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Nature Conservation Saves for Tomorrow

Attention: Ms Ursula Lang
Development Assessment
Blue Mountains City Council
2-6 Civic Place
Katoomba NSW 2780
Email: council@bmcc.nsw.gov.au

24 April 2023

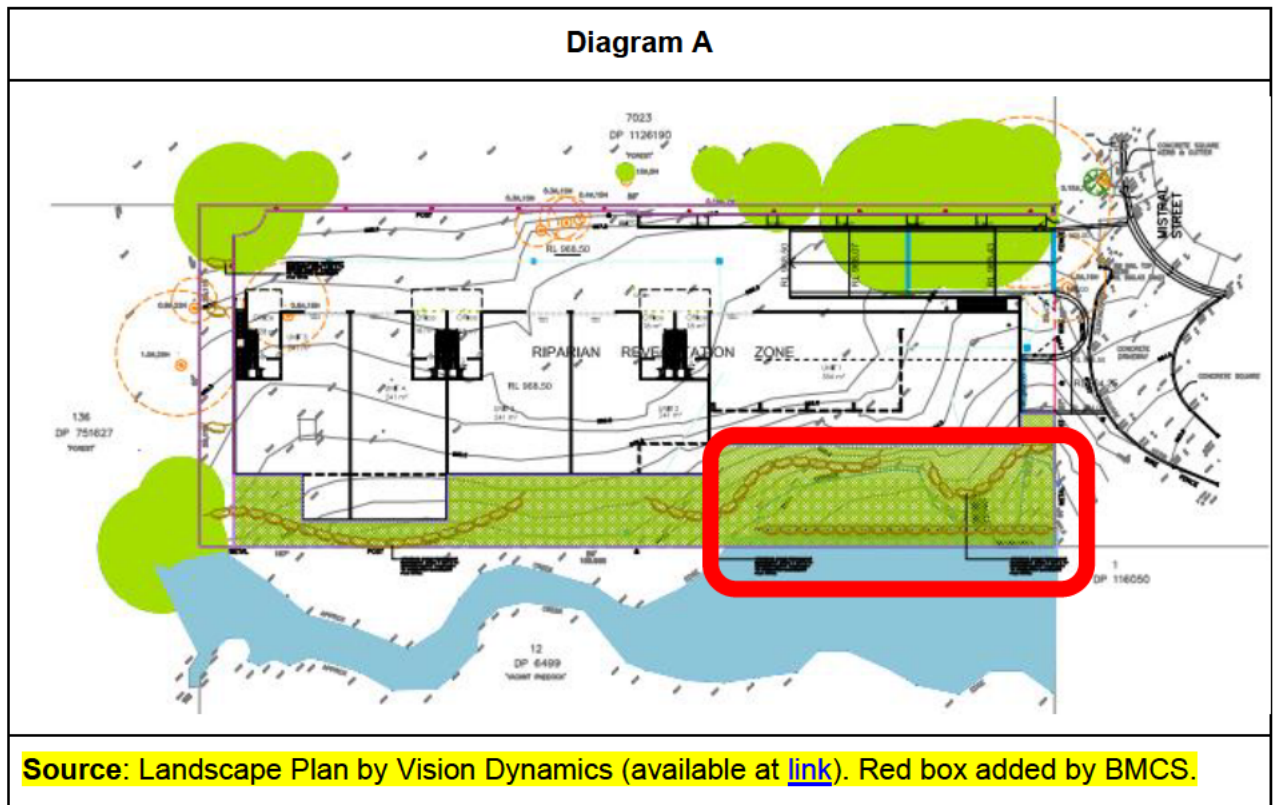
Development Application X/38/2023, 24-26 Mistral Street, Katoomba 2780 - Partial realignment of Yosemite Creek and construction and use of a light industrial complex

Dear Ms Lang,

The Blue Mountains Conservation Society is a community volunteer organisation with over 900 members. The Society's aim is to help conserve the natural environment of the Blue Mountains and to increase awareness of the natural environment in general. The Society would like to make a submission in relation to Development Application X/38/2023, 24-26 Mistral Street, Katoomba. We understand the public submission period for this DA has now closed and the DA is now in assessment but we ask Council to consider this submission as part of the assessment process..

Key points

- Development Application X/38/2023 seeks approval for the 'partial realignment' of Yosemite Creek by the construction of a wall to narrow/'realign' the creek channel (see Diagram A below) and the planting of a 10-metre-wide vegetated riparian zone.
- The Blue Mountains Conservation Society opposes the proposal to narrow/realign the present Yosemite Creek channel as to do so is inconsistent with the principles of ecologically sustainable development and the *Blue Mountains Local Environmental Plan 2015*.
- The Society also opposes the application to reduce the width of the vegetated riparian zone below the 20 metres recommended by the Department of Planning and Environment.



Submission

Development Application X/38/2023 seeks approval for the 'partial realignment' of Yosemite Creek. The proposed partial realignment consists of two distinct elements:

- Construction of a wall to narrow (or 'realign') the creek channel (see Diagram A below);
- Planting of a 10-metre-wide vegetated riparian zone adjacent to the Creek.

Yosemite Creek is a 2nd Order watercourse (under the Strahler System of ordering watercourses), and therefore a watercourse of some significance. Yosemite Creek is tributary of Katoomba Creek, which is a tributary of the Grose River in the Blue Mountains National Park and World Heritage Area. Works in Yosemite Creek can be confidentially assumed to have some impact on both Katoomba Creek and the Grose River.

