

The Stealth Campaign & The Battle of the Bill

I'd like to start by acknowledging the caretakers of the unceded land on which we're meeting, the Dharug and Gundungarra people, and their leaders past, present and emerging.

You only have to look at the BMCS website to see that it's been successfully involved in many campaigns in the 63 years since it was formed, and at Hut News and the Gazette to see that it still is.

It's most recent success of course is, with Council, getting the State government to exclude the BM local government area from its "one size fits all" housing reforms, and I'd like to take this opportunity to offer the Committee and everyone involved my heartfelt congratulations.

That campaign consisted, like most of its others over the years, of submissions, letter writing and lobbying by the Society's Management Committee and often many other members.

The Stealth campaign of 2004 started in the same way as that too, but suddenly turned into something dramatically different, which is perhaps why many folks both in the Society and the wider Mountains community still remember it, if only vaguely.

It all started in 2003 when an American film company made a proposal to film scenes for a war adventure movie titled *Stealth* at Butterbox Point in the Grose Wilderness.



Butterbox Point

In December of that year the Society received an invitation to comment on the proposal which was described in a one-page overview. This was responded to by Ian Baird, the Society's Project Officer for Threatened Species, listing many concerns the Society had with the proposal.

Both the Society and the Colong Foundation for Wilderness suggested a number of other suitable sites to the company, in the bush but not in the National Park, but they were all

rejected, the company claiming Butterbox Point was “crucial to the integrity of the film’s final scene”.



Pink Flannel Flowers, Butterbox Point

In March the following year when a full Review of Environmental Factors became available, the Society lodges a full submission objecting to the proposed filming - so far, our usual response.

Jenny Rich, the Society’s project officer for National Parks issues, immediately organised a meeting for concerned Blue Mountains residents on the evening of Wednesday 14 April, to which I couldn’t go due to another commitment.

The meeting was well attended, and Jenny explained our reasons for objecting to the proposal. The area proposed for filming had Threatened Species of both flora and fauna, as it was a hanging swamp that was home to the endangered Giant Dragonfly, and to sensitive heath vegetation only just starting to recover from drought and recent bushfires. It was surrounded by fragile tessellated rock platforms and ledges. The film company wanted the site because to them it represented war-ravaged Korea. The proposed filming activities included the construction of a temporary helipad and use of helicopters, 3 large camera decks, generators and board walk decking through the swamp for actors to run on with exploding devices strapped to their legs. 75 people would be working in the sensitive wilderness area and another 75 plus equipment in the small car park.

The minutes of the meeting show people starting to organise for a community response for which they expected to have enough time to rally considerable support to pressure the government. Some specific activities planned were another meeting in 9 days on Friday 23 April, and a possible demonstration on Monday 26, the Anzac Day holiday. At the end of the meeting Jenny told everyone that she was committed to leave within the week on a 5 week overseas holiday with friends, and asked if somebody would volunteer to take over co-ordinating the campaign.

I heard about all this 2 days later at bushcare from a friend who had been at the meeting. She also told me that no-one had volunteered to take over.

Then the following Monday 19 April we heard that approval had already been given by a Special Licence by the Deputy Director of the Department of Environment and Conservation (DEC). Apparently it had the strong backing of Fox Studios and the Premier's Office. The only concession to the environment was the deletion of the helipad.

This was the point when everything about the campaign suddenly and very urgently changed from all previous ones.

Both the President and Vice-President of the Society were overseas at the time. I'd sworn many great vows never to take on another environmental campaign, but I was the immediate past president and I did have experience in this sort of campaigning from my previous life which no-one else on the Committee at that time did. I phoned both Jenny and Keith Muir of the Colong Foundation to find out what I could about the status of proceedings, and realised on hearing what they told me that there simply wouldn't be enough time to organise a lengthy community campaign of the kind Jenny had envisaged, and that our only chance to stop the filming would be through legal action. So I rang Jenny again and told her I would volunteer to take over the co-ordination of the Mountains community's response.

