

**INQUIRY INTO NSW GOVERNMENT'S USE AND
MANAGEMENT OF CONSULTING SERVICES**

Organisation: Save Sydney's Koalas

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17 July 2023

Submission to the Upper House Inquiry into Government's use and management of consulting services

To: Ms Abigail Boyd MLC, Chair, Upper House Inquiry into Government's use and management of consulting services

Dear Ms Boyd

Thank you for the opportunity to make a submission to this important inquiry.

Save Sydney's Koalas believes an investigation is warranted into the use of proponent-appointed consultant reports for assessing the environmental impacts of major public and private projects.

The following case study highlights how the integrity of the development approval process for a critical piece of state road infrastructure has been undermined by Transport for NSW's reliance on both a private consultant and a private developer to conduct an important environmental impact study.

Case Study: Transport for NSW commissioned EMM Consulting and Lendlease to prepare an Addendum Report on the Environmental Factors for the Appin Road upgrade.

Recently, Transport for NSW (TfNSW) appointed EMM Consulting Pty Ltd and Lendlease Communities (Figtree Hill) Pty Limited to prepare the [Addendum Report on the Environmental Factors \(November 2022\)](#) (Addendum REF) for the proposed staged upgrade of a 5.4 km section of Appin Road between Mount Gilead in the

south and the intersection with St Johns Road, Ambarvale to the north, “which includes intersection upgrades, widening part of the road from two to four lanes and the construction of new intersections for access to the proposed (and approved) Mount Gilead residential subdivision.”

Lendlease, the developer of the Mount Gilead housing estate, has now agreed to fund the inclusion of two fauna crossings under Appin Road and fauna fencing on the eastern side of Appin Road, thus necessitating the need for an Addendum REF.

In SSK’s opinion, the Addendum REF highlights how a perceived conflict of interest has led to the design of suboptimal wildlife underpasses and inadequate analysis of the environmental impacts, as illustrated by the following facts and observations:

- **The main beneficiary of the Appin Road upgrade, Lendlease, was allowed to commission the Addendum REF on behalf of TfNSW.**
Enquiries about the Addendum REF were also directed to a Lendlease email address.
- **Findings made in the Addendum REF are not in line with previous advice to Government from the Office of the Chief Scientist and Engineer's Koala Expert Panel.**

The Addendum REF says, for example, that the impacts of the proposal have now been assessed as ‘not significant’ under both State and Commonwealth assessment criteria due to its limited impacts and the size and wide distribution of the local koala population."

This claim is in direct contradiction to the Office of Chief Scientist and Engineer’s [Advice on the protection of the Campbelltown Koala population Koala Independent Expert Panel 30 April 2020](#), (OCSE First Koala Report), which clearly emphasised how essential the existence of native bushland and rural farmland in the immediate Campbelltown area has been crucial for ensuring that the Campbelltown Koala population can expand its numbers and reach:

The Macarthur region is host to a historically continuous population of koalas, known as the Campbelltown population. The population of between 250 and 500 individuals is surviving in a landscape that is predominantly native bushland that is connected to rural farmland or peri-urban environment in the

*vicinity of the Greater Macarthur area.*¹

The claim is also not in line with Addendum REF's acknowledgment of the high level of Koala roadkill on the section of Appin Road to be upgraded:

*The Department of Planning and Environment's (DPE's) flora and fauna database, Bionet, holds records for 31 koala strikes on the section of Appin Road between Rosemeadow and Appin Township between 2010 and 2021 (Data downloaded August 2021). This figure would underestimate actual koala vehicle strikes as not all incidents would be reported. The modification of the Project REF is being proposed following confirmation of the State Government's position on fauna corridors as part of the NSW Chief Scientist's advice (Advice on the protection of the Campbelltown Koala population, Koala Independent Expert Panel, 20 April 2020) and later update to Greater Macarthur 2040.*²

- **The Addendum REF also includes outdated information on the threatened species status of the Koala under both state and federal legislation.**

The Addendum REF includes a report by Eco Logical, *Biodiversity Assessment for Appin Road Upgrade Review of Environmental Factors*, which says that the "Koala is not an endangered ecological community." As a consequence, this report argues that the requirement to assess adverse effects on the risk of extinction to the local Koala population is not applicable.³

¹ [Advice on the protection of the Campbelltown Koala population Koala Independent Expert Panel 30 April 2020](#), (OCSE First Koala Report), page iv.

