

To the Committee,

Inquiry into historical development consents in NSW

I will address the Terms of reference

That the committee on Environment and Planning inquire into and report on historical development consents in New South Wales, including:

- (a) The current legal framework for development consents, including physical commencement test.
- (b) Impacts to the planning system, development industry and property ownership as a result of the uncertain status of lawfully commenced development consents.
- (c) Any barriers to addressing historical development consents using current legal provisions, and the benefits and costs to taxpayers of taking action on historical development concerns.
- (d) Possible policy and legal options to address concerns regarding historical development consents, particularly the non-completion of consents that cannot lapse, and options for further regulatory support, including from other jurisdictions.
- (e) Any other matters.

In this submission I use the case of the Wallum property, owned by Clarence Property P/L, as a clear example of the problems with historical DAs. My community has been put in a position where we must take action to save Wallum Brunswick Heads from inappropriate planning decisions. Wallum Brunswick Heads is a Zombie DA!

(a) I am unsure as to what the current legal framework for development consents is. I assume the Planning Department is responsible for Environmental and Planning Consents. I do not know what the physical commencement test is. The Northern Regional Planning Panel approved this DA and bypassed local decision making. This has cost us taxpayers thousands of dollars in time and money to protect the sensitive environment.

(b) Impacts to:

1. Planning system - Delays, costs, frustration
2. Development industry loses money, time and investors
3. Property ownership – properties lose value, unsellable

Because of uncertain status to lawfully commenced development consents

(c) Any barriers to addressing historical development consents using current legal provisions, and the benefits and costs to taxpayers of taking action on historical development concerns

1. There does not appear to be a system within the planning department to recall or reassess historical DAs.
2. Legal costs are prohibitive to communities taking action on Zombie DAs
3. Community members lose time and money physically defending the environment.
4. The benefit to taxpayers is that they are drawn together to protect sensitive ecological communities and reflect back to the government their own contradictory Environmental and Planning Laws.
5. Knowing and understanding the system is a barrier experienced by many taxpaying community members.

(d) Possible policy and legal options to address concerns regarding historical development consents, particularly the non-completion of consents that cannot lapse, and options for further regulatory support, including from other jurisdictions.

1. Appeals process

2. Non-complete – reassess MORATORIUM

3. Environment separate from planning

Our communities have been let down by existing planning systems as the consultation process for zombie DA sites (such as Wallum) was insufficient. Community values and attitudes towards this development are at odds with Clarence Property. Alongside a small newspaper advert, only 200 people were notified via a letterbox drop. Our communities were not informed of the depth of ecological significance of Wallum. Clarence Property say that the development would improve the ecological values of the site. Clarence Property's 'Habitat Management' measures have negated the Wallum Sedge Frog entirely, whilst focusing only on the Wallum Froglet.

Clarence Property has proposed to replace the destruction of Wallum's acid frog habitat with artificial 'Breeding Ponds' - the viability of which has been brought into serious question by leading ecologists. Both species of frog are highly sensitive to habitat modification, hydrology changes and pH levels – requiring the acidic, tannin-rich water that Wallum ecology uniquely provides. Clarence Property has failed to establish any precedent of breeding success in artificial conditions, the least of which should be a minimum of five years of proven breeding success, considering the Vulnerable status of these frogs.

Thriving communities of Wallum Sedge Frog and Wallum Froglet are found on-site at Wallum. These two unique species are both Vulnerable to Extinction - primarily due to habitat loss from coastal development - with the Wallum Sedge frog being listed as a Species of National Environmental Significance.

Alongside habitat destruction, the proximity of roads and houses will pose additional threats to Wallum's acid frogs, with noise and light pollution associated with stress and potential breeding behaviour disturbances.

It is a place of deep cultural and ecological significance, 'Wallum' also constitutes a significant part of the mere 1% remaining Wallum Heathland in Byron Shire - the only representation of this ecological community in Brunswick Heads. Heathland wildflowers crown the surface of Wallum's sandy soil, under which lies thousands of years of organic deposition of unique plant matter and bushfire ash. This process culminates into what we know as coffee rock - a peat substrate that hardens around sand, forming a water-dense layer that encourages permeation and retention of water for wildflower swamps. This unique soil matrix is what sustains the extremely specific Wallum Wildflower Heathland ecology.

