

**Submission
No 25**

REVIEW OF THE NSW RECONSTRUCTION AUTHORITY ACT 2022

Name: Mr Martin Musgrave
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Partially
Confidential

Martin Musgrave

Economist

Former Resident of NSW Northern Rivers

17 May 2024

Mr Clayton Barr, MP

Member for Cessnock

Chairman, NSW Parliamentary Review of the NSW Reconstruction Authority Act 2022

Via the NSW Parliament Web Portal

Dear Mr Barr

Thank you for the opportunity to make a submission to the Review of the NSW Reconstruction Authority Act 2022. I look forward to an opportunity to give in-person evidence to the Committee when hearings begin.

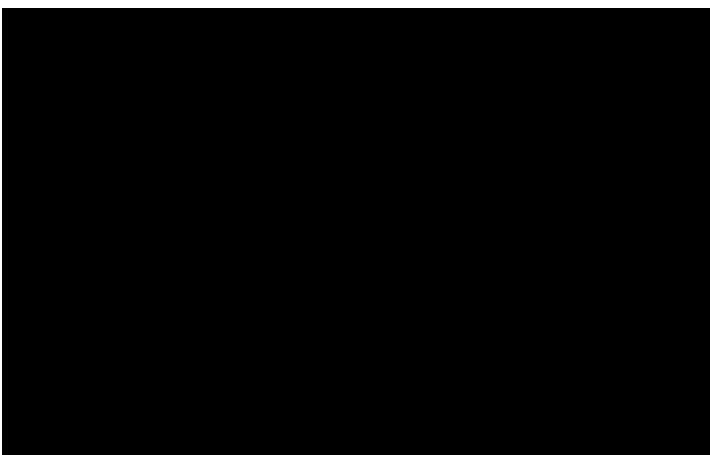
I write regarding my family's experience with the Northern Rivers Reconstruction Corporation (NRRC), which I understand is the predecessor of the NSW Reconstruction Authority in the Northern Rivers of NSW.

This submission includes my advice for what should have occurred in the wake of the back-to-back disasters that befell the Northern Rivers in February and March 2022, whether the powers of the NRRC were adequate, whether the use of the powers were adequate, what our experience was with the Corporation, and what our experience was with Ballina Council following our submission to make our land available for affordable rental dwellings.

Background

I lived with my family at [REDACTED], in the Ballina Shire, from November 2016 to June 2022. The land was 1.2 hectares (3 acres). The land is zoned RU1, which means that we were unable to subdivide our land, nor were we able to build a "caravan park-" like development. To do anything other than have a primary and secondary dwelling would require a rezoning.

The flood rains began on 26 February 2022, and peaked on 28 February 2022. Rous Mill is around 10 kilometres from Alstonville on the Alstonville Plateau. While there are two routes to Alstonville from our house (our nearest services centre), we were cut off for three days as were required to go over a flooded causeway in either direction. As a result, we were cut off from Alstonville. The red lines on the map below show the causeways that were flooded and prevented us from getting to Alstonville.



Our children were unable to attend school for two weeks. My wife lined up for bread at 6am on 3 March as we were beginning to run out of food. Alstonville Coles ran out of food and the lines to even enter the store stretched over 250 metres. This is because the Bruxner Highway and other roads into Alstonville were underwater for over two weeks, meaning no food or fuel trucks could get in to resupply shops.

This was my Facebook post on 3 March 2022:

It's terrible and a little scary here right now in the Northern Rivers. There's a storm rolling through Casino, Lismore, Alstonville and surrounding villages. There's no food except the two bakeries have been baking bread. Supermarkets are closed because there's nothing for them to sell. There's no milk. Anyone on town water has been asked to not drink too much as the treatment works are in trouble. There's no fuel. Ballina has no power or internet. There appears no way to resupply. Schools are closed as staff can't get there.

We are so grateful to be at the top of the hill, with our own water supply, power and intermittent internet. We are safe and well and thinking about people who have lost everything and can't do anything to recover while it continues to rain.

When the March flood took place, we were cut off for another week. Our business, which relies on internet access, was without access for nearly a month with no compensation.

The impact on our house and lives were minor. Around \$10,000 worth of damage occurred to our property through rain surge, not flooding, and we suffered no water ingress.

Immediate Aftermath

In the immediate aftermath of the disaster, the state government was extremely slow to react. The Minister appeared to be over her head and paralysed by the decisions that needed to be made. There seemed to be confusion over whether the Minister or the Deputy Premier was responsible. While the main focus was on Lismore, large parts of the Ballina and Tweed Shires also flooded.

