

**Submission
No 106**

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

Organisation: Save Myall Road Bushland Incorporated

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Submission to Committee 7 of the NSW Legislative Council by Save Myall Road Bushland Inc.

THE INQUIRY INTO THE PLANNING SYSTEM AND THE IMPACTS OF CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES

Save Myall Road Bushland Incorporated (SMRBI) welcomes the opportunity to submit comments related to the subject matter before Committee 7. We specifically wish to highlight our concerns from our collective experiences of a proposed development by Landcom in the Lake Macquarie area.

Residents of Cardiff, Cardiff South, Garden Suburbs and the Hillsborough areas have objected to this development proposal from when it was first lodged in 2013 as it involves the destruction of significant bushland and vital habitat. Save Myall Road Bushland Inc (SMRBI) was formed in January 2021, after a group of concerned residents who had individually objected in 2013 and in 2018 to the development application (Lake Macquarie City Council DA/1284/2013).

The application from Landcom proposes to develop nearly 12ha's of a 38.8ha area of remnant coastal eucalypt forest for 66 house lots and 3 super lots at Myall Road, Garden Suburb in the City of Lake Macquarie.

Supporting documentation from Landcom included a *Statement of Environment Effects*, prepared for them by Elton Consulting stating that the development would not have a significant impact on biodiversity and would have a positive impact on the human community. It further claimed that the existing, remaining 28ha would offset the impacts of the development. Landcom claimed that an equivalent off-site offset could not be found and falsely claimed that the Biodiversity Conservation Trust had agreed that the offset was appropriate. We contend that these above matters are highly erroneous.

Individual community members presented evidence and information to the Joint Regional Planning Panel on 8 December 2020, that directly conflicted with various Landcom assertions made in their application and at the panel hearing. Community members' evidence and conclusions were not appropriately addressed by the JRPP. The developer -and Lake Macquarie City Council employees contended that they had followed the procedures set out in various state environmental and planning, threatened species and biodiversity conservation laws, however some of these rely upon provisions from 1979. SMRBI contends a more rigorous assessment is required considering contemporary environmental protections when doing contemporary damage, to the environment and, not relying on dinosaur provisions.

To provide an example related to the above paragraph, as the DA was lodged in 2013, yet assessed by the JRPP in 2020, Landcom claimed an exemption from the Lake Macquarie City Council's (LMCC) Large Forest Owl policy of 2014. Landcom and LMCC presented to the JRPP that there would be no negative impacts upon the Powerful Owls by this development despite Landcom and the community both agreeing that this is a Powerful Owl roosting area. This is in direct contradiction to the LMCC policy of 2014 which requires LMCC to act to protect remaining habitat of the Powerful Owl as it will negatively impact its' survival and potentially move it from vulnerable to threatened status without appropriate protections.

SMRBI requests you to consider how is it fair and reasonable to the community and the Powerful Owl that policies related to protecting the environment developed before the final consent of a development is given, should be ignored because the initial DA was lodged under a different

environmental protection framework. Current knowledge and practise **must** be required for **current development**. We would not let anachronistic work health and safety provisions of decades ago pass as reasonable protections in the workplace today, but we are doing this for the natural environment.

As Landcom was given conditional approval in December 2020 by the JRPP, SMRBI set out to undertake our own research and have published a detailed report on the biodiversity, historical and community benefits of managing the whole 38.8ha as Bushland. SMRBI have made 22 recommendations for improving the management of this site ([view report](#)).

SMRBI has managed to establish that Landcom has not used the correct test of significance of this site in regard to the Little Bent Wing Bat, a species of bat considered vulnerable in NSW. We have obtained an independent expert report to support this finding.

Landcom has failed to effectively engage with the Aboriginal people of the area and consider the cultural values of the site. In working in partnership with stakeholders we have established that there are significant Aboriginal heritage sites within the development footprint, and at a minimum, these should be further investigated, and not when the bulldozers turn up. In addition, the proposed development site adjoins an Aboriginal Hostel, Kirinari which provides housing for Aboriginal people from rural NSW to be able to live in a bushland setting whilst studying at local schools. Landcom's conclusion to the clear felling of 12 hectares of bushland adjoining the hostel is, that there will be not impact. The approach from Landcom to cultural impacts of this development seems to be the same as the environmental impacts, Landcom's approach seems to be, *we are not sure what is actually in that bushland area, but as we bulldoze it, we will tell you and then work it out*. We expect better from the NSW Government land development organisation. Find out more about Kirinari [here](#).

SMRBI continues to lobby and request the Federal Minister for the Environment, the NSW Minister for the Environment and the Minister for Planning in NSW's act to prevent the destruction of this remnant bushland which has threatened and vulnerable species within it. We have requested community consultation by the developer and to be informed further about the progress of the development, but Landcom has not engaged with us to work on improved potential outcomes and protections. Surely this would be a reasonable accommodation for the developer to work with the community.

