



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

Mr Robert Greenwood,
General Manager,
Blue Mountains City Council,
Locked Bag 1005
Katoomba NSW 2780
council@bmcc.nsw.gov.au

29th July 2015

Re: Maharishi's Global Administration Through Natural Law Ltd

- 1. Development Application No: X/611/2015 (Construction of 4 bedroom dwelling)
Lot No 207 28 Pulpit Hill Road Katoomba 2780**
- 2. Development Application No: X/612/2015 (Construction of 4 bedroom dwelling)
Lot No 208 28 Pulpit Hill Road Katoomba 2780**

Dear Mr Greenwood,

The Blue Mountains Conservation Society is a community based volunteer organisation with over 850 members. The goal of the Society is to promote the conservation of the environment in the Greater Blue Mountains region. The Society has had a long standing interest in Elphinstone (Radiata) Plateau, particularly in the six lots incorporated into the property of 28 Pulpit Hill Road Katoomba, due to its scenic and conservation value as well as proximity to the Greater Blue Mountains World Heritage Area. The proposed development site has significant environmental importance given that 28 Pulpit Hill Road occupies most of the vacant land on the Plateau including the escarpments, and while there has been some past disturbance, there is a largely intact coverage of scheduled vegetation communities, Threatened Species Conservation Act (1995) listed Blue Mountains Swamps, other Eucalypt forests and a number of TSC Act Vulnerable and Endangered plants and animals. This submission covers both development proposals given that they are from the same applicant, Maharishi's Global Administration, and they are, it would seem, two parts of a single development located on two separate plots but very close together and with the same access road. This has the appearance of a co-ordinated development that has the potential for integration into a larger facility.

The Society considers that the Blue Mountains City Council should **reject both Development Applications** (X/611/2015 and X/612/2015) for the construction of two 4 bedroom dwellings for reasons that include the following:

1. The owner is **Maharishi's Global Administration Through Natural Law Ltd** of Maleny Queensland. This is a commercial organisation operating Transcendental Meditation and Health Services Centres throughout Australia. Given the previous refusal of a larger facility at 28 Pulpit Hill Road, the Society is concerned that this is an attempt to develop a larger facility on the site but in less obvious stages. From the publicly available documents on the BMCC website the Society has noted that:
 - 1.1 The two buildings are identical in layout and external appearance (as best as can be determined from the redacted documents).
 - 1.2 Neither building has the appearance of a private-use 4 bedroom residential dwelling despite the stated intention of each on the individual Land Use Applications. As best as can be determined from the windows shown in the Elevation Plans the layout appears to be one of individual units with separate bathrooms under common roof-lines
 - 1.3 The two buildings are intended to be located quite close together with each being accessed by short individual circular driveways from the end of a 650 metre access road leading into the property from the western end of Pulpit Hill Road, Katoomba. On the site maps they are drawn as closely as possible to each other while still being located on different Lots. In Lot 207 (X/611/2015) the building is to be sited in the north-eastern corner of the lot; in Lot 208 (X/612/2015) the building is in the south-eastern corner, so they are in fact adjacent to each other.
 - 1.4 Given the proximity of the two proposed buildings to their boundary corners, this development will also certainly impact on the adjoining Lot 41 (DP 816211); the access driveway will be across the northern portion of Lot 41 from Pulpit Hill Road. There is no Land Use Application for Lot 41 however in the documents that are publicly available.
2. Lots 207 and 208 are both currently **zoned** under LEP 1991 as Bushland Conservation (No Subdivision) and Environmental Protection. In recognition of the environmental significance of both blocks of land this zoning would become **100% E2 Environmental Conservation under LEP 2013**. In addition to the need to protect **escarpments**, we appreciate that Council officers are well aware of the **vegetation significance** of each Lot:
 - 2.1 **Lot 207**: there are 8 Scheduled vegetation communities listed on the property details on the BMCC website as indicated below:

