Submission No 37

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Allen Price & Scarratts

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allen price & scarratts pty ltd
land and development consultants

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Mr Clayton Barr MP
PO Box 242
CESSNOCK NSW 2325
Submitted via NSW Parliament of NSW

Submission to the enquiry into historical development consents in NSW

We make the following submission in reference to the Parliament of New South Wales enquiry to examine the impact of historical development consents on the NSW planning system, development industry and property ownership. We understand this enquiry will also consider policy and legal solutions to address concerns about historical development consents, including any barriers in using current legal provisions to respond to the issue.

As background to our submission, our company is a leading land development consultancy on the South Coast of NSW which has over 75 years of experience working to both achieve and deliver a variety of developments consents through a very complex and resource hungry assessment process, which really should be reviewed in a separate parliamentary enquiry.

No developer or the related industry intentionally set out to want to achieve a historical development consent. The initial upfront costs in obtaining a development consent are significant, and in majority of cases the development is needed to proceed immediately to get a return on that investment. There are however many reasons why a development consent is put on "hold" and overtime subsequently become a "historical development consent", and we list some of these reasons below:

- Feasibility costs
- Available funding
- Market changes
- Available infrastructure
- Personal circumstances
- Government policy changes

The fundamental point is that the delayed delivery of development can be the result of multiple reasons, outside the control of the developer, meaning the development approved in a development consent does not proceed immediately, or upon substantially commencing the consent.

Further to this, through the passage of time it is not uncommon for local Councils to have no defined records of the status of historical development consents, or how many exist which have achieved substantial commencement. From our experience, we have seen some local Councils lose or misplace relevant records all together. Hence, for this enquiry to comprehensively review barriers to addressing historical development consents, it is important to reflect not only on how the development industry acts on these consents, but also the role that local Council and communities have in not having knowledge or records that a valid development consent exists, which over time has been forgotten about.

When considering the possible policy and legal options to address concerns regarding historical development consents, it is critical that if a development consent is considered to be operational/commenced, any powers to determine a consent is not valid should rest with the Court only, and not a separate bureaucratic or political motivated process.

At the end of the day, this inquiry should consider the purpose of the historical development consent and its intended outcome of a development, including creating housing and/or lots with associated infrastructure. Although we do recognise that construction requirements and costs have continued to increase overtime – again this is often the reasoning why a development consent is put on hold. However, we should not also forget that the basics of residential living / development requirements have not changed significantly over time i.e. roads, drainage, sewer, utility connection, etc – only related standards and costs.

There are also many examples where past consents were delivered in the state, and not put on hold. These locations, including many of the State's coastal villages have become well sought after living destinations. It is these same locations where, ironically, the NIMBYs (Not In My Back Yard) often campaign and oppose new development including completion of historical development consents. This is not an equitable or fair representation based on the planning system applicable at the time. The reasons for the opposition to historical development consents being carried out today, are the very same actions or impacts that were considered in the creation of the lots or development where these towns today exist.

In closing, the NSW planning system should not unnecessarily focus its energy on further impeding the development industry with a more complex system and further penalise property owners who have resourced and demonstrated an operational/commenced development consent for an audience or process that has not kept pace with past development determinations. The governments energy and resources should focus on fixing and making our current planning system simpler and concentrate on resolving affordable housing issues rather than preventing lawful historical development consents to proceed.

Upon review of this submission, please do not hesitate to contact our office for any further clarification or information.

Regards

Allen Price & Scarratts

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James Harris
Town Planning Manager | Director