

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Sandy Beach Action Group
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Inquiry into historical development consents in NSW

May 8, 2024.

SUMMARY and RECOMMENDATIONS

The Sandy Beach Action Group Inc (SANDBAG) welcomes the opportunity to comment on the problem of zombie developments in NSW, having been haunted for many years by a proposal that should have died long ago.

Sandy Beach is a small coastal community 23 kilometres north of Coffs Harbour in NSW. Our experience is based the experience of opposing an on-going Development Application (DA) for north Sandy Beach on the shores of Hearn's Lake.

The State government has failed to address past mistakes to the point where the waterway is now reported by marine scientists to be in its death throws. This is a direct result of the cumulative impacts of the planning process over the last two decades.

Several DAs have been submitted to Coffs Harbour City Council (CHCC) over more than a decade 20, and they are typically in direct conflict with the Coffs Harbour City Council's plan for the site, general planning for the area and the best expert advice on how to protect this important ecological site.

Development of this land as a housing estate would compromise an established residential community through increased potential for flooding, sea level rise and coastal recession. The developer shows little consideration for the historical environmental issues or current planning requirements for coastal and environmentally sensitive land.

SANDBAG considers that the following would facilitate a better outcome, for both this development, and all future development applications in NSW:

- (i) The determination or approval of any development in regional areas should be by Local Councils based on local development control plans, local impact studies, submissions from local residents and detailed estuary management plans.
- (i) Prior to any state government determination that a development in a regional area is a significant state project, the authority must outline in detail the reasoning behind its decision and invite submissions and representation from local residents and authorities.
- (ii) A mediation process should be held with all interested parties before an application is made to the Land and Environmental Court to assess the merits of the proposal.
- (iii) Due to the potentially significant risk of serious harm or damage to the environment, life and property, private certification of larger developments, e.g. over 20 houses, should be discontinued. Private certifications should remain for minor developments only.
- (iv) There should be a mandatory revision of Development Applications (including those relating to State Significant Projects) after 5 years if the development has not been completed.

- (v) The State Government should review existing Development Applications more than 5 years old and have not yet been completed to redress past mistakes under repealed Part 3A legislation.
- (vi) Australia faces a home insurance crisis due to the heightened risks of climate change. Flood categorisation needs to be identified for all Flood Prone Lands, which is all land inundated to the Probable Maximum Flood (PMF). The PMF needs to be very carefully considered in plans.
- (vii) The NSW Coastal Lands Protection Scheme needs a major boost in funding to be truly effective. The \$3 million is inadequate.

The Story Behind Hearnese Lake

A 'bad odour' lingers around a small lake and surrounding pocket of bushland on the NSW mid-north coast, north of Coffs Harbour. It's coming from a very dubious planning decision made in the distant past. The story of Hearnese Lake, at the northern end of Sandy Beach on the Coffs coast, is not atypical but one of many 'zombie' projects that exist along the NSW coast.

It is an important ecological site, rich and diverse in its flora and fauna. It is in a flood zone, and will undoubtedly be impacted by sea-level change. But, most significantly, it is suffering the death of a thousand cuts due to a planning regime that refuses to address the sins of the past.

In 2010, the then Minister for Planning, Tony Kelly, gave concept approval for the development of a 200-house estate, 'Sandy Shores', on the Hearnese Lake site under Major Projects Part 3A of the EPA. That provision of the Act has since been repealed because of the wide scope of 'discretion' it gave ministers. Tony Kelly has since been named as corrupt by the Independent Commission Against Corruption, yet the concept approval lives on, seeming in perpetuity.

Before Kelly intervened, the local council in 2005 had deemed no more than 35 houses be built on the site. It has a rich biodiversity, is home to a number of endangered plant and animal species, and its marine habitats feed directly into the Solitary Islands Marine Park. Ecologists argue that the lake is a vital component of the park.