The NRRC was announced on 19 April 2022. It was meant to work with councils to solve issues from the flood, including the 4,000 or more people who had been left homeless. The politicians rolled in to Lismore in their tan pants, blue shirts, brand new akubras and RMs. Lismore was the focus, even though the whole region was impacted. This Lismore-centric thinking, I believe, made for Lismore-centric solutions rather than thinking across all LGAs in the region.

I consider that the government should have been more proactive and should have temporarily amalgamated the six Northern Rivers councils (Tweed, Ballina, Lismore, Byron, Casino and Kyogle), and appointed the NRRC CEO as the Administrator. This would have prevented parochialism and allowed the NRRC to operate without having to deal with local politics and council officers and councillors.

My Interaction with the NRRC

I had a phone conversation with [REDACTED] on 7 June 2022, before he moved into his role as [REDACTED] the NRRC. I expressed concern to him that he would not have enough power to make sure councils didn't just work in their own interests. He assured me that the NRRC would have extensive powers, including the power to rezone land, purchased land, and to override councils. I mentioned that I was concerned that the NRRC was to be established without working out local governance first.

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Economist

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I suggested that he should advocate to government that the local government areas of the Northern Rivers be temporarily amalgamated and that the NRRC CEO be appointed as the Administrator of all six LGAs. He suggested that this wasn't a bad idea and that it would stop parochialism and allow a whole-of-region. I let him know that I was interested in discussing how our land could be used to aid the recovery and help to house the 4,000 homeless people. I was left with the impression that there was a real possibility that my land would be rezoned so that it could be used for affordable housing. We also spoke during this conversation about the macadamia industry and how it was failing, and that the perfect sites would be around Rous Mill where farmers would welcome the opportunity to develop their land, in an area where there was a school and plentiful water (indeed before the flood a bottled water company had been prevented from extracting water from the Plateau's aquifer). In the prior 4 years, the macadamia industry had lost crops to disasters and had suffered plummeting prices, making the industry uneconomic. [REDACTED] agreed with me that macadamia farms, located on the Alstonville Plateau halfway between Ballina and Lismore, would be considered as part of the resilient land programme and should very much be considered as sites that could be rezoned urgently. He noted that because the NRRC would be coming "from Sydney" that there would be the opportunity for the NRRC to make bold decisions and that councils would be able to "blame" the NRRC and so get political cover from any decisions.

I tried several times to follow up my conversation once the NRRC was operational. At one stage I received a call from an NRRC officer who said they were based in Brisbane. There was no way to contact the NRRC except through their "info@" email address, and the replies from various officers were inconsistent and generic. I sent the following email to the "info@" email address on 18 January 2023 – there was no other way to get a message to the NRRC – no phone number and no officers would give their email addresses. It appears that the only way I got a substantive reply was because I copied in the local members (including federal), the Deputy Premier and other senior politicians.

Dear [REDACTED]

I met with [REDACTED] in July.

I have a scheme to put 30 manufactured homes on my 3 acre lot in Rous Mill, but am looking for support. The scheme would not require any financial assistance from government, but would require a DA. I would also subsequently be looking to rezone the land so it can be subdivided. The issue I have is that I am also in the EOI for land purchase, so I want to make sure I don't invest too much money in my scheme if the NRRC is going to purchase my land at a price that I consider it to be worth at its highest and best use.

Could someone please get in touch with me – preferably a senior executive, or [REDACTED] himself – to discuss my proposal and how it might be best progressed?

This was the reply on 19 January

Hello Mr Musgrave

[REDACTED] office have asked us to respond to you on his behalf with the latest information in relation to the Resilient Land EOI.

More than 250 Landholder EOIs have already been lodged under the Resilient Land Program, the NRRC will continue to receive EOIs until Wednesday, 1 February 2023.

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The first shortlist of landholdings will be identified by March 2023. Shortlisted landholdings will then undergo a detailed assessment to confirm what Government support is needed to accelerate development.

Applications will be assessed by an expert panel, the robust and objective assessment will focus on future natural hazard risk, including flood and bushfire, and balance the social, cultural, economic and environmental factors which can arise from development to ensure the delivery of the right houses, in the right place, at the right time and at the right price point for the community.

