancement of habitat within the offset area, as well as contribute to the better protection of individuals and/or populations of ***EPBC species*** onsite;

- f) an assessment of the baseline population for **EPBC species** which are detected within the offset area during field surveys;
- g) demonstration that any management actions to be undertaken will not adversely impact **EPBC species** (for example, this may apply to pest control);
- h) a description of funding arrangements or agreements including work programs and responsible entities;
- i) details of a comprehensive long-term monitoring program for determining the effectiveness of management actions;
- j) commitments to undertake contingency measures and corrective actions in the event that performance objectives are not met; and
- k) anticipated timeframes for achieving performance objectives.

The approved NGOMP must be implemented.

Standard Administrative conditions

22. Within one month after the **commencement of the action**, the **person taking the action** must advise **the Department** in writing of the actual date of commencement.
23. The **person taking the action** must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement any management plans or reports required by this approval, and make them available upon request to **the Department**. Such records may be subject to audit by **the Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on **the Department's** website. The results of audits may also be publicised through the general media.
24. Within three months of every one year anniversary of the commencement of **the action**, the **person taking the action** must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of any management plans as specified in the conditions. Documentary evidence providing proof of the date of publication and non-compliance with any of the conditions of this approval must be provided to **the Department** at the same time as the compliance report is published.
25. Upon the direction of **the Minister**, the **person taking the action** must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to **the Minister**. The independent auditor must be approved by **the Minister** prior to the commencement of the audit. Audit criteria must be agreed to by **the Minister** and the audit report must address the criteria to the satisfaction of **the Minister**.
26. If the **person taking the action** wishes to carry out any activity otherwise than in accordance with the TFOS, TFOMP, or NGOMP as specified in these conditions, the **person taking the action** must submit to **the Department for the Minister's** written approval a revised version of that TFOS, TFOMP, or NGOMP. The varied activity shall

not commence until **the Minister** has approved the varied TFOS, TFOMP, or NGOMP writing. **The Minister** will not approve a varied TFOS, TFOMP, or NGOMP unless the revised TFOS, TFOMP, or NGOMP will result in an equivalent or improved environmental outcome over time. If **the Minister** approves the revised TFOS, TFOMP, or NGOMP then that TFOS, TFOMP, or NGOMP must be implemented in place of the TFOS, TFOMP, or NGOMP originally approved.

27. If **the Minister** believes that it is necessary or convenient for the better protection of listed threatened species and communities to do so, **the Minister** may request that the **person taking the action** make specified revisions to the TFOS, TFOMP, or NGOMP specified in these conditions and submit the varied TFOS, TFOMP, or NGOMP for **the Minister's** written approval. The **person taking the action** must comply with any such request. The revised approved TFOS, TFOMP, or NGOMP must be implemented. Unless **the Minister** has approved the TFOS, TFOMP, or NGOMP, then the **person taking the action** must continue to implement the TFOS, TFOMP, or NGOMP, originally approved, as specified in these conditions.
28. If, at any time after five years from the date of this approval, the **person taking the action** has not **substantially commenced the action**, then the **person taking the action** must not **substantially commence the action** without the written agreement of **the Minister**.
29. Unless otherwise agreed to in writing by **the Minister**, the **person taking the action** must publish all management plans and reports referred to in these conditions of approval on their website. Each management plan or report must be published on the website within 1 month of being approved, or where approval is not required, on the same day as the report is provided to **the Minister**.

Note

Any plan, strategy or report that has been prepared as a requirement of a state legislation approval (in relation to **the action**) may be used to satisfy the requirements of any of the above conditions, providing the relevant criteria have been met (as specified in these conditions). Where this option is employed, the plan, strategy or report must be accompanied by a standalone document detailing where each of the relevant criteria have been addressed within that plan, strategy or report. This note is particularly relevant to conditions 13, 16, 17, 19, 21 and 25.

Definitions:

adjacent to means within at least 50 metres of.

appropriate care of means all necessary measures to remove the animal from danger, while minimising the risk of stress or discomfort to the animal to the greatest extent possible including its placement in suitable habitat that will not be subject to further disturbance from **the action**.

Cryptic Forest Twiner means *Tylophora woollsii* as listed under the EPBC Act.