² Transport for NSW, Appin Road Upgrade, [Mount Gilead to Ambarvale, Addendum Review of Environmental Factors](#), prepared by EMM Consulting Pty Limited and Lendlease Communities (Figtree Hill) Pty Limited for Transport for NSW (November 2022), page 22.

³ Eco Logical Australia Pty Limited, [Biodiversity Assessment for Appin Road Upgrade, Review of Environmental Factors, Addendum Report on Environmental Factors](#) (16 November 2022), page 46. Eco Logical is Lendlease's preferred consultant on environmental matters. Koala experts have previously expressed concerns about Eco Logical's perceived lack of objectivity. See, for example, Dr Steve Phillips' response to the Eco Logical report, *Mt Gilead Koala Carrying Capacity*, prepared on behalf of Lendlease, where he says:

Obviously, the author of this report was either unaware or failed to mention that on 12 February 2022 koalas in NSW were [formally listed as endangered](#) under the federal government's Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), and subsequently [listed on 20 May 2022 as an endangered species](#) under the NSW Biodiversity Conservation Act 2016 (BC Act).

- **The Addendum REF includes designs for underpasses at Glen Lorne and Browns Bush that are very different to the best practice culvert-style underpass structures that Lendlease told the OCSE Koala Expert Panel it intended to build.**

As highlighted in the OCSE [Response to questions about advice provided in the Chief Scientist's First Koala Report'](#) (OCSE Response to Questions about Advice), the Koala Expert Panel considered a box culvert underpass structure to be a good solution:

There is good evidence that koalas use [box] culvert structures (e.g. Woolgoolga to Ballina Pacific Highway upgrade), with a documented case of a successful crossing of a 100 m long culvert, noting that important aspects for koala crossings are in their fit-out, including that they are dry and well ventilated structures.⁴

- **The Addendum REF argues that the design and width of the two Koala underpasses have been changed to stop encroachment on the Noorumba/Beulah Biobank sites, but says nothing about how this situation could be avoided if the underpasses were constructed on**

At the outset, we were surprised by the lack of objectivity evidenced in this report, asserting as it does that in the absence of development, both the amount and quality of koala habitat in the Gilead area will deteriorate, which is not necessarily the case. The assumption that trees planted across the Gilead Stage 2 landscape will become a viable food resource for koalas at 4 - 7 years post planting is also fundamental to calculations relating to koala carrying capacity of the site both during and post development, but this critical milestone is not demonstrably possible for reasons we argue in the following paragraphs. (Campbelltown City Council, [Agenda, 13 October 2020](#), page 63)

⁴ [OCSE Response to Questions about Advice](#), page 4.

more land owned by Lendlease:

Options are limited in relation to the installation of the underpass pipes. An initial assessment by designers shows that bored pipes (also known as pipejacking) typically require 2.5 times the pipe diameter to what is being proposed. If the pipes were sunk lower to enable pipe jacking, then the earthworks would encroach into the Noorumba/Beulah Biobank sites and would trigger the need for retaining walls to stop the encroachments. For the larger pipe, a mini tunnel boring machine (TBM) would be required which would result in a larger construction footprint to enable use of the TBM.⁵

As far as SSK is aware, the adequacy of the now proposed narrow pipe designs has not been assessed by the OCSE's Koala Independent Expert Panel.

This is alarming because according to Maria Matthes, a Threatened Species ecologist who advised the TfNSW about appropriate underpasses for the Woolgoolga to Ballina Pacific Highway Upgrade, the new designs are suboptimal and are unlikely to be used by koalas.

