

## **HISTORICAL DEVELOPMENT CONSENTS IN NSW**

**Organisation:** Manyana Matters Environmental Association Inc  
**Date Received:** 31 May 2024



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## **Manyana Matters Environmental Association**

### **Submission to the Inquiry into historical development consents**

In this submission:

- A. Manyana Matters: our objectives and reach
- B. The impact of historical development consents
  - a. Impacts of zombie DAs on Manyana and surrounding communities
  - b. Environmental impacts – existential threats to species and ecological communities
  - c. Community impacts – trauma, declining mental health, physical danger and financial burden
  - d. The risks created by the cumulative impacts of historical development consents across NSW
  - e. Development approvals as speculative tools
- C. Recommendations regarding legal or policy changes to be made
- D. Barriers that prevent the current framework from addressing this issue

#### **A. Manyana Matters Environmental Association (Manyana Matters)**

Manyana Matters Environmental Association Inc. is a volunteer community-based organisation, initially formed in 2018 and incorporated in 2020 in response to environmental threats following the 2019/20 Black Summer bushfires.

Our objectives are to:

- Preserve, protect and enhance the natural, social, and cultural environment of Bendalong, North Bendalong, Manyana, Cunjurong Point, Berringer (the “Red Head villages”), and the surrounding Conjola National Park.
- Ensure a sustainable future for the plant, animal, and human communities of this region.
- Champion and support broader environmental campaigns throughout NSW and Australia.

Manyana Matters has no political affiliations and enjoys widespread support in our community. We have several hundred financial members and almost 500 subscribers to our mailing list. More broadly, we have more than 5,500 Facebook followers and over 4,000 Instagram followers. We have a reach of many hundreds of thousands of like-minded people through our links with state and national environmental organisations.

We welcome this NSW Government Inquiry into historical development consents. “Zombie DAs”, as we have referred to them for many years, alongside outdated zoning decisions, represent an immediate threat to our biodiversity and community well-being. We are hopeful that this Inquiry will deliver solutions that place development in our area on a more sustainable footing.



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## **B. The impact of historical development consents**

### *Impacts of zombie DAs on Manyana and surrounding communities*

Manyana and the surrounding four Red Head villages have very high biodiversity values. With approximately one fifth of the terrestrial species of NSW having been identified in this area<sup>1</sup>, it could be described as a biodiversity hotspot<sup>2</sup>.

Currently there is a substantial development being proposed for the village that fits the description of a “historical development consent”.

The Manyana Beach Estate is a 20ha block of native forest. The current owner purchased the property in 2017. The land is zoned Residential and has development approval granted by the NSW Government (as a 3A Major Development) in **2008** and a Construction Certificate issued by Shoalhaven City Council. Under current planning laws, the developer’s plan to destroy this forest is considered lawful even though their Environmental Impact Statement, produced in **2006**, is woefully out of date.

In the wake of the Black Summer of 2019/20, the worst bushfires in Australia’s recorded history, the Manyana community was horrified to find that even though this forest was practically the last intact bushland in the area, legislation did not provide for stopping, or even stalling, this Zombie DA. It is only thanks to the tireless work of Manyana Matters and our supporters that the forest is still standing and that this project is presently a Controlled Action under the Federal EPBC Act.

The village of Manyana and Shoalhaven Council are also presently opposing the development of 76ha of bushland known as Inyadda Drive, North Manyana. While not technically a historical development consent, this block is what we describe as a zombie zoning decision. It is zoned “Residential” even though it exists in a major bushfire corridor and experiences regular flooding. The two waterways on the property channel to Endangered Ecological Communities (EECs) and are adjacent to an Intermittently Closed and Open Lakes and Lagoons (ICOLL)<sup>3</sup> that supports seven threatened shorebirds including the critically endangered Eastern Curlew and the critically endangered Hooded Plover. The block has changed hands between would-be developers many times since its Residential zoning in 1991.

### *Environmental impacts – existential threats to species and ecological communities*

If these developments were allowed to proceed, they would directly impact vulnerable, endangered and critically endangered species and would destroy endangered and critically endangered ecological communities (EECs) and threatened species habitats listed under the NSW Biodiversity Conservation Act and the Federal EPBC Act.