SMRBI was not specifically informed of the developer's application under the federal Environmental Protection and Biodiversity Conservation (EPBC) Act 1999 to impact the threatened plant species *Tetratheca juncea*. However members of SMRBI have objected to the development through the federal environmental processes for assessing impacts on threatened species and received in response the same statements still being used to justify their application to destroy this species on the development site, as shown in the following excerpts from a letter by Ryan Auberson-Walsh, Communications & Engagement Manager, Landcom Parramatta Office, dated 18/07/2023:

"Our plans conserve more than two thirds of the site, with development of much needed housing on areas that are the least environmentally sensitive....."

.....We have committed to notifying the Save Myall Road Bushland Incorporated community group when the final documentation is publicly available as part of the required Federal environmental assessment process."

SMRBI contends that using the term "*saving two thirds of the site*" is misleading as it does not consider the impact on the remnant of the to be developed areas.

We contend that the NSW Planning system has not accounted for the regional and cumulative effects of several ongoing developments, similar to DA/1283/2013, on loss of biodiversity, loss of habitat connectivity, loss of Aboriginal cultural values and loss of community amenity (see SMRBI's report). Nor has it taken into account changes over the last 10 years in community values and attitudes towards loss of Bushland. Even after this year's change in the NSW government, Landcom has been invigorated and the Biodiversity Conservation Trust (BCT) reduced in power in the inexorable continuation of residential development at the cost of biodiversity, Aboriginal historical values and community amenity, and meanwhile devolving management of the Bushland in this case to the BCT with a paltry budget from Landcom.

Landcom's claims of taking into account public concerns are still made, yet SMRBI contends that our concerns are still being dismissed by supposed independent planning authorities and the buck has now been passed to the Federal Minister for the Environment, as shown in an excerpt from a letter by Paul Scully MP, NSW Minister for Planning and Public Spaces, dated 27/09/2023:

"As you are aware, planning panels are independent bodies [sic] which assess and determine development applications as part of the planning system. The panels are not subject to the direction of the Minister, and there is no power in the planning legislation for me, or the Federal Minister, to review a decision made by a planning panel...."

....Furthermore, I am advised the applicant is undergoing the Federal environmental approval process under the EPBC Act. This process, together with the preparation of the Biodiversity Stewardship Agreement, will consider the impacts of the proposed development and the appropriateness of any biodiversity offset scheme applicable for this site. These are issues under the jurisdiction of the Australian Government."

It is not clear to us that the federal impact assessment process will be any different from the NSW process or that it is in any way related to the NSW Biodiversity Stewardship Scheme, which has not done an independent assessment, and which has not demonstrated any precedent for best practice management of an 'onsite offset'! The involvement of all levels of government and two planning authorities has unnecessarily complicated the issue, which is significant loss of biodiversity, ecological connectivity, Aboriginal history, environmental 'services' and community amenity for a small in-fill housing development.

A number of changes to the planning system are needed in NSW to remove its pro-development bias. SMRBI requests the following:

1. All developments approved under superseded legislation and not commenced should be reassessed under current legislation. For example, Landcom seems to be getting special treatment because they are a government authority, firstly regarding the length of their conditional approval to develop the Myall Road Bushland, i.e. 5 years, and the fact they haven't had to start a new application under the Biodiversity Conservation Act 2016 or LMCC's Large Forest Owl policy.
2. Planning laws should be revised to address changes in community attitudes towards biodiversity conservation in the last 10 years. The NSW government has recognised the value of open space, yet continues to approve clear felling of the last piece of remnant bushland at the northern end of LMCC area, i.e. Myall Road, Garden Suburb, instead of taking opportunities to redevelop already disturbed land such as has happened at Boolaroo on the former Pasmenco site. Already cleared/disturbed land is where to do in fill, not by clearing bushland with threatened species.
3. Community submissions to Regional Planning Panels need to have the professional support of professionally trained employees to produce documents equivalent to those that Landcom paid

thousands of dollars for by environmental consultants. Currently there is massive power imbalance as SMRBI is made up of volunteers and we produced our report on the proposed alternative development and management of the Myall Road Bushland for free in our spare time.

4. Regional planning committee representation needs to include permanent seats for Environment and Community Advocates. The Hunter Central Coast Regional Planning Panel appeared to be politically stacked in December 2020 as there was no representative from community or conservation/environment groups, and as a result was very pro-development.
5. Environmental Impact Assessments need to consider the regional scale of development and not take a piecemeal approach to development applications. The Myall Road development application should be required to assess its impact on biodiversity and community in relation to the massive Newcastle Link Road development for housing, the road infrastructure developments making up the Charlestown bypass and Newcastle Inner City bypass, Edgeworth/West Wallsend massive land clearing for housing.
6. Developers or owners of land that is proposed to be developed need to manage the land appropriately. Therefore, Landcom should be required to appropriately manage land under their jurisdiction, including fire protection, tree and track maintenance, rubbish removal, prevention of firewood collection and invasive weed control, none of which have they done over the last 10 years. This site has sat between Crown and Landcom, neglected in management but seen as a cash cow by development at the cost of the environment.