The report in relation to the *Aquatic Ecology Aspects* of the development site by Marine Pollution Research Pty Ltd (December 2022 update) indicates that Yosemite Creek generally is in Fair to Good health and that water quality has been improving (pages 7-19), though the site itself returned a Fair waterway health rating, mainly because of poor land use (21-22).

The Applicant argues that the landform of the Creek in the 1940s was a narrow, incised channel rather than its present broad and meandering form (page 20-21, 23), and that fences constructed after the 1940s are probably the cause of the change in Creek's landform though poor land management generally is also likely to be a factor. The *Aquatic Ecology Aspects* report notes that

the *'creek-line edge and riparian corridor adjacent to the project site are degraded due to livestock access and associated impacts ...'* (page 21). The historical (pre-1940) landform of the Creek does not appear to be known and so to some extent the assumption that the 1940s landform was the original one, and therefore that the creek is being 'realigned' rather than 'moved' is a speculative one.

In short, Yosemite Creek developed its current landform sometime between the 1940s and 2023 – a period of 80 years – and it is in good-to-reasonable condition for an urban waterway. The Creek appears to be in the process of further recovering its health. In these circumstances the Society submits that the Council should be extremely reluctant to support substantial works that disturb the Creek, including the 'realignment' of it.

Clause 6.1(1)(b) of the LEP provides that the watercourse and the land on 40 metres either side of it is deemed to be 'environmentally sensitive land' unless the Council makes a determination to contrary under 6.2 of the LEP. The objectives of the 'environmentally sensitive land' provisions include *'protecting watercourses and the riparian buffers necessary to maintain or enhance the hydrological function of those watercourses'* (clause 6.1(1)(b)). Clause 6.1(2)(b) and (c) of the LEP provides that *'development consent must not be granted for development that may have an adverse impact on environmentally sensitive land unless the consent authority is satisfied that ... (b) the development will be managed to protect the natural environment and maintain the ecological integrity and environmental significance of the Blue Mountains, and (c) the water quality, watercourses, groundwater quality, riparian habitats and wetlands in the Blue Mountains, ... and the Hawkesbury-Nepean River catchment will be preserved and, if possible, enhanced.'* [emphasis added].

The Society submits that the material provided in support of the Development Application does not provide the evidence necessary for the Council to be satisfied to the level required by clause 6.1(2). The material focusses on the present state of the waterway rather than how the development will preserve and manage to protect the water quality of Yosemite Creek, Katoomba Creek and the Grose River during the construction of the light industrial complex and after its commissioning. The Society further submits that the failure to provide such evidence results in the development also necessarily results in the Council being unable to be satisfied whether the development are consistent with clauses 1.2(2)(g) (*'preserve and enhance watercourses and water quality within the Blue Mountains and the Hawkesbury-Nepean River catchment'*), 1.2(2)(a) (*'maintain the unique identity and values of the 'City within a World Heritage National Park'*) and 6.9 (stormwater management).

The proposed realignment will be a controlled action under the *Water Management Act 2000* which applies the principles of ecologically sustainable development to the management of water in NSW. The principles of ecologically sustainable development mandate the conservation of biological diversity and ecological integrity as fundamental considerations in decision-making, including in the formulation, adoption and implementation of any economic and other development plan, program or project. The principles also require external environmental costs – such as the impact of the development on Yosemite and Katoomba Creeks, and the Grose River – to be internalised. The clearest manifestation of this element of the principles of ecologically sustainable development is the so-called 'polluter pays principle' which requires those who generate pollution and waste – or benefit from unsustainable development – bear the costs of containment, avoidance, or abatement.

The Department of Planning and Environment, which is the NSW government department which administers the *Water Management Act*, issues Guidelines for development affecting watercourses and waterfront land including the Guideline [Controlled activities – Guidelines for in-stream works on waterfront land](#). The general principle articulated in the Guideline is: *the design and construction footprint and the extent of disturbances within waterfront land should be minimised*. In this case the development has adopted a contrary approach. Not only is the extent of disturbance not minimised, but the proposed industrial complex will also directly impact both the waterfront land – by changing the landform, placing fill, and constructing the proposed industrial complex on the vegetated riparian zone (see below) – and the watercourse itself – by narrowing/realigning it. This course of action is not consistent with the internalisation of external environmental costs, and therefore not consistent with the principles of ecologically sustainable development, and for that reason too the proposed realignment of Yosemite Creek is opposed by the Society.

Finally, the Society opposes the application to reduce the width of the vegetated riparian zone below the 20 metres recommended by the Department of Planning and Environment (cf. [Controlled activities – Guidelines for riparian corridors on waterfront land](#)). In this case the Applicant proposes a narrower, 10 metre vegetated riparian zone but without advancing a relevant justification. It is true that the Guidelines recognise that detention basins, footpaths and other ancillary structures may be located in half the vegetated riparian zone. However, in this case the proposed structures are not ancillary but primary – it is the light industrial complex itself.

Thank you for the opportunity to make a submission in relation to this matter. If you have any questions in regard to this submission please contact me on email [REDACTED] or mobile [REDACTED]

Yours sincerely,

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Tara Cameron
Senior Vice President
Blue Mountains Conservation Society