The next day, Tuesday 20, I was on the phone most of the day with Keith, Andrew Cox from the National Parks Association and Jeff Smith from the Environmental Defenders Office. EDO thought that there were potential grounds to challenge the approval, as it was inconsistent with the Plan of Management for BM National Park and the Grose Wilderness area. We instructed EDO to advise the Director General of DEC of the potential illegality of the filming, and to request that the filming company be restrained from carrying out the activity until there had been further consultation with affected parties.

I know that if there were reasonable grounds for a successful action the Conservation Society would be very likely to agree to fund a legal appeal. We have a proud history of involvement in conservation campaigns and perhaps more to the point, had sufficient assets to fund one. And fortunately the Management Committee had its regular monthly meeting scheduled for the following Saturday morning, 24 April. I arranged for Keith and me to speak to them.

On Friday 23 in order to get a legal opinion as quickly as possible I instructed Jeff to brief barrister Tim Roberson at my expense to advise on the prospects of successfully appealing the approval. On the same day we heard that the film company were planning to occupy the site the following Monday 26 - in 3 days time and only one week after getting their approval.

EDO warned us that if a significant amount of work was done by the company at the site before the case could be brought before the court, the judge might exercise his discretion to allow the filming to continue.

Luckily one of the conditions for approval restricted the film company from carrying out activities during school holidays. Jeff contacted the company's solicitors to inform them that their client would be in breach of their consent conditions if they commenced activities at

Mt Hay on Monday 26 as it was the Anzac Day public holiday and fortunately (for us) also the final day of the school holidays. However, we didn't know if this would stop them.

At Jenny's first meeting she's arranged the second meeting for Friday 23, so that night I was able to tell everyone the situation - that I had initial legal advice that there were grounds for the approval to be challenged, and that we were getting further advice from a barrister on the prospects of a challenge being successful. I told them I was meeting with the Management Committee the next morning, that there was a good chance that the Society would agree to fund an appeal, and that the filming company would be in breach of its approval conditions if they commenced work on the site before Tuesday 27.

I explained the necessity of delaying access to the site until the court hearing. At that point we of course didn't know if the Society would agree to fund an appeal, if the barrister would think that a challenge might be successful, or how long it might take for a case to be heard.

A decision was then made to blockade Mt Hay Rd, the only access to the site, from the night of Sunday 25 onwards. It was decided that the first blockade was to be at the entrance gate to the park on Mt Hay Rd, the second at a dangerous point where the narrow road made a very sharp bend half-way down a steep cliff, and the third at the access to the parking area at the end of the road. Volunteers would go out on Sunday night to position a massive chain across the park entrance and erect tripods there and at the bend in the road and the car park at the end of the road. It was also decided to hold a public meeting at Govetts Leap at midday on Monday 24, at which people would be told about the blockade and asked to go out and support it if they could.

On Saturday 24 Keith and I attended the Society's committee meeting and told them about the legal situation to the best of our knowledge at that point, and that although there was no certainty it seemed there was a reasonable chance of success. I asked that the Society agree to funding the cost of a legal appeal, and they needed no convincing. They unanimously passes a resolution "that BMCS be part of a coalition of groups to provide up to \$21,000 for legal costs associated with the injunction and subsequent court action necessary to stop the filming of *Stealth* at Mt Hay, contingent on the recommendation of the barrister". I remember Keith was very impressed that it was a unanimous decision!

On Monday 26, in spite of very short notice, about 150 supporters turned up at Govetts Leap to hear speakers on different aspects of the issue.



First Protest Meeting at Govett's Leap

Keith representing Colong spoke about the illegality of filming anything other than a conservation based subject in a designated Wilderness area.

Sue Morrison who'd worked as a National Parks ranger on the preparation of the Plan of Management for the Blue Mountains National Park spoke of her incredulity that the very department charged with the protection of the Park had legitimised this illegal and potentially destructive activity.

Ian Baird, the Society's Threatened Species Officer who had prepared the Society's submission spoke of the vulnerability of the Giant Dragon Fly and the ecological fragility of Butterbox Point.

Tara Cameron spoke of the concerns of the National Parks Association, and Greens senator Ian Cohen spoke about the value of our designated Wilderness areas.

Colin Skinner, representing his eco tourism business told us that he had to get a licence every time he wanted to take a group into the Wilderness area and that the group could consist of only 8 people and archaeologist Wayne Brennan spoke of the presence of important Aboriginal artefacts in the area.