There are at least 68 threatened bird and animal species known to inhabit the village bushlands. Notably, the forests of the area are suitable habitat for the Greater Glider, which was once regularly seen in the Manyana forest. Sadly, climate change, habitat destruction and habitat fragmentation

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<sup>1</sup> Atlas of Living Australia

<sup>2</sup> Biodiversity hotspots are regions that contain a high level of species diversity, many endemic species (species not found anywhere else in the world) and a significant number of threatened or endangered species. [What are Biodiversity Hotspots? | Defenders of Wildlife](#)

<sup>3</sup> This development will exacerbate the bushfire threat to the existing village and put more pressure on our small firefighting resource which increases risk to the community’s survival.



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have taken a huge toll on their numbers and in 2022, the Greater Glider was listed as Endangered under both the EPBC Act and the NSW Biodiversity and Conservation Act<sup>4</sup>.

Clearing the area would destroy foraging and/or nesting habitat for birds such as the Eastern Bristlebird, the Swift Parrot and forest owls, and animals including the grey-headed flying fox, spotted tail quoll and long-nosed potoroo.

The EECs that sit within the village forests that are slated for development include Littoral Rainforest, Bangalay Sand Forest, Swamp Oak Floodplain and Swamp Sclerophyll Forest. A Critically Endangered Ecological Community (CEEC) of Illawarra and South Coast Lowland Forest and Woodland is listed under the EPBC Act. This threatened ecological community is also a Serious and Irreversible Impact (SAIL) Entity under the NSW Department of Environment's Biodiversity Assessment Method.

In addition to these direct impacts, the destruction of these habitats would have significant flow-on indirect effects and prescribed impacts on the biodiversity values of the area. This includes edge effects such as increased human activity, weeds, domestic animals and pesticide residues, a reduction in downstream water quality and changes to existing water hydrology that services the EECs.

#### *Community impacts – trauma, declining mental health, physical danger and financial burden*

Natural disasters such as fire and flood have major social and health impacts. Bushfires result in deaths and injury, trauma and psychological stress, loss of homes and possessions and fears about future bushfires. There are also broader economic costs such as lost labour, agricultural productivity, tourism interruption, and costs to government of relief measures and infrastructure rectification or replacement.

Memories of the Black Summer of 2019/20 are still fresh and raw in the minds of the Manyana community, including the evacuation of over 3,000 tourists trapped inside the village because the only road in was impassable due to ongoing fire and falling trees.

Many residents of the Red Head Villages report experiencing "eco-grief", the sense of loss that arises from experiencing or learning about environmental destruction or climate change.<sup>5</sup>

According to the journal Nature, climate-related weather events and environmental changes have been linked to a wide variety of acute and chronic mental health experiences.<sup>6</sup>

These social, financial and health impacts are not trivial. Allowing zombie developments and zoning decisions to proceed potentially puts people in the path of catastrophic events. They ignore the

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<sup>4</sup> A 2023 report by ecologist Garry Daly, commissioned by NSW NPWS, on the monitoring of arboreal mammals in various NSW south coast national parks concludes, amongst other things, that there is evidence of ecosystem collapse in eastern Australia due to the 2019-20 wildfires, resulting (with other unknown threatening processes) in the decline of the Yellow-bellied Glider and Greater Glider. Also, fragmentation of habitats without effective movement corridors will make populations of arboreal species not viable in the long term.

<sup>5</sup> Ecological grief (or eco-grief), or climate grief [Ecological grief - Wikipedia](https://en.wikipedia.org/wiki/Ecological_grief).

<sup>6</sup> These include sadness, distress and despair; depression, anxiety, and pre- and post-traumatic stress; increased drug and alcohol usage; increased suicide rates; threats and disruptions to sense of place and place attachment; and loss of personal or cultural identity and ways of knowing.  
<https://www.nature.com/articles/s41558-018-0092-2>





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effects on people's social and mental health and the effects of witnessing the wholesale destruction of vital habitat and species.

There are also the social costs to community and financial costs to local councils of constantly having to defend the environment and their community's safety against inappropriate and dangerous subdivisions in locations that should no longer be, and probably should never have been, candidates for housing.