The Addendum REF states that “overall, it is considered that the proposed underpasses, in association with exclusion fencing, have a strong likelihood of success based on evidence of koalas using similar structures on other road projects, such as the Oxley Highway, Wardell Road and Bonville Bypass projects.” But the underpasses referenced above are either culvert-style structures or in the case of the [Bonville Bypass](#) a combination of a 60-metre-wide fauna overpass, eight underpasses, some utilising existing structures like service roads, drains and creek bridges, or artificially lit culverts.

⁵ Transport for [NSW, Appin Road Upgrade, Mount Gilead to Ambarvale, Addendum Review of Environmental Factors](#), prepared by EMM Consulting Pty Limited and Lendlease Communities (Figtree Hill) Pty Limited for Transport for NSW (November 2022), page 31.



[Wardell Road Underpass](#), Pacific Highway, Wardell

- **The proposed design for the Glen Lorne underpass appears to have been modified in response to a condition imposed by the Campbelltown Council Local Planning Panel (LPP) on Lendlease’s Development Application for a residential lot subdivision.**

At its meeting of 24 August 2022, the Campbelltown LPP set aside 10 lots from a 138 residential lot subdivision (Condition 2(a) of DA2687/2018/DA-SW) to allow room for the proposed Glen Lorne underpass adjacent to the Noorumba Reserve on the Figtree Hill Estate (MGS1).

Its [Considerations and Reasons for the Decision](#) noted that:

Further review of the TfNSW REF is likely to accommodate an amended scope of works to the State VPA to include fauna underpasses adjacent to Noorumba Reserve and Beulah. In this regard, the Panel is conscious that the proposed development in the north east corner of the site may compromise the most suitable outcome. Therefore, it is considered prudent to exclude proposed lots 1397 – 1398 and 1372 - 1379 to form a residue lot, until such time as detailed design of the Noorumba underpass is formalised within an appropriate planning approval.⁶

⁶ [Minutes of the Campbelltown Council LLP](#), (24 August 2022), page 4.



Above: The excluded lots from the residential subdivision to make room for the Noorumba Glen Lorne underpass are marked 1372 and PT1389. Source: [Stage 1C Subdivision plans, Lot 1, Appin Road, Gilead](#)

The Addendum REF now shows a scaled-back underpass for Glen Lorne that does not encroach on the 10 blocks excluded from residential development by the Campbelltown LLP.

- **The fact that Lendlease has now lodged a S4.55 modification request to remove Condition 2(a) from its DA increases the likelihood that the underpasses were reduced in size so Lendlease could "reclaim" the lots set aside to make room for the Glen Lorne underpass.**

The [GLN Statement of Support](#) for Lendlease's S.4.55 modification request to the DA falsely claims that:

the Chief Scientist & Engineer Report (CSER) imposed no requirement for a fauna crossing at corridor (A) to be located on the Applicant's land, on the contrary, the CSER acknowledges

*that the land-use planning for the Figtree Hill site was settled prior to the publication of that advice in April 2020. The residential zone on which the development application relies was published in September 2017.*⁷

To the contrary, the OCSE Response to Questions about Advice stressed the importance of not letting land tenure issues jeopardise the securing of appropriately sized corridors on Mount Gilead Stage 2 (MGS2) and neighbouring landholdings, noting that “there are recent sightings and evidence of koalas in the Noorumba Reserve and across Appin Road in the Bionet database (2019).”

