

**Submission
No 41**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: VOWW, KKEPS, and EcoNetwork Port Stephens
Date Received: 31 May 2024

Partially
Confidential

NSW Legislative Assembly Committee on Environment and Planning

Zombie Developments Inquiry.

This is a submission on behalf of:

- Voice of Wallalong and Woodville (VOWW)
- EcoNetwork Port Stephens
- Koala Koalition EcoNetwork Port Stephens (KKEPS), all not-for-profit incorporated community organisations representing areas within the Port Stephens LGA.

Thank you for allowing us to contribute to this important environmental and social issue.

There is an increased concern with current flaws in the NSW State Planning Laws regarding 'zombie DAs'. The current policy is that once a development application has been approved the consent is still active. This is even though it has not been acted upon in any meaningful way over a number of years. This must be reviewed, and amendments made to suit contemporary views and conditions.

Our environment is changing rapidly with climate change one of the key factors in determining the health and wellbeing of not only our human population, but also of our flora and fauna. Yet this is not taken into consideration in historical DAs.

Quite often development applications that were approved 5, 10 or even 20-40 years ago, but not acted upon, will have had environmental impact statements that are irrelevant by contemporary standards. When new conservation rules and standards are not applied and conservation status of native flora and fauna do not have to be addressed, the risk to our environmental communities is dire. For example, an original DA for a quarry at Eagleton in the PS LGA, listed the koala as vulnerable but the current listing is endangered. Yet, the historical biodiversity reports are still applicable and being used for the re-establishment of the quarry development.

Community Perceptions.

When historic developments were originally considered, some over 20 years ago, community perceptions regarding the fragility of the natural environment, climate change and the implications of increased housing development, were not fully understood. As a more educated community we have a better understanding of the implications of vegetation and species extinction. Significantly, we are already seeing community backlash and outrage over zombie developments. Through inaction on a DA, existing residents may have forgotten, and newer residents would be unaware of the DA's existence and therefore have had no opportunity to have any input or chance to object. Local councils are bearing the brunt of this anger and concern, yet it is the State and Federal Governments that are responsible for the laws and regulations that are in place, allowing historical developments to progress without further scrutiny.

Our protection laws and scientific understanding of environmental issues have changed and so too have community expectations of government.

Where there may not have been concern for these issues in the past, there certainly are now. Governments and councils need to address these community concerns in a positive way and if need be, amend the laws that still allow these zombie DAs to continue to be enacted.

Cumulative and Combined Impact.

There is a failure to recognise any other development that may have happened in the vicinity of the historic development site. These developments and the resulting infrastructure would not have been foreseen 20 or 30 years ago when the original DA was submitted and approved. Therefore, in the contemporary setting the cumulative impact of developments needs to be addressed.

The impact of the reactivation of zombie developments along the NSW coast shows how big a problem this cumulative impact has become. Residents from Tweed Heads in the north to the Bega Valley in the south and many localities in between are all experiencing the destruction or expected destruction of valuable habitat.

Community concern and outrage are clearly articulated in the local media with numerous protests to highlight the flaws in the current legislation.

An article in "The Echo", an independent newspaper of the North Coast shows the backlash against a zombie DA in Brunswick Heads.

Comments from community members (shown below) express their anger at a flawed system.

... "zombie developments are an ecologically harmful leverage of loopholes in planning legislation, which pushes local populations of threatened species all the way to the edge of their ability to stave off extinction and robs local communities of places they truly value."

... "I was tempted to stay up the tree and risk arrest for doing so, but instead have promised the community that if we get to the point of blockading bulldozers, I will be there with them and will put my body on the line then." – Senator Rice.

... "Zombie DAs are popping up all over our coast."

*... "They are **outdated developments** that have **no social licence, ignore current science, and endanger wildlife by clearing coastal habitat.**"*

And on the issue of zombie DAs, Greens Senator, Ms Faerhmann stated:

"Yes, we need affordable housing, but let's be sensible about this,"

"In these places it is insanity to build hundreds of homes in areas where services are strained, and vulnerable habitat will be destroyed".

*"What I have tried to do is tell the **cumulative impact of these developments** — the real story is told when you look at it altogether."*

At South West Rocks a DA was granted in Feb 1993 with a lapsing date for consent of Feb 1998. However, the LEC ruled that 'soil testing' constituted 'engineering works' and that amounted to 'physical commencement' before the lapsing date. Residents were outraged when clearing of significant coastal habitat commenced in 2023.

