

Attachment A - Submission Lynden Jacobi WCA

To whom it may concern;

It is obvious to all, even Lake Macquarie City Council officers, if this DA goes ahead as is, there will be a significant impact on the Squirrel Glider population in this area. It is a threatened species.

John Clulow's Seven Part Test includes new records of the squirrel glider in the Fernleigh Track corridor. The data in Fig. 6 of this report shows squirrel gliders present in the Fernleigh Track corridor close to Whitebridge and support the view that the Fernleigh Track at Whitebridge is a high value squirrel glider corridor of regional significance that is threatened by the current development.

The Squirrel Glider Peer Review commissioned by Lake Macquarie City Council and undertaken by Michael Murray of Forest Fauna Surveys in November 2015 confirmed this point of view.

See quote below (I have bolded pertinent bits):

*I consider that **subject to implementation of the recommendations by LMCC (2015d), which outline the above mentioned ameliorative actions, the proposed development would not likely have an adverse effect** on the lifecycle of the local Squirrel Glider population. However, **if no habitat enhancement measures are incorporated into the Consent Conditions for the proposed development, then the action would likely have an adverse effect on the lifecycle of the local Squirrel Glider population**, particularly the northern Glenrock sub-population. (p.15 Squirrel Glider Peer Review, Forest Fauna Surveys Pty Ltd, 11 November 2015).*

The Lake Macquarie City Council Supplementary Report (p16) says an SIS is not required on the basis that further ameliorative conditions are imposed.

See quote below;

Mr Michael Murray of Forest Fauna Surveys Pty Ltd was commissioned and undertook the Squirrel Glider Peer Review and completed a report dated 11 November 2015, provided in Attachment H.

The findings of the Peer Review confirm:

- 1. The preparation of a Species Impact Statement is not required.*
- 2. Subject to the implementation of the following ameliorative actions*

the proposed development may proceed.

The reasoning in the report to the JRPP appears flawed when viewed in the context of some of the case law.

Firstly, LMCC's reasoning seems contrary to the law found in *Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council and Stoneco Pty Limited* [2010] NSWLEC 48 - specifically when looking at whether a development is likely to have a significant impact on threatened species **any measures to reduce impact must be found in the development application and not be those applied as conditions of consent.**

Secondly, the subject of the development application is not restricted to the nature, extent and other features of the development but can also include ameliorative measures to prevent, mitigate, remedy or offset impacts of the development. However, in order to be able to be considered in answering the inquiry of likely impact, **the ameliorative measures must be proposed as part of the development application.**

Ameliorative measures not proposed as part of the development application, but which are imposed afterwards, as conditions of consent or restrictions in construction certificates, are not able to be considered in answering the inquiry as to likely impact.

This is because the inquiry required by S78A (8)(b) focuses on the development and its likely impact before the determination of the application and not afterwards: see *Drummoyne Municipal Council v Maritime Services Board* (1991) 72 LGRA 186 at 192; *Smyth v Nambucca Shire Council* [1999] NSWLEC 226; (1999) 105 LGERA 65 at [11]-[13]; *Corowa v Geographe Point Pty Ltd* at [57].

It is absolutely imperative that you, the JRPP apply the law correctly and do not approve this DA as it stands. A Species Impact Statement must be done before a new DA is submitted to LMCC. Unfortunately because this problem was ignored by LMCC and the JRPP a lot of time, energy and money has been wasted. Do not continue wasting time. Do not approve this DA. Send it back to the applicant and ask them to do the job properly, starting with a Species Impact Statement.

Yours truly
Lynden Jacobi

Secretary WCA Inc