

**Submission
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HISTORICAL DEVELOPMENT CONSENTS IN NSW

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Planning system overdue for reform: a summary of submissions to the NSW Legislative Council's 2023 inquiry into the planning system and the impacts of climate change on the environment and communities

'Broken', 'captured', 'an enemy of people' are just some of the descriptions that have been applied to planning in NSW by concerned professionals and lay people alike.

The NSW Legislative Council's 2023 inquiry into the planning system and the impacts of climate change on the environment and communities received over a hundred submissions, mostly from citizens, community groups, local councils, and professional bodies, with an overwhelming majority calling for reform.

There is a conspicuous absence of representation from the industries that profit most from the system, with the pro-industry Urban Development Institute of Australia one of the few to support the status quo.

Some insiders, including former staff within the bureaucracy, made confidential submissions under 'Name Suppressed', and their comments are the most damning, pointing to a system lacking in transparency and basic regard for the health and wellbeing of the community. A fundamental problem identified is having the portfolios of planning and the environment together in one department. This creates a clash between the regulatory functions and service provision, in turn 'driving unethical behaviour'.

The inquiry has amassed much evidence to show how this becomes manifest, as soft corruption favouring developers. It starts at the top by denying councils and communities sufficient resources to properly assess and challenge inappropriate DAs. Further down, expert reports by consultants and private certifiers are fudged with impunity. And, there are countless other bureaucratic tricks, work-arounds and sleights-of-hand that are used to shift the odds in favour of industry. That is, the suppliers of bitumen, concrete, and buildings that form the treeless, cookie cutter suburbs, devouring tracts of land, forests and wetlands, all up and down the NSW coastline.

Meanwhile, inland, coal mines are said to be 'approved by default' because the bureaucracy lacks the resources to conduct the necessary assessments, and developers get away with misrepresenting the facts. The outcome is that the climate impacts and the social and environmental costs are not given due consideration, nor are cumulative impacts.

Lawyer Catherine Brady, who worked within the planning bureaucracy and Land and Environment Court system for 20 years, says the Environmental Planning and Assessment Act of 1979 has been slowly eroded and is now aimed at short-term profits. The planning system of NSW, once a model of access to justice, has been undermined by provisions that excuse non-compliance with government policies, including those designed to manage climate change.

The Law Society notes that the planning system does not factor in the future impacts of climate change, other than in ways that are 'piecemeal and often reactive'. At a practical level The Planning Institute of Australia observes that the State Government does not have clear accountability for preparing and maintaining natural hazard modelling. This rests with local government, which in turn lacks the resources to make use of the data. In fact, local government lacks any real power at all, which is where much of the injustice begins.

Many submissions decry the fact that each DA stands alone; there is no strategic overview, no account of cumulative impacts and so no real notion of the extent of deforestation and habitat loss. This prompted the National Parks and Wildlife Service to observe that the planning system is now the 'greatest driver of species decline and habitat loss'. If government is serious about climate change, the restoration of habitat and vegetation communities is one of the most effective means for sequestering carbon.

Perhaps the worst of it is that there is reported to be at least 90 approved DAs on the NSW coast that are between 10 and 40 years out of date, that is 'zombie DAs'. These are still current even though conditions, such as predicted sea-level rise and bushfire risks, have altered radically. These concept approvals have time limits, but these can be overcome by showing 'physical commencement'. In one case this is reported to have meant simply removing a 'couple of saplings', an indication of how easily the rules are bent.

Academic institutions, planners and legal bodies, and the major conservation organisations, for the most part, condemn the planning system. A joint submission by the University of NSW, Sydney University and the University of Western Sydney calls for urgent action in addressing shortcomings of the EPA Act, which it is argued, should have as its top priority the protection of human health and wellbeing.

The most vociferous complaints come from environmental groups, including the Total Environment Centre which says that 'currently the major developers' business model is their control over the planning department'. The housing crisis is now providing a whole new impetus for the 'fast tracking' of estates, and this is often in the absence of supporting infrastructure.

The Nature Conservation Council echoes many of the suggestions from a great number of submissions, arguing that primacy should be given to the environment, starting with reform of The Biodiversity and Conservation Act. Regional Planning Boards need to be scrapped and councils given power over DAs. A complete halt to coastal development is needed until the planning system is reformed.

Legislative and institutional change aside, there are many relatively simple, practical measures, that are being ignored. These include better spacing for buildings, having light coloured roofs, and mandating tree canopies, of say 30 to 40 percent, as ways of preventing heat islands and the consequent poor health outcomes.

The fact that these and other changes are being set aside, means that health professionals are among those who believe the planning system is now putting communities at risk. Add to this the lack of due regard given to flooding and bushfires means that lobby groups and professionals fear whole communities are increasingly being put at risk. For example, the Bushfire Survivors for Climate Action is just one of the many voices calling for urgent action, and the first priority should be for councils to have the power to reject inappropriate developments.

If there was ever a case for a moratorium, to stem the damage being done by an out-of-control system, it is now.