Environmental Info: Lot 207

Info table	Code	Description	% of Lot	Approx Area m2
Emp2002VegSch	85	1A Ceratopetalum apetalum Doryphora sassafras Rainforest	- 2.51	16228.06
Emp2002VegSch	29	2F Eucalyptus cypellocarpa piperita Tall Open-forest	- E. 1.9	12283.51
Emp2002VegSch	49	2G Eucalyptus oreades forest/Tall Open-forest	Open- 10.64	68738.81
Emp2002VegSch	51	2G Eucalyptus oreades forest/Tall Open-forest	Open- 16.49	106520.48
Emp2002VegSch	23	5A Blue Mountains Heath and Scrub	10.17	65685.07
Emp2002VegSch	8	5B Blue Mountains Swamps	2.22	14332.64
Emp2002VegSch	7	7 Blue Mountains Escarpment Complex	1.81	11689.75
Emp2002VegSch	16	7 Blue Mountains Escarpment Complex	10.36	66941.52

2.2 **Lot 208:** there are 7 Scheduled vegetation communities listed on the property details on the BMCC website as indicated below.

Environmental Info: Lot 208

Info table	Code	Description	% of Lot	Approx Area m2
Emp2002EB Asv	EBA SV	Ecological Buffer Area - Significant Vegetation	15.56	77347.62
Emp2002Ve gSch	49	2G Eucalyptus oreades forest/Tall Open-forest	Open- 6.98	34697.32
Emp2002Ve gSch	51	2G Eucalyptus oreades forest/Tall Open-forest	Open- 5.48	27241.32
Emp2002Ve gSch	112	4A Eucalyptus gullickii Woodland	Alluvial 0.77	3824.7
Emp2002Ve gSch	11	5A Blue Mountains Heath and Scrub	0.01	45.27
Emp2002Ve gSch	23	5A Blue Mountains Heath and Scrub	6.55	32588.99
Emp2002Ve gSch	8	5B Blue Mountains Swamps	3.61	17951.66
Emp2002Ve gSch	16	7 Blue Mountains Escarpment Complex	26.04	129456.13

2.3 **Lots 207 and 208 both contain areas of *Blue Mountains Swamps*.** This is listed as a Vulnerable Ecological Community under the NSW Threatened Species Conservation Act (TSC Act 1995), and as an Endangered Ecological Community (called *Temperate Highland Peat Swamps on Sandstone*) under the

Commonwealth's Environmental Protection and Biodiversity Conservation Act (EPBC Act 1999). This swamp community is the habitat of a number of TSC Act listed endangered fauna species including the Giant Dragonfly (*Petalura gigantea*) and the Blue Mountains Water Skink (*Eulamprus leuraensis* – also listed under the EPBC Act 1999). It is possible that the newly discovered and classified sedge, **Carex klaphakei**, (TSC Act Endangered) might also be found in these swamps and this should be investigated.

Both proposed buildings are upslope of areas of **Blue Mountains Swamps**. In the *Statement of Environmental Effects* (2015) it is noted that both development sites are some 120 metres from any swamp and the same distance from ephemeral streams (both should be confirmed). While it is therefore reasonable to assume that the swamps will not be directly affected by surface construction and other activities, each building would actually be sited on the intake areas for rain that then percolates through the rocks before seeping out downslope through suitable geology to sustain the swamp vegetation. The Society is concerned that on-site disposal of waste water with nutrients and chemical contaminants may in fact impact negatively on both swamp and stream water quality as it may also ultimately do on the TSC Act **Endangered Pherosphaera fitzgeraldii (Microstrobos)** which reaches its north-western limit on Elphinstone Plateau in Lot 207. Weed propagules from the development carried in surface runoff could also detrimentally impact on the swamp community and on the Microstrobos.

2.4 Both buildings would require the clearing of part of the unscheduled vegetation community of *Eucalyptus sieberi-Eucalyptus piperita* Open-forest on Lots 207 and 208, but also of the **Scheduled Vegetation Community of Blue Mountains Heath and Scrub**. Lonergan (2015) states that this community will not be impacted on by the development but map evidence (Blue Mountains City Council on-line maps and Conacher Travers 2007) suggests otherwise. Clearing for bushfire protection will certainly encroach on this community. As Blue Mountains Heath and Scrub not only has a diverse assemblage of plant species but also provides habitat and food sources for the annual migration of honeyeaters for which the Blue Mountains is well known, the claims of no impact need to be investigated thoroughly.