Its advice emphasised “the importance of a holistic planning approach. By their very nature, the habitat corridors within the two study areas cross multiple tenures and landscapes, connect internally and with each other. Koalas, in using these corridors, do not recognise lines on maps...the tenure of the land should not preclude it from being included in the corridor or buffer calculations.”⁸

- **The Addendum REF also explains that only a temporary koala/fauna underpass (two x 1.2m diameter pipes) will initially be built at the Browns Bush Beulah location, and offers no information about the timing of a more appropriate replacement including its likely design.**

Lendlease’s explanation in the Addendum REF about why only a temporary underpass will be built at Browns Bush is both inexplicable and unacceptable given the urgency of securing appropriate koala habitat corridors and putting well-designed Koala underpasses in place before intensive development is allowed to proceed on the Mount Gilead property:

In July 2022 Lendlease submitted an irrevocable letter of offer for the inclusion of additional infrastructure to be delivered under the Mount Gilead Planning Agreement to the Planning Minister. The additional

⁷ Section 4.55 Application to Modify DA 2687/2018/DA-SW from Matt Cooper, Director, GLN Planning Pty Ltd, to Jim Baldwin, Campbelltown Council, 17 October 2022, page 2.

⁸ [OCSE Response to Questions about Advice](#), page 8.

infrastructure included the provision of a permanent underpass on Appin Road adjacent to the Beulah biobank within Corridor B (as identified in the NSW Government Chief Scientist's advice). The timing and extent of this proposal however has not yet been determined and separate approval would be required. The permanent crossing does not form part of this Addendum REF works. In the interim, approval of the amendments sought by this Addendum REF is required to support the relevant approved Appin Road upgrade works under the Project REF. These works are urgently required to improve safety on the relevant section of Appin Road. To meet the requirements of the NSW Chief Scientist, as well as facilitate the road upgrade, it is proposed to construct a temporary underpass at the southern extent of Mount Gilead Stage 2 land (Browns Bush underpass).⁹

Importantly, the OCSE was originally shown a very different concept drawing for the Browns Bush Beulah underpass, and assessed it to be "a well-conceived structure" that is "likely to be used by koalas."

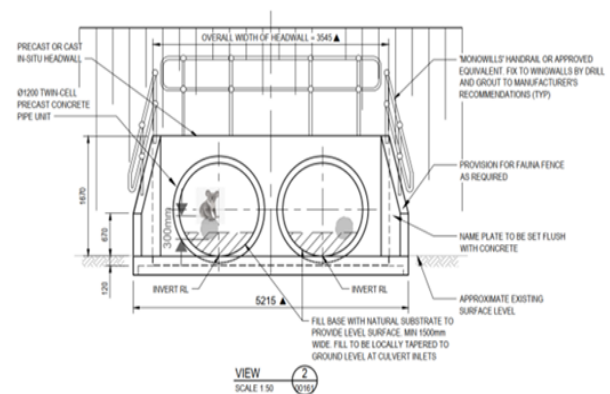


Figure 7 Indicative fauna furniture through Browns Bush underpass

Above: The image on the right of the proposed temporary underpass Browns Beulah is very different to the one reproduced in OCSE First Koala Report.

Understandably, SSK has reluctantly formed the view that expediency, expense and loss of land for its residential subdivision are the real reasons why Lendlease doesn't want to build underpasses based on best practice design.

⁹ [Addendum REF](#), page 6.

Conclusion

The above example highlights how an overreliance on private developers to facilitate the financing and delivery of state government critical infrastructure has led to a situation where Government departments are relying on proponent-appointed consultants to provide important environmental impact studies.

As a consequence, essential safeguards to manage conflict of interest concerns have been dismantled. The Addendum REF for the Appin Road upgrade appears to be skewed in favour of the pecuniary objectives of the project's funder and primary beneficiary Lendlease. TfNSW has seemingly abdicated oversight responsibility for the design of the Koala underpasses and ignored its public interest responsibility to ensure an objective analysis of the environmental impacts.

As this submission highlights, EMM Consulting's assessment of the environmental impacts of the suboptimal Koala underpasses either relies on inaccurate information or discounts the advice from the OCSE's independent Koala Expert Panel, which was established by the previous government to ensure better outcomes for the Campbelltown Koala population.

Additional resources and expertise within TfNSW and other Government departments are urgently required to give the public confidence that the environmental impacts of roads and other major state or privately funded infrastructure are properly considered and addressed.