SMRBI's alternative management plan (see attached or via link above) outlines our evidence for an alternative to an inefficient housing development and contains the following recommendations for this site directed to Landcom, Lake Macquarie City Council, our local electorates' state and federal MPs and their Ministers for Environment:

1. "Threatened species management should be a high priority, particularly for the Powerful Owl, Squirrel Glider and Little Bent wing Bat, flora such as *Tetratheca juncea* plus the many rare orchids in the Myall Road Bushland.
2. Aspects of cultural significance related to the Aboriginal community should be independently investigated and sites of Aboriginal significance be referred for registration on the Aboriginal Heritage Register.
3. Restoration of vegetation damaged by illegal track construction must be undertaken, and mountain bike riding restricted to DP1011323 in the south-east of the remnant. Areas should be revegetated with native species through regular regeneration activities.
4. Remediation and ongoing management of remnant bushland terrestrial and aquatic habitats should be commenced immediately with the removal of the heavy infestation of land and aquatic weeds from these areas and revegetation/habitat restoration, should include remnants on adjoining DPs.
5. All rubbish should be removed from these areas and dumping of rubbish more effectively prohibited and proactively policed with significant fines.
6. The area to be monitored and maintained to prevent degradation due to damage by vehicles. The area should be appropriately fenced, sign posted and equipped with surveillance.
7. Collection of firewood from the area should be monitored, prevented and heavy fines applied for illegal firewood collection.

8. Conservation management plans for DP1011323 must include adjoining remnant bushland in the areas DP701651 Lot 31, DP 1249929 Lot 70, DP1010980 Lot 22, DP1010980 Lot 23 and DP755233 Lot 1730, as well as the isolated portion of DP 1011323 on the eastern side of the Newcastle Inner City Bypass.
9. The south-east portion of DP1011323 south of the power lines, which is extensively damaged by track construction and weed infestation, should be designated as a dedicated mountain bike area, with properly designed ramps, jumps and associated drainage
10. The area between Cardiff (Gillian Crescent), Hillsborough (Percy Street), Hillsborough Road, and the southern edge of Cardiff South along the high voltage transmission line easement should be recognised and managed as a vital wildlife corridor between Warners Bay and Garden Suburb. A safe wildlife crossing must be installed over Hillsborough Rd to the bush surrounding Charlestown Golf Course.
11. Monitoring of water quality and aquatic invertebrate and frog species diversity in this and the adjacent (upstream and downstream) DPs before and after any structural and vegetation changes are made. This will give an indication of stream health.
12. Fire hazard risk controls need to be implemented immediately.
13. Fence the areas of mine subsidence and begin mitigation work that is sensitive to the vegetation it contains while ensuring public safety and protection of the threatened Powerful Owl.
14. A community consultation session should be run jointly by Landcom, the BCT and LMCC, to which SMRBI contributes.
15. The 'deferred matter' should be rezoned E2 (LMCC Local Environment Plan zoning map).
16. As the last assessment of biodiversity was more than 10 years ago (except for the targeted surveys in 2016), the Landcom or BCT needs to do a comprehensive assessment of biodiversity of the site and its connected remnants in full consultation with independent wildlife experts, including identifying the sensitive flora and fauna in the remnant and protecting all the large trees from damage.
17. BCT or Landcom explain how BCT would consult with the community and SMRBI to implement creek and vegetation management, and address all recommendations detailed in this report, with further expert input for water, flora and fauna-sensitive design.
18. BCT or Landcom explain how BCT would undertake monitoring of the following items as part of ongoing environmental health assessments: Flora and fauna surveys, Erosion control, Feral animals, in particular cats and foxes, and weed control.
19. BCT or Landcom explain how the range of recreational activities that can be undertaken within this site will be promoted and managed effectively to enable sustainable enjoyment. These include Walking, Birdwatching & plant observation, Limited access/locations for Mountain bike use.
20. The production of a brochure documenting and naming of tracks and landmarks to promote sustainable land use, on the reverse side of the brochure, flora and fauna highlights with photos and links/QR codes to species lists.
21. A local responsible mountain bike group (eg. Glenrock group) should be engaged to put a proposal together for modifying DP1011323 for mountain bike riding.

22. Local Awabakal community members should be consulted on whether and how to highlight and promote indigenous cultural features of the remnant as this has been poorly explored by the proponent of the development.”

In concluding SMRBI would welcome a visit to the Myall Road Bushland from members of Committee 7 to observe the high biodiversity, historical and community values it represents, and to discuss with members of SMRBI how to address our recommendations and our concerns and to give **serious** consideration to our proposed alternative to development for housing.

This would inform and assist the committee further understand how the current planning system is facilitating loss of habitat, the loss of bushland which provides greater protection for biodiversity and also impacts climate change.

We wish you well in your deliberations.

Regards

Save Myall Road Bushland Incorporated

Prepared by committee members