3. **The Development Application was not accompanied by a comprehensive or accurate Flora and Fauna Report:**

3.1 The two *Statements of Environmental Effects* (prepared by Chris Lonergan 2015) rely in part on The Ecological Constraints Analysis (prepared by Conacher Travers Environmental Consultants 2007). That analysis is not only out-of-date but was also sourced largely from published material available pre-2007 rather than from field surveys. **There is not a comprehensive flora or fauna list** with either of the DA accompanying documents (Conacher Travers 2007; Lonergan 2015)

3.2 Both *Statements of Environmental Effects* contain brief lists of the main plant species of three communities of Lots 207 and 208 that have been called "Forest", "Rainforest" and "Blue Mountains Swamp". This is a poor consolidation

of the plant community diversity of the site and the list of species for each “community” indicates that the **compiler has no understanding of the usual species mix of each community type**. The “Rainforest” list (Lonergan 2015, pp. 23-24) for example **contains no dominant rainforest trees**, but does name 3 Eucalypts and a Turpentine and is more be-fitting a *Eucalyptus oreades* Open-forest/Tall Open-forest. **The species list for “Blue Mountains Swamp”** (Lonergan 2015, pp. 24) **is particularly inadequate**; only one swamp plant is mentioned (*Gahnia sieberiana*), the other eleven plants are from heath or open eucalypt forests. *Eucalyptus cypellocarpa* and *E. sclerophylla* do not grow together in Blue Mountains Swamps. We have also noted that although **Blue Mountains Swamp** is listed in the key to Figure 1 of Conacher Travers analysis, the actual symbol and therefore the swamp location is missing from the map that accompanied the development application. Furthermore despite Conacher Travers (2007) clearly indicating in Figure 1 the presence of **Blue Mountains Heath and Scrub** in the area to be cleared by the current proposal, there is **no species list** for that community in either *Statement of Environmental Effects* (Lonergan 2015).

3.3 The *Statement of Environmental Effects* (Lonergan 2015) includes **listings of common birds and other animals but these are far from comprehensive**. Not a single honeyeater, whether resident or migratory is listed for a location that abounds in such birds. Prominent cockatoos including the Yellow-tailed Black-cockatoo and the Vulnerable (TSC Act) Glossy Black-cockatoo are left out. The Torresian Crow is included but it is a northern Australian species and definitely does not occur in the Blue Mountains. There are no owls, no bats (where Threatened listed bats are likely) and the statement “various species of gliders” which may well include the TSC Act Vulnerable Yellow-bellied Glider, serves to reinforce the inadequate way in which the fauna of this large and important area of bushland appears to have been investigated. **These fauna lists are incomplete and therefore understate the habitat importance of this significant place**, and like the flora species compilation, need to be resubmitted following independent surveys.

4. The *Statements of Environmental Effects* (Lonergan 2015) for Lots 207 and 208 contain the **Assessment of Significance (Seven-part Test) for Threatened Species** as required by section 5A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Lonergan (2015) basically concluded that location and distance safeguards built into the development proposals would ensure that no species or community listed under the Threatened Species Conservation Act 1995 would be negatively impacted on by the development.

The Society is particularly concerned however that serious **inadequacies in the flora and fauna surveys** and in the identification of ecological communities listed as threatened under both the Threatened Species Conservation Act (1995), and the Environment Protection and Biodiversity Conservation Act (1999) which Lonergan (2015) actually fails to refer to, have resulted in questionable Assessments of Significance. We submit the following community and species as examples of possible flaws in the analysis:

4.1 **Blue Mountains Swamps** – as previously noted in this document this is listed as a Vulnerable Ecological Community under the NSW Threatened Species

Conservation Act (TSC Act 1995), and as an Endangered Ecological Community (called *Temperate Highland Peat Swamps on Sandstone*) under the Commonwealth's Environmental Protection and Biodiversity Conservation Act (EPBC Act 1999). While Lonergan in the *Statement of Environmental Effects* (2015) notes that both development sites are some 120 metres from any swamp (a distance to be verified) contaminated sub-surface water flow could have a deleterious effect.

- 4.2 **Individually listed Threatened Flora and fauna species** – the Conacher Travers analysis (2007) lists some species which “might” be on the sites but Lonergan (2015) argues away their presence or possible impacts thereon. The Endangered *Pherosphaera fitzgeraldii* is noted in Lot 207 by Conacher but that has not translated into **an adequate analysis of the impact of development on this species** in the Assessment of Significance in the *Statement of Environmental Effects* (2015).

