

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: CLAI (Community Led Aquisition Initiative) Wallum
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Submission in response to

Inquiry into Historical Development Consents in NSW

3 June 2024

About CLAI

CLAI is an organisation that was born to solve environmental protection which requires purchase of lands that cannot be acquired through any other means than by community driven fundraising and philanthropy. It follows the values and approaches of BioDiversity Legacy and is led by and with First Nations sciences and approaches to the selection of these important ecological corridors, and parcels and areas within the Bundjalung Nation. CLAI was initiated in full consultation with Traditional owners of the Bundjalung Nation and is committed to continuing to work with these lands as they lead their nation in environmental protection and cultural sustenance. The site known as Wallum is the first project for CLAI in the Bundjalung Nation.

For further information on this submission, please contact:

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Submitted to:

NSW Legislative Assembly Committee on Environment and Planning

via online submission portal

CLAI Wallum is committed to support First Nation voices first and we support the submission made by Currie Country Social Change to the Parliamentary Inquiry. We support Wallum community voices, and citizens of Bundjalung Country who have made submissions to the Parliamentary inquiry into Historical Development Consents including the following:

1. Save Wallum
2. Wendy Royston
3. Phoebe Torzillo
4. Sandra Lundbergs
5. Nature Conservation Council NSW
6. Dave Rawlins
7. Friends of the Koala
8. Manyana Matters
9. Yamba CAN

Looking forward to your acknowledgement of our submission.

Regards

Jenelle Bowen
Member
CLAI Wallum

Executive Summary

The revival of historical development consents, known as “zombie DAs,” poses significant risks to ecosystems, living cultural heritage, and increases vulnerability to natural disasters. This submission sets out a proposal to not only address the issues posed by historical development consents but also to actively benefit wetlands, forests, First Nations communities, and disaster-affected communities through culturally and ecologically-sound decision-making.

The proposal involves strategic land acquisition to preserve high cultural and ecological value areas at risk of destruction. The State of NSW would acquire these lands as a strategic investment in disaster resilience, informed by community groups and subject experts, including First Nations experts in land management and ecology.

Introduction

First Nations peoples around the world understand the intrinsic link between people and their environment. Healthy, biodiverse, and resilient Country is central to our ability to flourish. Inappropriate land use and development pose numerous threats, including disruption to communities, exacerbation of social inequality, destruction of cultural heritage, and increased risks of natural disasters. Zombie DAs exemplify these risks by allowing developments that would not be approved under current standards, particularly in disaster-prone areas.

The Problem: Zombie DAs

Development in NSW is governed by the Environmental Planning and Assessment Act 1979 (NSW). Typically, development consents lapse after five years unless “physical commencement” occurs on the site. Minor preparatory work has been sufficient to meet this threshold, allowing inactive development consents to be revived years or decades later. Many

of these developments pose significant environmental threats and would not meet current standards.

The revival of these historical consents has caused considerable community distress, especially in coastal NSW. Communities already rebuilding after fires and floods now face inappropriate development in vulnerable areas, placing additional strain on ecosystems and public resources. From an environmental perspective, these developments threaten endangered species and disrupt ecosystems vital for disaster resilience.

Case Study: Wallum Development

The proposed Wallum development exemplifies these risks. The site contains rare coastal heathland home to endangered species such as the Wallum Sedge Frog, Glossy Black Cockatoo, and Koala. These species have significant totemic associations for First Nations communities. The site is adjacent to Simpsons Creek, connecting to the Brunswick River, and holds numerous cultural and environmental values. Additionally, the site is flood and fire-prone and is likely to suffer inundation according to climate change modeling. Due to its zombie status, the site has not had updated flooding risks assessments nor contemporary ecological or cultural evaluations.

The Wallum development would never be approved under today's standards and does not meet community expectations. It is a mark of shame on NSW that communities are required to fight historical consents that are so clearly and egregiously inappropriate. Existing laws should prevent such developments, but through the zombie loophole, they are progressing.

