

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Culburra Residents and Ratepayers Action Group
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CULBURRA RESIDENTS AND RATEPAYERS ACTION GROUP INCORPORATED

31st May, 2024

Historical Development Consents in NSW Inquiry Committee
NSW Legislative Assembly
Parliament of NSW
6 Macquarie St
Sydney NSW 2000

Inquiry into the impact of historical development consents on the NSW planning system, development industry and property ownership

The Culburra Resident and Ratepayers Action Group believes the impact of historical development consents on the NSW planning system is detrimental and significant. If not managed urgently and effectively, these outdated developments will create and exacerbate problems for generations to come.

It is the role and duty of the NSW planning system to balance short and long-term social, environmental and economic objectives for an area and the primary issue with 'zombie' developments is that these developments do not take into account recent changes to planning and environmental standards, and to expectations of the community.

Given the Federal Court's 2019 decision that the government has a duty of care to protect young people from the climate crisis - a point that is extremely pertinent in the planning and development arena - we believe it is of critical importance to legislate urgently to prevent historical development consents from having an irreversible detrimental effect.

We see two types of 'zombie developments':

1. Historical development consents where that consent was given many years - often decades - ago, and are no longer in step with society's rapidly changing social, cultural and environmental circumstances and planning laws; and,
2. Historical developments where the land was rezoned many years ago and developers are now seeking approval for DAs based on this rezoning, despite the aforementioned changes.

Zombie developments in Culburra Beach

Lot 1, East Crescent, Culburra Beach

Lot 1, East Crescent in Culburra Beach is an example of a 24-lot subdivision that is currently moving forward because it is subject to an historical development consent. This development site is on the banks of Lake Wollumboola, at sea level beside a lake that opens intermittently to the Pacific Ocean.

The proponent's initial application to develop this land dates back to 1979 with a DA to build a caravan park. The current DA for the 24-lot subdivision dates back to 2006. In 2018 application was made for modifications to the existing consent, without taking into account the following environmental factors:

- impacts on the flora and fauna of the site, Lake Wollumboola and adjacent Sheepwash Creek
- potential for flooding of properties
- cumulative impacts on the water quality and ecology of Lake Wollumboola from ground and surface water pollution
- cumulative impact of increased medium-density development in the catchment of Sheepwash Creek

Less than a month ago, after an extreme weather event the partly-cleared site experienced a level of flooding that would put the ground floor of any houses built there underwater. This is a clear example of how changed weather patterns and the increasing frequency of extreme weather events in our region have made this particular 'zombie' housing development entirely inappropriate. The cost to prospective home buyers will undoubtedly be high when it comes to insuring a property built on a site that is known to be flood-prone.



Lot 1 East Crescent flood May 2024.



Building homes at sea level on the banks of this environmentally sensitive waterway is completely at odds with:

- The State's regional strategy goals to preserve the region's natural beauty
- Society's current knowledge and understanding of extreme weather events
- Expected sea level rises and the future burden facing coastal locations to retreat or defend
- The future burden on families purchasing these properties with respect to insurance on low-lying, flood-prone homes.

In addition, since 2020, the cultural significance of this site to the local Jerrinja people has been proven without a shadow of a doubt. The Jerrinja Aboriginal community has always had a powerful cultural connection with this land and describes how its abundance of food sources and natural resources made it a significant meeting and gathering place for their people.

During a recent clearing and excavation of one-third of the site, over 19,000 artefacts of importance to the Jerrinja people were discovered, scientifically proving the significance of the site and the Jerrinja people's direct and long-term connection to it through genealogy. The destruction of such a significant area is detrimental to the preservation of Australia's invaluable cultural heritage and the nation's healing process.

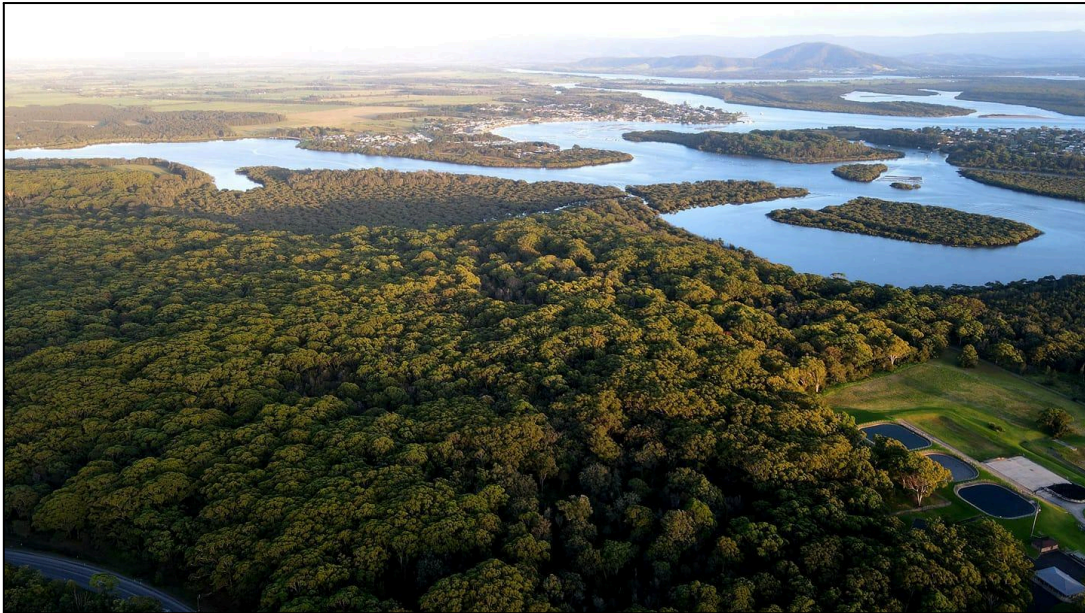
The fact that this development is progressing in spite of these recent discoveries highlights the urgency of freezing such 'zombie developments' until legislation around these consents is reassessed.