Of some concern is the fate of the Endangered shrub *Leionema lachnaeoides* (TSC Act, EPBC Act) that is found at only 10 sites in the upper Blue Mountains. Conacher Travers (2007) indicated that this species had been previously identified (by someone else) in **Lots 207 and 41**. However Lonergan (2015) stated that the closest plants to Lot 208 were 300 metres away from the development sites on an adjacent property, and 250 metres away from Lot 207 in Lot 41. *Leionema lachnaeoides* grows in exposed sandstone heath. Given that both the BMCC and Conacher Travers (2007) have mapped this heath community at the proposed development site, and that Conacher Travers (2007) listed this plant in Lot 207, its exact distribution within the whole of 28 Pulpit Hill Road should be determined as a matter of urgency.

While Lonergan (2015) lists the **Gang-gang Cockatoo, Brown Treecreeper and Scarlet Robin** for the site, he **fails to note their conservation significance**. They are all listed as **Vulnerable** under the NSW Threatened Species Conservation Act (1995). The likely impacts of the proposed development on these species need to be properly assessed. **Threatened species not listed** by Lonergan (2015) but which are likely to occur within the development area include the **Flame Robin** (Vulnerable), **Glossy Black-cockatoo** (Vulnerable), **Blue Mountains Water Skink** (Endangered), **Giant Dragonfly** (Endangered), **Broad-headed Snake** (Endangered) and the **Yellow-bellied Glider** (Vulnerable).

Lonergan (2015) lists the **Great Barred Frog** *Mixophyes fasciolatus* as the **only amphibian** in Lots 207 and 208. Its presence in Katoomba would be most unusual and if that report is correct then it would be regionally significant (J. Smith pers. comm.). The paucity of amphibians in the *Statement of Environmental Effects* is further indicative of the shortcomings of that report.

The Society considers that the **Assessments of Significance should be re-submitted** after comprehensive Flora and Fauna Reports are undertaken. Should further site investigation as part of a **revised Assessment of Significance** indicate that there will in fact be negative impacts on Threatened Species Conservation Act (1995) species and/or communities then **Species Impact Statements** as required

under Section 110 of the Threatened Species Conservation Act 1995 will need to be completed. Furthermore should it become evident that there will be significant impacts on communities and/or species listed under the **Commonwealth's Environment Protection and Biodiversity Conservation Act** (1999) then the proposal must be submitted according to required procedure to the **Australian Government's Minister for Environment and Heritage**.

5. The **development footprint** for just two buildings on Lots 207 and 208 will be considerable given that the proposed dwellings are sited 650 metres into the property and accessed by a private driveway from the sealed end of Pulpit Hill Road. The requirements of bushfire mitigation, landscaping, driveways and on-site sewer systems will impact on plant communities and their inhabitants:

- 5.1 In the *Statement of Environmental Effects*, Lonergan (2015) lists the numbers of **trees** that will be removed from each Lot to allow the construction of just two dwellings:

Lot 207: 30 eucalypts and 20 pines

Lot 208: 27 eucalypts from the house site; 20 eucalypts from the on-site waste disposal facility and 25 eucalypts from the bushfire access track

This totals a **minimum of 102 Eucalypts alone for just two dwellings**. We contend that more trees than this will be lost especially as the high level of bushfire threat on this category 1 Bushfire Prone Land becomes a reality.

- 5.2 There is no assessment of the removal of the heath community or of forest shrubbery. Despite the assurances by Lonergan (2007) that the development is on previously disturbed land, both heath and forest are mapped by the BMCC and by Conacher Travers (2007) at each site and are visible on available aerial photographs. It is considered that this development will impact on regenerating and established vegetation in addition to the trees listed above, and especially if the maximum provision for 10/50 bushfire protection clearance is carried out.

- 5.3 The **impact on Lot 41** of a 650 metre long all-weather access road, as well as other required infrastructure like a phone service, **has not been adequately assessed** (we note that electricity and water are to be provided on-site). The road will apparently follow an old pine plantation access trail/fire trail that has already been disturbed but there are no details about the impacts on either adjoining trees or shrub layer of any required upgrading or of clearance for fire protection.