For more information about the Northern Rivers Reconstruction Corporation and the Resilient Lands Program, go to: www.nsw.gov.au/NRRC

Kind regards

■

Growing increasingly frustrated, I responded on 30 January 2023

Dear ■

Thank you for writing to me. It was, however, not anywhere near a response to my email. I am actually very disappointed that this passes for a response on behalf of the CEO.

I know that there was a key word in my email that referred to the EOI process. However, my email was really about me wanting to inject some housing supply, with zero government investment required. The only thing I would need is a development approval or a rezoning, both of which the NRRC was established to expedite. I was interested to know how long things will take because I am talking to financiers and, if the EOI process was imminent, I was going to wait. At least you have given the impression (although not explicitly) that there won't be any movement on this front until well into 2023 and maybe even 2024.

I am interested to understand who the "experts" are who will be reviewing the EOIs. Will the public be advised as to who is sitting in judgment over their land or proposal? I am an economist with over 25 years experience in the property development and housing sector, so am keen to understand how the experts have been appointed, who they are and what their experience is.

I am concerned that, even though the NRRC has the power to rezone and approve developments under the Act it was established under, there are still no development pathways available for land holders such as myself. Will development approval and rezoning pathways be established within the NRRC soon?

When I met with ■ in July 2022, I was given the impression that the NRRC would be looking to use its powers to rezone and approve development with a high sense of urgency, and to ensure that land was being used, all over the Northern Rivers, for its highest and best use. Your email suggests that this is no longer the case, but instead there will be a bureaucratic process that will leave a large amount of undersupply of land in the market. The consensus among economists is that there should be a flood

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Economist

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of new land supply so that those in need can purchase land that is not ridiculously expensive (particularly those who receive a buy-back).

I am also confused about the wording of your last second-last paragraph. Surely the "right time" is any time since last March. Surely the "right place" is anywhere in the Northern Rivers. Surely the "right price point" is determined by supply, which without urgency, has no chance of being right for anyone.

I would very much appreciate a detailed response to each of the points I have raised here, rather than the generic response that your most recent email was.

I have copied this email to the Deputy Premier's Chief of Staff, Secretary of Planning, the Member for Page, the Member for Lismore, the Member for Ballina and Ben Franklin, MLC. I am sure each of these representatives will be interested to understand the lack of communication and lack of urgency coming from the NRRC.

I met with [REDACTED] and [REDACTED] on 3 February 2023. I was told that there had been 326 applications under the "resilient land programme" and that there was a short, medium and long term list. I was told that strong sites were those with no local risk, no environmental constraints and sites that were not state significant farmland. I outlined that I had a relationship with a Community Housing Association and that my site needed rezoning to work, but would be a great site for affordable housing, and that I could fit around 30 small dwellings on the site for this purpose. I was told to get in touch and that they would be considering blanket rezonings, which were not in their powers at the time, but would turn on soon once the Reconstruction Authority was constituted. I left that conversation with the impression that, regardless of council's thoughts, the NRRC would consider my site for a rezoning to allow for affordable housing.

In May 2023, the NRRC released the resilient land programme land. For Ballina Shire it looked remarkably like the land release areas that had already been part of the long term plan of the council. It appeared to include no new land and it even gave the impression that any new land, such as ours, had been dismissed out of hand.

We received a letter by email on 2 June 2023 advising that our land was not part of the Resilient Land Programme, and that we would be free to undertake a rezoning through our local council via the normal procedures under the EP&A Act. At no point was there an opportunity to discuss the EOI with the NRRC, nor was there an opportunity to meet with the "expert panel" to make a case.

On 26 June 2023 I wrote to the Mayor of Ballina Shire:

Dear [REDACTED]

We are the owners of [REDACTED]. We wanted to discuss with you the potential for the site to be used as affordable housing. We are particularly keen to understand your (and Councillors') appetite for our proposal before we embark on an expensive planning proposal exercise.

We have been approached by a Community Housing Provider to use the land as a site for affordable housing. The concept is to use pre-fabricated homes

on the site and provide affordable long-term rental accommodation for residents.

We met with [REDACTED] last July and then in February, and he assured us that we would get a response from them regarding their concept for our land in March. We have waited for a response from the NRRC and, ultimately, they have responded that the land is not in their priority area, and that we should now approach Council. Unfortunately, waiting for them to respond to us has wasted about six months, and we now find ourselves in a position where the Community Housing Provider is getting less interested.