At the end of the meeting I explained what our legal advice had been, that the Society was prepared to fund an appeal to the Land and Environment Court, and especially of the need to delay access by the film company for as long as possible. I urged people to attend the blockade as much as they could to keep it going at least all of Tuesday.

After the meeting large numbers of people went out to the blockade, mostly going only as far as the metal gate area right at the Park entrance. Some who already knew of the the plan came prepared to stay overnight, others resolved to return early the next morning.

Then came Tuesday 27, the day it was still legal for the film crew to access the site. At about 10 am the police arrived at the first blockade. Their first job was to remove the massive chain the volunteers had positioned across the road to block vehicle access. There were quite a few people there by then, some had pitched tents just off the road, most were just milling around on the road moving away from the police when told to move off the road but moving back onto it when they'd passed. They seemed to be quite enjoying themselves on the whole. I remember the Society's treasurer, a very respectable accountant, coming out at the crack of dawn in his business suit and tie to put in a few hours before he reluctantly left for work. The 50 or so blockaders behaved peacefully but they didn't disperse either, and over the course of the day the police arrested 9 people who point blank refused to move off the road, including respected citizens Dr Mick Dark, designer Jenny Kee and Hugh Patterson, the Society's Fire Officer and owner of a bush regeneration business.



Number One Blockade, Mt Hay Road

That same morning EDO's solicitors Ilona Millar and Jeff Smith met with barrister Tim Robertson SC to discuss whether the Society has reasonable prospects of challenging the filming approval. He advised them that our prospects were good, suggested that appeal papers be drawn up immediately and that the Society approach the Land and Environment Court as a matter of urgency to seek an injunction restraining any activities on the site. I instructed EDO to prepare the necessary appeal papers and commence legal proceedings against the Department of Environment and Conservation, the Minister for the Environment and AFG Talons, the film company.

Finally at 3 in the afternoon legal proceedings were filed in the Land and Environment Court and an interlocutory application for an injunction was sought. The judge adjourned the hearing of the application until the following day.

During all this incredibly anxious time, the blockades held! The second one at the dangerous bend had caused the police the most delay (though Keith told me later that they didn't seem to be in a big hurry). Demonstrators had locked themselves on the top of the tripods close to the cliff edge, and it was quite a perilous business to bring them down safely. One lovely, intrepid young woman who had locked herself on then thrown the key down the cliff told me later she kept pleading with them to be careful, saying piteously "I'm frightened, I'm frightened". She managed to slow down her rescue considerably! Greens senator Ian Cohen had based himself at this location and worked his mobile phone very effectively with his press contacts to gain maximum publicity for the issue, and as a result helicopters were flying overhead filming the action for the TV stations.



Number Two Blockade, Mt Hay Road

At 4 pm the last blockaders were finally brought out by the police. The film crew immediately started driving in, vehicles filled with equipment, some of them jeering at us as they passed.

The legal proceedings were held in Sydney the next day Wednesday 28, and on Thursday morning Justice Lloyd handed down his decision, in favour of the Society. He found that the proposed activity would be unlawful because it would contravene Section 9 of the Wilderness Act. It is actually illegal to make a film of this nature in designated Wilderness areas (as it is also in America) and he said "The governing consideration is this: declared Wilderness areas are sacrosanct". In addition to this great, very quotable quote, he also awarded costs to the Society, which was a wonderful bonus.

For 2 hours we were euphoric at our success. Then Premier Bob Carr appeared on TV snarling that the government would appeal the decision and that if the appeal didn't win, he'd bring in a new law to change it

Apparently the reason for the Premier's reaction was that the judgement highlighted the fact that the only kind of filming that could legally be done in any part of any National Park is for films that espouse conservation values. As a great deal of filming about all sorts of things other than conservation is already being done in National Parks (has been for years) the film industry got very nervous, and what we heard was that Rupert Murdoch who owns Fox Studios, had leaned on Carr to fix things fast.

An appeal was lodged, but the film company quickly found an alternative site on a private property, so the appeal lapsed. The company was quoted in the Herald saying that the new

site was much better and made a much better film, however *Stealth* is on record as the biggest box office failure ever made to date.