6. **Fire Exposure:** Lots 207 and 208 are both mapped as **Category 1 Bushfire Prone Land**. No residential dwelling should be newly constructed today 650 metres from a serviced road in the middle of a bushland property above an escarpment, nor should any volunteer service be required to protect it during an emergency. There is no reticulated water to the property with full fire fighting provisions being 2 x 20,000 litre tanks that will empty quickly. Despite repeated assurances in the *Statement of Environmental Effects* (2007) that the development will occur in sites previously

hazard-reduced, there are no large scale clearances evident in the aerial photographs available for the property. Furthermore should construction be permitted there will be considerable clearance pressure placed on surrounding bushland for more adequate property protection.

7. **Aboriginal Cultural Values:** no reference at all can be found to Aboriginal cultural values on Lots 201, 208 and 41 in any of the available documents. There is furthermore no indication that any archaeological investigation or cultural survey of any kind has been carried out. It is hard to imagine that this plateau and its escarpments, swamps and forests were not part of the Aboriginal landscape of the Upper Blue Mountains. An assessment of the potential impacts on the Aboriginal cultural values of the site must be carried out before any final decision can be made.
8. The Society can find no assessment of the impact of these “dwellings” on the social and recreational **amenity of local residents** of Elphinstone (Radiata) Plateau:
 - 8.1 There is no discussion in the Land Use Application of the impact of the development stage of the proposal in terms of construction traffic, and dust and noise generation. Similarly once there are occupants in the new “4 bedroom residences” there is no indication as to how many additional daily vehicular movements will there be from “residents” and service vehicles.
 - 8.2 Due to the relatively undisturbed nature of the property and its iconic location on the escarpment it has considerable social value and has been used for many decades by locals and Blue Mountains visitors alike for activities that include bushwalking and bird watching. The social value of access to bushland and escarpment resources through this property has not been assessed.

The Blue Mountains Conservation Society considers therefore that the Blue Mountains City Council should reject the proposal for two “residential dwellings” on Lots 207 and 208 28 Pulpit Hill Road Katoomba. We base our objections to the current Land Use Application on:

1. The nature of the developments proposed that appear more likely to be part of a facility related to the commercial activities of Maharishi’s Global Administration Through Natural Law Ltd, than to that of two residences.
2. The inadequate and often inaccurate documentation of the flora and fauna of the site. Both Development Applications **lack Flora and Fauna Reports** and we have raised objections about the conclusions of the **Assessment of Significance (Seven-part Test)**. This is particularly because of the presence on each site of scheduled plant communities, Commonwealth Environment Protection and Biodiversity Conservation Act and/or NSW Threatened Species Conservation Act listed Blue Mountains Swamps, plant species including *Leionema lachnaeoides* and *Pherosphaera fitzgeraldii*, and fauna species including Gang-gang Cockatoo, Brown Treecreeper and Scarlet Robin, and the likely occurrence of threatened fauna

species such as the Blue Mountains Water Skink, Flame Robin and Glossy Black-cockatoo, none of which have been adequately assessed. Re-assessment may indicate that **Species Impact Statements** are required and that the proposal may have to be submitted to the Commonwealth Minister for Environment and Heritage for approval.

3. The size and impact of the actual development footprint that has been under-assessed particularly with regard to bushfire protection clearance and the upgrading and fire protection of the access road across Lot 41.
4. The extreme risk of placing dwellings 650 metres from ready assistance in Category 1 Bushfire Prone Land.
5. The absence of an archaeological report and complete disregard of Aboriginal cultural values in a place of undoubted previous occupation.
6. A total lack of consideration for the amenity of existing residents at both the construction stage and later during the “residential” period.

The Blue Mountains Conservation Society supports the Draft LEP 2013 intention of the Blue Mountains City Council to re-zone Lots 207 and 208 of 28 Pulpit Hill Road Katoomba as fully E2 Environmental Constraint. In the light of the intention of that forthcoming action, and given the objections that we have raised in this document, the Society calls on the Blue Mountains City Council to reject the Development Applications for the construction of two residential dwellings at 28 Pulpit Hill Road Katoomba. The Society also requests that the Development Applications are determined by the full Council at a Council Meeting and not under delegation by Council staff.

Thank you for considering our submission. If you have any further questions, please contact myself on mobile 0419 824 974 or email taracameron4@gmail.com

Yours sincerely



Tara Cameron
Senior Vice President
Blue Mountains Conservation Society

cc Mr Mark Greenhill, Mayor, Blue Mountains City Council