Every so often, a new modification is made by the owners of the land under the 2010 concept approval, and this invariably leads to howls of protest by local residents. Twice this has led to action in the Land and Environment Court. The concept approval lives on by virtue of the technicality that the statutory requirement to 'commence' development occurred when the owners demolished two old cottages on one of the parcels of land. No other actual work has taken place.

Meantime, the lake and bushland is located within an area of spiralling population growth, and offer enormous conservation and recreation value, yet, it has been locked up in this planning stalemate for close to two decades. As a result, it is being slowly degraded, with cattle allowed to run freely, and the waters of Hearnese having become a toxic dumping ground, for the local blueberry industry. The lake is now virtually unusable.

Chronology of key events in relation to development of Hearnese Lake

2005	The Coffs Harbour City Council (CHCC) Development Control Plan (DCP) placed a limit of 35 lots to be developed on the 49-hectare Hearnese Lake site.
20/12/2010	Concept approval given for 200-house, under Part 3A, by Planning Minister, Tony Kelly, overriding council planning restrictions.
15/3/2011	CHCC challenged to validity of concept approval in Land and Environment Court.
23/1/2012	Decision of Sheahan J in Land & Environmental Court upholding Concept Plan approval of 20/12/2010
2012	CHCC appeal to Court of Appeal against the decision of Sheahan J in L & E court
19/9/2012	Modification 1 to clarify name of proponent in instrument of approval was withdrawn
6/3/2013	Appeal dismissed - concept approval upheld
2013	Application by Sandy Shores Developments Pty Ltd to modify concept approval into 280 residential lots – Modification 1 (Subsequently withdrawn)
23/09/2013	Sandy Shores Development Pty Ltd – application to modify concept approval – Modification 2 – changes sought
28/03/2014	Receivers appointed with respect to the land
18/2/2015	Land sold to Elite Constructions
2/2015	Elite makes application to modify Concept approval - Modification 3 - to extend lapsing date for 2 years to 20/12/2017 – granted
8/5/2015	NSW Planning approval of Mod 3 to extend lapsing period to 20/12/2017
2/2017	Landholder makes application to modify Concept approval to remove laneways on basis of submission of new plan and also remove small swales drains and in place have garages and driveways Note: CHCC submission in relation to this application for modification states “The modified stormwater (proposed in the application) is likely to affect the flood impacts on the development site and on existing properties in the area”
01/3/2017	Complying Development Certificates issued by [REDACTED] to demolish 15 & 17 Pine Crescent
21/4/ 2017	NSW Planning assessment report recommending approval to Modification 4
4 May 2017	Demolition of 15 & 17 Pine Crescent completed as certified by [REDACTED]
11/5/2017	Application to amend application for Modification 5 Amendment of the subdivision layout to remove rear laneways and alteration of the drainage design to provide bio-retention areas around the perimeter of the development footprint.

6/2017	Various submissions lodged in response to application for modification by CHCC (not support); OEH (not support); and public (mostly not support)
8/2017	Elite made further submissions x 2 to modification 5
9/10/2018	Land and Environment Court decides that Elite's concept approval has not lapsed, based on the fact it had commended work with the demolition of two cottages in Pine Crescent, allowing access to the future estate.
2/2018	Application for Modification 7 to the Concept Plan Approval to increase the development footprint by re-instating parts of the site specifically excluded from the Concept Plan Approval
1/1/2019	Elite lodge DA0450/18DA with CHCC for 169 lots
1/2019	DA 0526/19DA lodged for subdivision of land into 3 lots – lot 1 = 39.703Ha by dedication; Lot 2 = 5.863 Ha; Lot 3 6.024Ha
9/2019 DA	0526/19DA approved
10/2019	DA0450/18DA withdrawn
4/7/ 2023	DA 0847/23DA lodged for development of 148 lots to reflect the recent zoning amendments to the Coffs LEP2013....the Application will retain lot 56 to set up Biodiversity Stewardship Site management Plan and flood works, the APZ.
30/8/2023	0847/23DA withdrawn on advice from council that it did not meet basic criteria.

From: Peter Quiddington, Chair, Sandy Beach Action Group.