The loophole in what is defined as 'work' must be urgently reviewed. Developers are using 'weeding' and installing security fencing as 'work' to keep the DAs live and are thereby able to bring DAs online many years into the future.

Councils are prepared to accept zombie DAs because of the threat of legal action from cashed-up developers who are prepared to continue to appeal should decisions not be favourable to them. The scales are definitely tipped in favour of the developer.

For many years there has been a significant shift in population from the country to the coast. Now, the State Government has made new housing a priority putting more pressure on the biodiversity of the coastal communities without any strategic framework in place. Developers who bought land speculatively many years ago at much cheaper rates than would be possible now, are using the prior development consents to clear huge areas of significant habitat and build more intensive housing estates than were previously possible. No new DAs are needed, no new environmental impact statements and no concern for the impacts of climate change.

In the Port Stephens LGA, the pressure for more housing is compounded with the multiple hard rock and sand quarry developments. Suddenly development consents that have sat idle for many years are being acted upon and this is adding to the loss of valuable habitat for many threatened or endangered species. The loss of habitat cannot continue otherwise all the policies that both State and Federal Governments have will be useless. Zombie developments are part of this mix. And, while ever the government has no strategic plan to address biodiversity and habitat loss for the entire coast, each council area will be independently assessing and approving new DAs and old DAs will start afresh.

Human health and wellbeing is also implicated with habitat loss. For example, bat colonies are constantly being displaced with the destruction of their roosting areas. As a consequence, they move into closer proximity to housing and have the potential to spread viruses which are known to be harmful.

There is one issue that has not been addressed by State Government regulations. That is the cost and imposition to local councils when developers fall into financial difficulties and the project, which was originally approved, then languishes and becomes an eyesore or a danger. The property with the original DA can be sold and will not require any further scrutiny even though years have passed, and the development may no longer be in the best interests of the community or aligns with contemporary council policies. In effect, this is a zombie DA.

A good example of this is a resort development that was proposed on Gan Gan Rd, Anna Bay. This development was approved by Council using the controversial loophole available to build tourist facilities on Rural 1A zoned land. This is a proposal for a major tourist

development on sand dunes with numerous difficulties and risks. However, even after community outrage, the council approved the project. Within a few years difficulties did arise and the developer was no longer in a financial position to continue with the work. The partially developed site has languished since 2013 and has gradually been consumed by the shifting sand dunes and vandalism. It has become an eyesore to the entrance of a significant tourism attraction of Birubi Point and is a zombie DA, not only in an historical sense, but visually.

Below are a number of email interactions between the community group, TRRA (Tomaree Residents and Ratepayers Association) and Port Stephens Council in May 2014.

[REDACTED]

(We note no mention of the changes made to the extremely fragile environment when sand dunes are exposed due to the removal of any vegetation that may have existed.)

[REDACTED]

Now, in 2024, 21 years from the financial difficulties of the first owner and with a new owner, nothing has changed physically on the site other than vandalism and the sand encroachment. In that time, it has become obvious that the site, on sand dunes is not viable or desirable, and yet this DA still stands active. How can this be condoned?

Current NSW planning legislation is failing to protect human communities and our increasingly threatened and vulnerable natural environment. For example, natural disasters or other changes in the local environment may result in development sites having higher biodiversity significance for ecological communities and threatened species than they did at the time the development application was assessed. Habitat destruction is surely the main catalyst for the vulnerability of our fauna and flora and causing species such as the koala to be listed as endangered. Zombie DAs contribute substantially to habitat fragmentation. And, as well as the fragmentation, the cumulative effect of the zombie DAs re-emerging and the new DAs being assessed is not raising alarm bells in any levels of government.

Conclusion.

There must be a balance between the natural and built environment. Without substantial changes to NSW Planning Legislation with respect to zombie DAs, the biodiversity of our natural landscape will suffer with more of our native flora and fauna placed on the endangered listings. As a society we can no longer condone such destruction.

- Zombie DAs older than 5 years should be reassessed and need to comply with contemporary regulations and legislation.
- The terms of actively engaging in 'works' to keep a DA live need to be redefined.
- The cumulative impact of the zombie DA and any subsequent DAs need to be considered.
- The importance of the biodiversity of an area needs to be a priority.
- Government and council policies are full of loopholes and therefore prone to exploitation by developers.
- The requirement for a developer to provide a bond should a project fail, for any number of reasons, must be considered.
- There must be immediate action and we suggest a moratorium on all zombie DAs until the issue is resolved.

Yours faithfully.

Margarete Ritchie (President VOWW)

Carmel Northwood (Convenor KKEPS)

Nigel Waters (EcoNetwork).