Landholdings West of Culburra

There are a further two proposed land developments in Culburra Beach dating back to the 1980's which are still in the planning system because the developer has been able to take advantage of weaknesses and loopholes in state planning legislation.

A) The West Culburra Development - a proposed 47Ha subdivision on the outskirts of our village which sits between the sensitive waterway of the Crookhaven River, the environmentally sensitive Lake Wollumboola and on a site currently forested by native bushland unburnt by the 2020 bushfires. It constitutes one of many tracts of land owned by the Halloran Trust. The West Culburra concept plan currently has approval with conditions, despite the fact that, like Lot 1 East Crescent, the site is on the banks of a sensitive waterway, has cultural significance for the Jerrinja community, is flood-prone, and is suitable habitat to endangered species.





West Culburra proposed development site

The Shoalhaven has regional planning documents to guide and direct future growth, but historical development consents and proposed concept plans don't appear to be required to meet these goals to be given the go-ahead. Instead, to accommodate the interests of developers, the processes are manipulated and escalated allowing developers to push on with environmentally destructive plans. To add insult to injury, these destructive plans are being promoted as a solution to the housing crisis.

However, a solution that creates future problems is no solution at all.

A solution to the housing crisis must put the community in a stronger position for the future ... one that follows the regional strategy guidelines to deliver a healthy, sustainable, and economically sensible living environment for the region's future.

The two guiding documents for the growth of the Shoalhaven region are the 'South Coast Regional Strategy 2006-31' and the 'Illawarra-Shoalhaven Regional Plan 2041':

- the South Coast Regional Strategy warns against tacking housing estates onto smaller villages like Culburra because these villages don't have the infrastructure or employment opportunities to support this housing, and recommends against land rezonings for housing, stating there is ample already zoned land available in the region for housing. And yet, despite West Culburra going against each of these recommendations, the development is still pushing forward. Why?
- The Illawarra-Shoalhaven Regional Plan 2041 recognises that the successful future of the region relies on protecting the scenic, non-urban spaces in between population centres. The Plan *"promotes the retention of existing scenic and natural areas, and seeks to protect them through an urban growth boundary. This will be maintained by land use zones that do not permit urban uses or intensive subdivision, and will ensure that existing centres, not identified as growth areas, do not expand into the surrounding, non-urban hinterlands"*.



The West Culburra development does not meet these directives. This subdivision will destroy 47 hectares of the environmentally sensitive natural beauty that gives this village its unique character. And, because decisions for West Culburra will 'inform' land zonings for the adjoining 'deferred matter' land to the west of West Culburra, this will impact hundreds more hectares in the future.

In addition to being so out of date as to not meet the requirements of the region's current planning strategies, the proposed West Culburra development also breaches current environmental standards. For example, the protection of greater glider habitat.

The greater glider was declared endangered in 2022 and the Department of Climate Change, Energy, the Environment and Water's (DCCEEW's) 2022 advice on the species is that: *"irrespective of the current abundance or density of greater gliders or the perceived quality of the site ... forest areas currently unoccupied by the greater glider (southern and central) may still represent habitat critical to survival, if the recruitment of hollow-bearing trees as the forest ages could allow the species to colonise these areas and ensure persistence of a subpopulation"*.