Two days after our win in court the Society's usual monthly evening meeting was scheduled at the Conservation Hut. It was absolutely packed with ecstatic, excited community members who could hardly believe the miracle of our success. It was a huge win. Keith, Andrew and the EDO solicitors Ilona and Jeff were there to celebrate with us and at first it was a wonderful night. But then we had to tell everyone the bad news about Carr's proposed new law to change the protection for National Parks. It was decided we should have a demonstration outside Parliament House the following week on Wednesday 4 May and 40 people instantly volunteered to come.

Within 5 days of the judgement the government introduced the draft *Filming Amendment Bill*. It was a horrible piece of proposed legislation, virtually giving the film industry the National Parks on a plate, just one huge film set - no environmental safeguards, no community rights of appeal, and everything up to the discretion of whoever happened to be the Minister at the time.

With our group of 40 supporters we caught the train down to Sydney and demonstrated outside Parliament House, where our numbers were considerably swelled by Sydney-based supporters. I told the crowd that Carr was "a Premier who has created a wonderful system of National Parks and Wilderness areas which should have been his greatest legacy to this state" and asked "Are we instead to see them reduced to nothing more than free film sets"?



Protest outside State Parliament House

After the demonstration we all trooped into Parliament House, and Keith and I and some others had a meeting with Bob Debus, the Environment Minister and our Local Member. Knowing him better as I do now (since retiring from politics he's now the Chair of the Board of Wilderness Australia) I think he was pretty appalled about the situation and had he not been away at the time on his first holiday for 8 years it might not have proceeded to the point it had, but at the time feelings were running high and it was a pretty feisty meeting.

Then we went back to the Mountains and straight into the next campaign, the *Battle of the Bill*, to have the draft Bill amended. This wasn't as straightforward as the *Stealth* campaign,

it took quite a bit more time and effort to explain the issues to the locals, but again the Mountains community was fantastic and rallied to the fight. The fact that Bob was our local member was a great advantage and we made good use of it. There were letters to the Gazette, information pamphlets were produced and widely distributed, and Hut News kept our 800 members informed about how they could take action. Among other things we ran street stalls at which indignant citizens were encouraged to make phone calls to Bob's office on the spot mobile phones we provided on the spot. I was pleasantly surprised by just how many folks were quite happy to do this!

Of course there was also a great deal of pressure being applied on government from other sources as well, with both Colong and National Parks Association especially lobbying hard, and combined with the local pressure it forced the government into negotiations on amendments to the proposed Bill. The amendments that were eventually negotiated provided strong constraints on filming in wilderness areas, and additional environmental safeguards for all National Parks which a Minister must take into account when issuing a filming approval. This did provide significant limits to Ministerial discretion.

Sadly, however, third party appeal rights were diminished, in spite of the Minister's assertion that they would exist as before, and it's now much harder for citizens to take effective action. Under the new law we wouldn't have had a chance of stopping the filming in time, and a precedent for filming commercial films in Wilderness areas would have been established.

So, that was the *Stealth* campaign - in 2 weeks of intense citizen action we stopped the filming of *Stealth* by proving in court that it was illegal, then another four weeks of action successfully pressured the government into modifying its attempts to destroy the existing protections regarding commercial filming in national parks.

I arranged legal advice and support for the arrestees from the roadblock, and was at the courthouse with the 6 who pleaded guilty to hear Magistrate Zdenkowski dismiss the charges and award good behaviour bonds to the other 3. He classified their actions as 'civil disobedience' which has 'a long and distinguished history', and said that 'to plead guilty for a morally justifiable act that was also a technically illegal act and then to present oneself at court for punishment was honourable behaviour'.

This campaign to protect Butterbox Point was a wonderfully co-operative effort, and on behalf of the Blue Mountains Conservation Society and residents, I'd like to especially acknowledge the wonderful contributions of Keith Muir and Colong Foundation for Wilderness, Andrew Cox and the National Parks Association, the Environmental Defenders Office solicitors Ilona Millar and Jeff ..., barrister Tim Robertson SC and Greens Senator Ian Cohen, without whose particular expertise we could not have accomplished what we did. And it's also true to say, they couldn't have done it without us!