*The image below shows the location of the two proposed subdivisions in relation to the spread of the Black Summer fires of 2019/20. It demonstrates why they are inappropriate for today's planning and environmental standards and why urgent action is needed to correct their status.*



*The risks created by the cumulative impacts of historical development consents across NSW*

In addition to the detrimental impacts on nature and communities of the individual historical development consents and zoning decisions mentioned above, there is an **unquantifiable and irreversible cumulative impact**.

It is increasingly evident that Zombie DAs and planning decisions are threatening sensitive ecosystems across the state. Manyana Matters is a member of Coastal Residents United, an alliance of community groups from along the entire NSW coast. The alliance estimates that there are at least 90 historical development consents located on the NSW coast that are between 10 and up to 40 years old.

The cumulative environmental risks include: decline of species' genetic diversity through habitat fragmentation (bringing them closer to extinction), physical risks to animals crossing roads to find new refuges and loss of critical littoral zones that protect water quality.

Historical development consents do not account for the impacts of the 2019-2020 bushfires or the threats from current and forecast climate change. These approvals were made when flooding and extreme bushfire events were far less frequent than they are today. With climate change, their frequencies are expected to increase with even more devastating impacts.



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The cumulative effects of neglect of natural ecosystems through habitat destruction and habitat fragmentation in the history of NSW are demonstrated in the Biodiversity outlook report 2024 published by the NSW Department of Climate Change, Energy, the Environment and Water<sup>7</sup>. It paints an increasingly grave picture of the health of our environment. Key negative findings are:

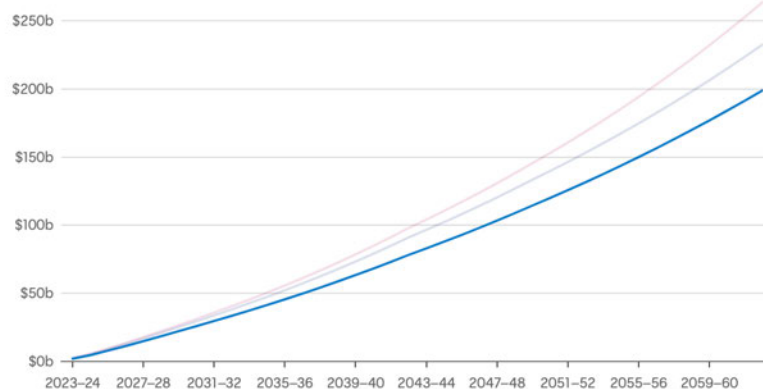
- Only 50% of threatened species are expected to survive the next 100 years.
- Only 29% of the capacity of habitat to support native species remains.
- Past habitat loss and future climate change will significantly reduce the capacity of landscapes to retain biodiversity over the next 50 years.

Australia's Federal Treasury has predicted the level of government spending on disaster relief under different climate scenarios (see chart below as published on ABC News website 18<sup>th</sup> May 2024). These forecasts should be prompting measures to reduce the impacts of climate change. Allowing historical development consents to proceed without review will only exacerbate the negative findings of the NSW biodiversity report and raise the likely costs of disaster relief.

#### Forecast spending on disaster relief

Modelling of natural disasters in different climate scenarios could see government spending increase exponentially.

— Sub 2°C scenario — Sub 3°C scenario — Exceeding 4°C scenario



The projected expenditure presented in the chart reflects the growth in costs under different climate scenarios. Actual costs in any given year are likely to vary significantly from projected costs.

ABC / Source: Treasury / Get the data

#### Development approvals (DAs) as speculative tools

The persistence of historical development consents facilitates land banking and speculation by developers. Property owners with approved DAs on-sell blocks to new owners at a premium price, with disregard for the environmental damage or community danger these developments will create. In the public interest, this is a business model that must be discarded.

*These developments cannot claim to contribute to the solution to our housing crisis. In the main, they do not align with the NSW government's housing policy, in that they are not located in regional growth centres supported by essential infrastructure, or on transport corridors. More often, they are found in holiday regions where the majority of houses sits empty outside of holiday periods<sup>8</sup>.*

<sup>7</sup> <https://www.environment.nsw.gov.au/research-and-publications/publications-search/nsw-biodiversity-outlook-report-2024>

<sup>8</sup> In the 2021 census, nearly 60% of homes in Manyana were listed as unoccupied.