Due to the specialised ecology of Wallum, it is host to an astounding number of threatened species of flora and fauna. Some of which are of State and National conservation significance. Including:

Koala, Wallum Sedge Frog, Wallum Froglet, Glossy Black Cockatoo, Eastern Grass Owl, Grey-Headed Flying Fox, White-Throated Needletail, White-bellied Sea Eagle, Collard Kingfisher, Common Planigale, Pale-Vented Bush-Hen, Little Bent-Wing Bat, Large Bent-Wing Bat, Greater Broad-Nosed Bat and Southern Myotis, Pink Nodding Orchid and the Endangered Ecological Community of Swamp Sclerophyll Forest (on Coastal Floodplain).

Leading ecologists who have put forth concerns about this development proposal, have also remarked that with adequate surveying more threatened species are likely to be verified as present. Including: Mitchells Rainforest Snail, Regent Honeyeater, and Swift Parrot.

Right now we don't know what the impact of fencing the entire property would be for the species dependent on the property would be. For any larger animal trapped within the property it could mean death, and at least curtailed access to other members of its species and sustenance. Species that might be impacted by fences would be macropods, goannas, echidnas and koalas.

Bushfires and Habitat loss have ravaged our Nation's Koala population, rendering them officially an Endangered Species. 70% of NSW's Koala population were estimated to have been killed in the Black Summer Bushfires. Without intervention focusing on conserving Koala habitat, Koalas are predicted to become extinct before 2050. There are koala scratch-marks apparent upon Wallum's Scribbly Gums. 76 old-growth Scribbly Gums will be destroyed if this development goes ahead. Some of these Scribbly Gums are 300-400 years old, bearing large hollows that provide irreplaceable habitat for wildlife. Scribbly Gum leaves are an important part of the koala nutrition matrix, as are Swamp Mahogany Trees - 27 of which are also earmarked for destruction.

Clarence Property plans to replace these mature trees with 54 saplings. Saplings would take up to 30 years to reach a point of providing sufficient habitat and food source for Wallum's Koalas. Even upon reaching sufficient maturity, these saplings may not be suitable due to the variable nutritional quality of individual trees. Additionally, improper landscape positioning will not provide adequate corridors for koalas to travel within. Perhaps most importantly, the developer has made no considerations towards climate-driven increases in temperature, which will mean a koala's survival will increasingly depend upon denser foliage under which to shelter.

Drought and climate changes have wrought extreme stress upon our Glossy Black Cockatoo populations. Wallum's She-oaks are a vital food source for these Vulnerable to Extinction Glossy Black Cockatoos. Clarence Property's development has marked 38 mature She-oak trees for destruction. A non-breeding Glossy Black Cockatoo can process up to 580 She-oak cones per day. While a pair can process a total of 420,000 She-oak cones per year. Glossy Black Cockatoos are infamously picky eaters! They have preferred feeding trees, which they will return to year after year.

Clarence Property proposes to plant new saplings in place of the old trees they're destroying. However, She-oaks take many years to produce cones, and form strength enough to support the weight of a Glossy Black. She-oak trees are dioecious - only the female tree will produce cones. This determination can't be made until a tree has fully matured, so Clarence Property cannot ensure these trees will become a viable food source. Clarence Property also proposes to install 50 nest boxes to offset the habitat loss for Glossy Black Cockatoos and other tree-dwellers. As food and habitat 'specialists', Glossy Black Cockatoos are known to be extremely selective against artificially-constructed replacement hollows - which will often degrade within 5-10 years. In fact, there are no recordings of successful artificial nest use across South-East Queensland or Far North-East NSW.

For the Glossy Black Cockatoos that frequent Wallum, Clarence Property's proposed destruction of the 76 Scribbly Gums would prove devastating, as their horizontal branches are known roosting sites; their deeply-set hollows ideal for nesting. It takes 200 years for a Scribbly Gum to even begin to form a hollow, and more than 300 years for that hollow to become large enough to be suitable for a breeding pair of Glossy Black Cockatoos. These trees are simply irreplaceable.

The greatest cost to our community would occur if this development goes ahead. The decimation of remnant coastal sclerophyll forest and wet heathland, traditional trackways, culturally modified trees and habitat for totemic species as well as endangered threatened and vulnerable species would be devastating for us. Actual financial costs could be measured in the tens of millions when you consider the ramifications of building on flood prone land. An urgent moratorium on all zombie DAs is called for now.

Yours sincerely,

[Name]