We were hoping that the NRRC would be able to help us, but they have put it back on us, even though they agree that the concept is worthy. The land is currently zoned RU1, which means it has a 40 hectare minimum lot size (despite being only 1.2 hectares) and prohibits the kind of affordable housing we would like to put on the property. Ironically, in the zone, we are allowed to have a brothel, kennels, a school, a mine, but we aren't allowed to build the affordable rental housing that the area so urgently needs. Notably, if the land was zoned RU2 instead of RU1, this would not be an issue, as the type of housing we are looking to provide is permissible with consent in the RU2 zone.

We are, therefore, seeking an additional permitted use on the property that would allow us to provide affordable housing for 20-30 families, couples and singles.

Rous Mill is ideally located for the thousands of people who will be working on the flood recovery and need accommodation while they are working. It is also ideally placed for those who have been displaced as a result of the floods, particularly those in and around Wardell. As it is situated between Ballina and Lismore (and close to Alstonville), it is also an ideal location for nurses and other key workers working at Lismore Base Hospital, as it provides a flood-free route to the hospital.

Those who live in Ballina Shire are likely to spend their earnings in the Shire. Even though it is likely that a number of the residents would be working in Lismore, they will undoubtedly shop in Alstonville and Ballina.

Rental vacancies in Alstonville and the wider 2477 area are very low, with only 27 houses available for rent in the most recent week. Median rents for 2-bedroom units in the area are \$508 per week, up from \$429 per week at the same time last year (an 18 per cent increase). Affordable housing is desperately needed in the area, and this proposal would help alleviate the issue. The concept would be that the rents would be set at 80 per cent of the current market rate (\$406 per week) and only those eligible under the regulations would be entitled to rent there.

We understand that Council has had some issues with its proposal in Wollongbar. It is important to note that no Council funds will be required to provide affordable housing at [REDACTED] – the only Council involvement would be to enable the additional use on the site.

We note that Council has provided additional uses in Schedule 1 of the LEP in the following places and uses, but none of these have been for affordable housing:

- Camden Street, Camden Lane and Skinner Street, Ballina for the purposes of coastal protection works
- Byron Street, Lennox Head for the purposes of hardware and building supplies, a plant nursery and a service station
- 1 Libby Lane and 200 North Creek Road, Lennox Head for the purposes of dual occupancy
- Wardell Road, Lynwood for the purposes of a function centre, garden centre, kiosk, plant nursery, respite day care centre, restaurant or cafe and warehouse and distribution centre
- Land adjacent to the Ballina Pacific Highway Bypass alignment at the Teven Road interchange for the purpose of a highway service centre
- Paperbark Close and Teven Road, West Ballina for the purposes of a freight transport facility and a warehouse or distribution centre
- Friday Hut Road, Tintenbar to create 2 lots, each of a size that is less than the minimum size
- Boeing Avenue, Ballina for the purposes of a specialised retail premises
- River Street, Tamar Street, Kerr Street, Grant Street, Moon Street, Cherry Street and Martin Street, Ballina for the purpose of residential flat buildings
- Certain land at Alstonville for the purpose of dual occupancy
- Lismore Road, Wollongbar for the purposes of a service station and a retail premises
- Use of certain land in Zones RU1 and RU2 for the purposes of an industrial retail outlet
- Certain land at Wardell for the purpose of dual occupancy (attached)
- Certain land at Alstonville and Lennox Head for the purposes of tourist and visitor accommodation

We were lucky that the floods of February and March 2022 did not affect us directly. We would like the opportunity now to use our land for something useful, and a greater purpose than it currently is serving. It appears to make no sense that, when the opportunity has arisen, the land should not be used for affordable housing.

We hope you and Councillors are enthusiastic for this proposal, particularly given the well-publicised housing crisis across the whole of the region, as well as locally.

We would be very grateful if we could discuss this proposal with you as soon as possible.

Warm regards

On or about the next day I received a phone call from [REDACTED] [REDACTED] told me there is plenty of land supply, apparently in Wollongbar and Cumbalum (which has a 15 year release period). I asked why no one is building then. She told me because no one wants to spend any money

Martin Musgrave

Economist

Former Resident of NSW Northern Rivers

right now. I said but I want to spend money on affordable housing. She said my land's not needed because there's plenty of land supply. I have never been in such a circular argument. I gave up. We put the land on the market the next day and sold. We will never return to the Northern Rivers.

Ironically, and the most frustrating thing, was that the land was sold to a couple who will be using the land for a dog kennelling business – it seems the government and Ballina council are more interested in housing dogs than people. During a housing crisis the NRRC, even though it had the powers, did not have the strength of purpose to rezone large swathes of land for more housing. They were reluctant to rock the boat, despite the bold statements of [REDACTED] over a year earlier.