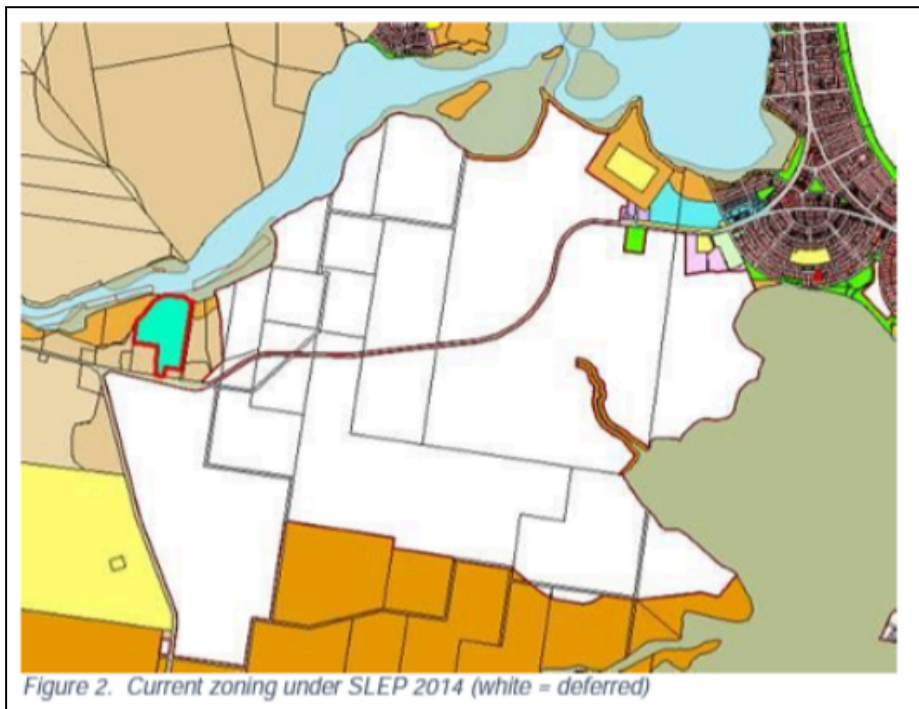
With respect to the West Culburra site, the environmental consulting company Eco Logical Australia, responsible for the environmental studies for the developer Sealark, states in their EPBC Act application on p 54: *"The proposed action would remove 38.14 ha of habitat critical to the survival of the Greater Glider. This critical habitat is not currently utilised by the species and does not contain potential foraging or breeding habitat for the species."*

So, current environmental understanding requires even potential greater glider habitat to be protected, the developer acknowledges the site is greater glider habitat and that 38Ha of this critical habitat will be destroyed ... and yet the proposed zombie development is still seeking approval to continue. State planning must take responsibility and exercise its duty of care to ensure this sort of environmental destruction is not allowed to come to fruition.

B) The land west of West Culburra - historically known as PP006. This predominantly forested land was originally rural/environmental zoning in the SLEP1985. The land has been 'deferred matter' since the second draft of the SLEP2014 when the developer sidestepped local council planning advice at the time of the first draft, in 2011, to zone the land *"a combination of environmental protection and rural landscape under the exhibited draft LEP to implement the requirements of the South Coast Regional Strategy and Sensitive Urban Lands Review Panel recommendations for the site"* (Planning Team Report B, p 12).

The developer Halloran, via Realty Realisations, went directly to the then Planning Minister to have a decision made that better suited his needs. The land became 'deferred' in anticipation of the submission of a master plan. It remains deferred today despite there being no current concept plan (PP006 was terminated by the Federal government in December 2020). The status of this land in terms of the owner's ability to develop it is currently unclear to the public. This lack of transparency is clearly problematic.





Shoalhaven City Council diagram of the deferred matter land (image source SCC submission to LEC Hearing, May 2021, p6)

So, we see a NSW Planning system where the 'theory' is in place, but it is not translating into practice at ground level. With respect to all three developments in Culburra Beach - East Crescent, West Culburra and the deferred matter land west of West Culburra - there have been multiple pivot points where the government has attempted to enforce decisions to follow guiding strategies for the region, but the system enables developers to sidestep and push forward. These are classic examples of where planning processes from the last century, which are not relevant to the current community's values or 21st-century environmental needs, are continuing to be forced through by loopholes exploited by developers and a legislative system unable to change course to keep abreast of changing societal needs.

Culburra Beach is but one example of the impact historical development consents will have in de-railing planning strategies for a sustainable and economically successful future for New South Wales. Similar zombie developments are occurring up and down the coast of Australia. The cumulative impact and destruction to the environment and threatened species is going to be enormous and must be recognised. Zombie developments need to be managed proactively and urgently. The impacts are irreversible.



Recommendations

CRRAG recommends the following action be taken on zombie developments:

1. A time limit be put on historical development consents so that they must be carried out by a fixed date.
2. Be reassessed to adhere to updated regional strategy plans.
3. Revoke historical development consents that do not meet current planning and development standards, particularly on land that could become prone to flood, fire and soil erosion.
4. Reassess zombie developments that pose a significant threat to the environment, habit and Indigenous cultural heritage.
5. Require ongoing monitoring and independent assessments of the impacts of the development as a condition of the DA.
6. Allow for reconsideration of lands that are high risk for residential development with appropriate compensation available for public acquisition. The unimproved capital value of the property should be the benchmark for compensation, not its improved value based on an approved DA.
7. When there is a proposed change to planning controls, consider whether there are any consents which should be revoked or modified in light of these changes.
8. Ensure DAs clearly state what is being approved, so that any further works outside the scope of the consent can be easily identified as requiring separate approval, particularly with respect to vegetation and species of tree removal and habitat destruction.

Thank you for the opportunity to make this submission. We look forward to seeing reforms that will ensure a more positive and sustainable future for us all.

Yours sincerely,

Culburra Residents & Ratepayers Action Group Committee

[Redacted Signature]