Community opposition to the development has been strong, with efforts including a four-month, 24/7 watch on the site to prevent clearing. This effort has involved significant personal and financial costs, essentially performing the regulatory and policing work that should be done by the government.

Proposed Solution: Strategic Land Acquisition

Steps for Strategic, Community-Led Land Acquisition

1. **Initial Assessment:**
 - Identify all land currently subject to a “zombie” development consent and assess for ecological and cultural value.
 - High-value parcels of land are referred for further assessment.
2. **State or Regional Assessment:**
 - Elevate suitable parcels to State or regional assessment processes to ensure disaster-resilience strategies are strategic and visible.
3. **Land Rating for Acquisition:**
 - A panel of community and subject experts, such as CLAI, assesses land parcels for acquisition based on criteria such as size, market value, condition, ecological value, cultural value, and disaster resilience.
4. **Purchase of Land:**
 - The State of NSW acquires the land using funds from the Commonwealth's Disaster Ready Fund, other appropriate funding avenues, or public/private partnerships
5. **Active Management and Restoration:**
 - Acquired land is managed, protected, and restored to enhance ecological and cultural values.

Criteria for Assessment

- **Size of the Block of Land**
- **Market Value**
- **Condition and Ecological Value**
- **Cultural Value**
- **Disaster Resilience**

Nature-Based Solutions for Disaster Mitigation

Nature-based strategies, such as protecting coastal wetlands and forests, are internationally recognized as best practice for flood prevention and disaster resilience. They offer cost-effective, multi-benefit solutions compared to conventional engineering projects.

Community-Led Process

Communities and First Nations experts must be involved in decisions affecting them. The assessment and ranking processes will be informed by community groups and subject experts, ensuring that land acquisition decisions are First Nations and community-led and not developer-driven.

First Nations Knowledge

First Nations expertise is essential for identifying totemic associations and determining cultural significance. Each Aboriginal Nation has its own totems, stories, and traditions linked to their land. CLAI, representing the Bundjalung Nation, will provide input on land in northern NSW that is either on Bundjalung country or linked to it through totems.

Strategic Visibility and Direction

A strategic, State- or regionally-significant development approach is necessary to ensure the protection of critical habitat and ecosystems. Land subject to zombie DAs that is determined to be of high value should be recorded on a central register with a mapping function to facilitate strategic decisions.

Funding and Land Acquisition

The State will use the Just Terms Act 1991 (NSW) to purchase land with funds from the Disaster Ready Fund (DRF). The DRF supports projects that reduce disaster risk and enhance community resilience. Strategic land acquisition for flood prevention and mitigation would be eligible for DRF funding.

Partnerships for Mapping and Protection

CLAI and groups like ours should be consulted by government agencies, NGOs, and philanthropic groups to map lands required to protect biodiversity, ensure climate resilience, and safeguard cultural heritage. This process will be conducted in consultation with Traditional Owners, First Nations groups, and ecologists. CLAI will operate as a company limited by guarantee, ensuring it remains independent and community-driven to maintain the integrity of its processes.

Land Banking for Ecological and Cultural Benefit

This approach can be likened to land banking, but instead of being for profit, it is for ecological and cultural benefit. The value of these lands will not diminish; instead, it will grow as our communities face ongoing challenges due to increasing disasters and climate change. By investing in these lands now, we are future-proofing our environment and heritage for the generations to come.

Nature Repair Market

The State can also utilize the emerging nature repair market to restore their costs by properly attributing value to the biodiversity and natural services of wetlands, habitat, and forests as financial assets. This may recoup some costs of acquisition, making the proposal not only environmentally and culturally beneficial but also financially sustainable.

Conclusion

The proposal provides a holistic approach to address the problem of zombie DAs. By adopting this forward-thinking strategy, we can ensure resilient ecosystems and communities. We urge the Committee to consider this proactive approach to nature restoration.

For further information or questions on this submission, please contact:

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We look forward to the Committee's acknowledgment of our submission.

Regards,

Jenelle Bowen

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