Clear Milkvine means *Marsdenia longiloba* as listed under the EPBC Act.

completion of construction works means such time as, when **construction** (excluding ongoing road maintenance works), has finished.

commencement of the action includes any preparatory works required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for buildings or infrastructure excluding any signage or fences.

construction means any aspect of the proposal including the clearing of vegetation, the erection of onsite temporary structures, and the use of heavy duty equipment for the purpose of breaking the ground for built structures or infrastructure (excluding any signage or fences).

design includes the physical size, specifications and parameters of fauna crossings, fencing and road medians (including length).

EPBC Act is the *Environment Protection and Biodiversity Conservation Act 1999*.

EPBC species means the *Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent Honeyeater, Swift Parrot, Cryptic Forest Twiner and Clear Milkvine*.

EPBC species habitat means habitat for the *Koala, Grey-headed Flying-fox, Spotted-tail Quoll, Regent Honeyeater, Swift Parrot, Cryptic Forest Twiner and Clear Milkvine*.

exclusion zones means areas delineated as a requirement of condition 5 (c) within which **construction** activities, placement of construction materials, equipment and waste and the passage of vehicular access are prohibited.

fauna crossings mean purpose built structures which are designed to allow passage for fauna and facilitate natural permeability of linear infrastructure.

Grey-headed Flying-fox means *Pteropus poliocephalus* as listed under the EPBC Act.

Koala means *Phascolarctos cinereus* (combined populations of Qld, NSW and the ACT) as listed under the EPBC Act.

legally secured means protected by a legal instrument under relevant legislation. The legal instrument must prevent any future development activities from occurring on the land protected, and ensure the active management of that land for the better protection of matters of national environmental significance.

local populations means local populations as defined by the **suitably qualified expert** engaged to provide advice in condition nine.

long-term success means:

in relation to translocation - effectiveness in re-establishing a self-sustaining population of ***Cryptic Forest Twiner*** and ***Clear Milkvine*** in the wild; and

in relation to fauna crossings, fencing and road medians - effectiveness in maintaining the viability of local populations of the ***Koala*** and ***Spotted-tail Quoll*** by facilitating the movement of these species between habitat areas either side of the ***Pacific Highway***, and thus maintaining genetic variation and providing opportunities for species dispersal and re-colonisation.

lowland rainforest of subtropical Australia means *Lowland Rainforest of Subtropical Australia* as listed under the EPBC Act.

Pacific Highway means any stretch of the Pacific Highway which runs between Old Coast Road (west of Nambucca Heads) and the Waterfall Way interchange at Raleigh (north of Urunga).

person taking the action is the New South Wales Roads and Maritime Services or any person or organisation acting under their authorisation.

quality means 'site condition', 'site context', and 'species stocking rate', as described in the Department's *How to use the Offsets Assessment Guide*.

referral means EPBC referral 2013/6963 as received by the Department in August 2013.

Regent Honeyeater means *Anthochaera phrygia* as listed under the EPBC Act.

shapefiles means an ESRI ArcGIS Shapefile, containing '.shp', '.shx.' and '.dbf' files and other files. Shapefiles must include appropriate metadata capturing attributes including but not limited to the EPBC reference number of the approved action and details of the EPBC protected matters present within the offset, covenant or legal protection details, including type and identification. The Department prefers shapefiles using the Geocentric Datum of Australia (GDA) 94.

short term means a period of no more than three years.

Spotted-tail Quoll means *Dasyurus maculates maculates* (SE mainland population) as listed under the EPBC Act.

substantially commence(d) the action means the erection of any permanent infrastructure excluding signage and fences, associated with the action.

suitably qualified expert means any individual with tertiary qualifications and/or a minimum of three years demonstrated experience relevant to the task in question. The expert engaged to advise on ***fauna crossings*** must have expertise both in the ecology of ***Koalas*** and/or ***Spotted-tail Quolls*** as well as, the design and application of ***fauna crossings***.

Swift Parrot means *Lathamus discolor* as listed under the EPBC Act.

temporary infrastructure includes but is not necessarily limited to: workers camps (i.e. site offices, workforce amenities and storage compounds), stockpile areas, and spoil disposal areas.

the action means the proposal as referred to the Department in August 2013.

the Department means the Australian Government Department administering the EPBC Act.

the Minister means the minister administering the *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of the minister.