We were left feeling strung along and helpless. We felt that we had a good solution to some of the problems and hadn't been listened to. We felt like we were given some comfort early on and then, nearly two years later, had been told that that was that. We also felt that it was possible that [REDACTED], who lives nearby, also did not want more housing in the area.

Are The Powers of the NSW Reconstruction Authority Adequate?

I consider that the powers of the NRRC and subsequently the NSW Reconstruction Authority are adequate. My concern is that the NRRC was reluctant to use those powers, and that councils were able to ignore the NRRC.

In my experience, in general, state government planners and agencies are very reluctant to over-ride councils. For some reason, despite them being less resourced, less experienced and less able, council decisions are considered to be sacred. I believe that the planners have a "club" and state planners do not like to over-ride council planners because they might one day be working with or for the planners they would be over-riding.

I also believe that planners are either ignorant or wilfully ignore economic imperatives, such as housing crises, and do not move with enough urgency to tackle problems. Planners also seem to have the ability to act unilaterally, without the need to implement government policy they don't like, and to act on their own interpretation of government policy.

I also consider that the advisory board did not include anyone who had development experience and were likely to act in a way that kept the status quo.

What Should Have Been Done and Lessons For Future Disasters

A new Housing State Environmental Planning Policy (SEPP) was proposed in January 2023. I wrote the following emails on 20 January to [REDACTED] and

[REDACTED]:
Hi [REDACTED]

I know I have missed the cutoff, but I have only just seen the proposed amendments to the Housing SEPP.

Could you please pass on this thought about Temporary Supportive Accommodation.

The provisions for temporary supportive accommodation should apply to council operational land, BUT ALSO to all land over 1.2ha in area in regions where a natural disaster has been declared within the previous three years.

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Economist

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The problem with it being council land only is that recently, Lismore Council has stopped Resilience NSW from using its parks (operational land) for temporary pod housing, requiring RNSW to seek land elsewhere. In areas where there have been natural disasters, there may not be enough council operational land to make a difference. Allowing it to be all land over a threshold of 1.2ha would bring on more land that is able to supply this kind of accommodation, especially in areas where there is unused rural zoned land that could be used temporarily for housing.

Making it a minimum size of 1.2ha (3 acres) would mean that parts of some farms could be carved off to provide this sort of accommodation, or the whole of smaller lots.

Bringing this in as part of this round would solve a number of problems in the Northern Rivers.

Thanks so much for your time in looking at this and passing it on for consideration.

Regards

Hi [REDACTED]

I would appreciate it if you could pass this on [REDACTED], please.

There is an amendment out at the moment for changes to the Housing SEPP. It would allow for Temporary Supportive Accommodation on council operational land using just a complying development certificate. I believe this should be widened, so that any land over 1.2 hectares could become temporary supportive accommodation in areas where a natural disaster has been declared within the previous three years.

This would mean that farms and whole lots within the Northern Region could be used as temporary supportive accommodation without the need to involve either councils or the NRRC. I'd be keen to understand what you think about this idea. As I understand it, councils have stood in the way of using their operational land to provide temporary accommodation (classified as 5 years), but this would provide a solution on private land.

I would be keen to get an idea of whether this is thought to be a good idea.

The following are some lessons that I believe should be considered by this Committee:

- Use the powers that exist under the act to rezone land quickly.
- Ensure that state planners are not captured by council planners (this is relevant to the current housing crisis and planning in general).
- Ensure planners are properly educated on the government's policies and desired outcomes.

Martin Musgrave

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- Ensure planners are properly educated in economics, and that economics is properly considered in decisions (the Planning Act requires decisions to be taken that promote ESD, which includes environmental, social and economic considerations).
- Consider increasing the powers under the act to allow for temporary council amalgamations and the installation of a Reconstruction Authority officer as Administrator so that parochialism is eliminated or reduced and that local politics does not impact decisions.
- Ensure any advisory boards include those with relevant private sector development experience.
- Make sure housing is available quickly, as any recovery will likely to slower than first anticipated.
- Amend the Housing SEPP to allow Temporary Supportive Accommodation to be built on private as well as council land.

Thank you for the opportunity to put my experiences and thoughts to the Committee. I look forward to giving in-person evidence.

Yours sincerely

Martin Musgrave

[Redacted signature]

[Redacted contact information]