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### C. RECOMMENDATIONS regarding the legal or policy changes to be made

It is evident that inappropriate developments in vulnerable regions that clear native vegetation increasingly imperil threatened species and endangered ecological communities, and further endanger the human population.

Given the negative impacts for the environment, communities and governments, the following changes need to be made:

1. There should be an **immediate moratorium** on the commencement of historical development consents, particularly the clearing of native vegetation, while this Inquiry is underway. This should include development consents in bushfire affected areas granted before the 2019 /20 Black Summer bushfires.
  - a. We are concerned that even the conduct of this much welcomed Inquiry will trigger reckless land clearing by property owners in anticipation of a negative outcome for them.
2. Property owners who hold historical development consents must be **required to report** them to the Department of Planning, so that the extent of these consents in NSW is known and fair decisions about them can be made. Property owners that do not report their development consent should have them **cancelled by default**.
  - a. We understand that there is no database that captures historical development consents in NSW and that even local councils do not know what consents exist in their jurisdiction because many of them pre-date digitisation.
3. All historical development consents, including any that may have “commenced” since the announcement of the Inquiry, must be subject to **reassessment under current planning and environmental laws**.
  - a. Developments that destroy sensitive and critical habitat or that put communities in danger should not be approved.
4. Clarify the **definition of commencement** in legislation to ensure genuine and substantial commencement, to prevent proponents from exploiting loopholes for land banking.
5. Change planning laws so that the **EPA has visibility and oversight of development proposals** so that they can advise of its contribution to cumulative impacts across the state, including in regard to fragmentation of critical habitat.
6. Amend planning laws to ensure that **any compensation** that may be payable by the lapsing of a development consent **is capped to unimproved land value** and defined to be zero for any development consent more than 5 years old with the statutory presumption that the holder of consent had no intention of acting on the consent<sup>9</sup>.
7. Reinvigorate the NSW Biodiversity Trust so that affected property owners have a **genuine alternative avenue for the preservation of sensitive habitat** and/or facilitate their participation in the Federal Government’s Nature Repair Market<sup>10</sup>.

<sup>9</sup> Industry compensation schemes and adjustment packages are normal government responses to retrospective changes in law required following changes in circumstances, e.g. the Dairy Industry Adjust Package, and the Assistance Package for Taxi Industry License Holders

<sup>10</sup> <https://www.dcceew.gov.au/environment/environmental-markets/nature-repair-market>



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#### **D. What barriers prevent the current framework from addressing this issue**

##### *Concern about legal action in response to withdrawn development consents*

It is understandable that state and local governments are concerned that property owners will seek legal recourse following changes in conditions regarding historical development consents. It is feared it could result in significant costs and diversion of resources away from other important projects within local government areas.

Jurisdictions need to weigh these costs against the real, significant and ongoing costs of *not* acting to prevent destructive and dangerous property developments.

***When circumstances change, responsible governments change the laws that govern them.***

##### *The extent of the problem is not precisely known*

Without a database of historical development consents, governments cannot assess the magnitude of the threats to biodiversity, sensitive habitats, water quality or communities, or the cost of any compensation that might arise from changes to consent conditions. If inappropriate developments are allowed to proceed, the damage will be permanent and the NSW community and our biodiversity will bear the cost.

Reporting of historical development consents by property owners will allow the state and local governments to clearly see the extent of the problem and thus make proactive decisions regarding them and the future development of NSW.

In addition, if local councils fully understand what historical development consents are active in their jurisdictions, they are better able to plan the development of their area (including infrastructure requirements) and to assess the impact of new DAs.

#### **E. Conclusion: Weighing up the costs**

We welcome this NSW Government Inquiry into historical development consents. Our view is that the state government must take responsibility where retrospective changes to development consents are required. It is not a matter for which individual local councils should bear responsibility. This Inquiry is the first step and we expect the state government to make the changes that the community is calling for.

Today's planning laws must apply to all developments and, as well as providing housing and amenity, they should protect people from harm and protect the natural habitats, flora and fauna from which people draw solace, connection and joy.

Knowing what we do about climate change and the perilous state of our environment, the people of NSW should not have to bear the cost of future disaster relief expected to be required as a result of historical development consents, nor the permanent loss of biodiversity they will cause.

Yours sincerely,

William Eger

President, Manyana Matters Environmental Association

30<sup>th</sup> May 2024