

**Submission
No 65**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Nature Conservation Council of NSW
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Nature Conservation Council

The voice for nature in NSW

3rd June 2024

Legislative Assembly Committee on Environment and Planning
NSW Parliament House
Macquarie Street
Sydney NSW 2000

Submitted via online form.

To whom it may concern,

Submission to the Inquiry into Historical Development Consents in NSW

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 200 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NCC is deeply concerned by the cumulative harms that historical development consents are inflicting on NSW's natural environment and communities.

NSW's planning frameworks are failing to address the biodiversity crisis. Many historically approved developments are being allowed to proceed despite not satisfying even the most basic contemporary planning controls.

Right now, our planning system is allowing developers to 'bank' project sites with approvals granted decades ago. These approvals are validating development projects that bypass even the most basic requirements Australians expect all new projects to meet.

Pending developments would clear swathes of threatened species habitat, increasing the likelihood of species such as the powerful owl, greater glider, and wallum sedge frog becoming extinct.

Immediate action is required to prevent further losses to critical habitat and avoid exacerbating natural hazard risks to impacted communities.

Australia is the world leader for mammal extinctions, and half of NSW's threatened wildlife is projected to be driven to extinction within a century¹.

If NSW is to avert further extinctions and become a leader in halting and reversing biodiversity loss and ecosystem collapse, then projects that exacerbate this downwards trajectory must be stopped.

This means crucial habitat such as at Manyana, Brunswick Heads and Tura Beach must remain off-limits to development, including where zoned or approved under obsolete planning regimes.

Residents should not be put at increased risk from natural hazards due to planning failures.

Communities such as at Yamba, Tweed Heads and South West Rocks have voiced strong concerns about increased flood and bushfire risks due to historical development consents. The impacts of these disasters are projected to increase with climate change, which was not considered in past planning frameworks.



Nature Conservation Council of NSW

GPO Box 2246 SYDNEY NSW 2001

www.nature.org.au

ABN 96 716 360 601



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NCC's recent petition calling for action on 'zombie DAs' has attracted over 1,600 signatures thus far. This augments many thousands more who have signed petitions from local community groups and the Coastal Residents United Alliance. It is clear that communities feel failed by the planning system and are passionate about resolving this issue.

The NSW Government must ensure all historically approved developments meet modern planning requirements and procedures at a minimum. A legislative mechanism should be introduced by which councils and the state government can require reassessment where the situation has changed since approvals were granted.

Such a move would not threaten property rights, as may be suggested by vested interests. Rather, it would ensure all new developments meet the same basic requirements as one another. Australians expect natural hazard risks and unnecessary biodiversity loss to be prevented by our planning controls. This is what our planning system should be designed to do. The reforms proposed as recommendations in this submission are required to ensure all developments are treated equally, to curtail these public harms.

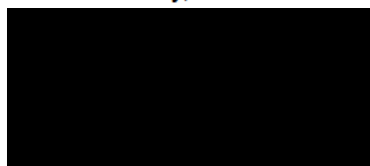
NCC recognises the urgency of NSW's housing crisis and understands new housing stock is required, particularly through sensitive, climate adapted urban densification and developing existing brownfield sites. However, building housing for the NSW community should not come with the unacceptable consequences of increased hazard risk and environmental destruction. The housing and biodiversity crises can be tackled simultaneously, and solutions for one need not worsen the other. The first step is ensuring all new developments are subject to contemporary and enhanced planning requirements that consider our changing climate.

NCC has outlined our recommendations below, to prevent further harms to the environment and communities from these planning loopholes. However, we maintain that a thorough overhaul of NSW's environmental and planning laws is required to fully address the extent of the state's biodiversity crisis.

Thank you for the opportunity to take part in this consultation.

Your key contact point for further questions and correspondence is Sam Johnson, available via sjohnson@nature.org.au and 02 9516 1488. We welcome further conversation on this matter.

Yours sincerely,



Jacqui Mumford
Chief Executive Officer
Nature Conservation Council of NSW

ⁱ<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/Biodiversity-Indicator-Program/nsw-biodiversity-outlook-report-2024-240126.pdf>



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Recommendations:

1. That the NSW Government undertakes a comprehensive investigation to identify and make public all remaining, actionable historical development consents.
2. That the NSW Government introduce a trigger in the *Environmental Planning and Assessment Act* (1979) that enables reassessment of developments where they would have a substantially greater impact than was identified at the time of initial assessment, or where the circumstances in which their approval was granted have changed substantially.
3. That the NSW Government utilise this trigger to enforce reassessments of historical development consents, where proposed in areas containing or adjacent to:
 - Threatened ecological communities as listed under the *Biodiversity Conservation Act 2016* (NSW) or *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).
 - Known habitat of threatened species, as listed under the *Biodiversity Conservation Act 2016* (NSW) or *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).
 - Land identified as bushfire prone, where the requirements of 'Planning for Bush Fire Protection' (2019) and AS3959-2018 cannot be met.
 - Land at high risk from sea level rise and/or flooding, including where modern flood-related development controls would otherwise apply as outlined in 'Considering flooding in land use planning guidelines' (2021), as well as the coastal zone as defined in the *Coastal Management Act 2016* (NSW).
 - Areas of Outstanding Biodiversity Value (AOBVs) as defined under the *Biodiversity Conservation Act 2016* (NSW).
4. Councils must be afforded adequate financial and legislative protections that allow them to challenge inappropriate and environmentally damaging developments, including those inconsistent with the recommended new trigger in the *Environmental Planning and Assessment Act* (1979), to counteract the disincentive of potentially significant financial losses, such as legal fees.
5. Strengthened physical commencement requirements, or other legislative mechanisms, should be explored to ensure future development approvals cannot remain active in perpetuity, unless they remain compatible with future planning regime reforms.
6. The NSW Government implement the recommendations of the report of the Independent Review of the Biodiversity Conservation Act, particularly pertaining to giving primacy to biodiversity considerations and a Nature Positive objective in the *Environmental Planning and Assessment Act 1979*, and intersecting Acts.



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