Submission No 80

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Bega Valley Shire Council

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Legislative Assembly Committee on Environment and Planning
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Dear Sir/Madam

Inquiry submission – Historical development consents in NSW

Thank you for the opportunity to provide input into the Inquiry on historical development consents in New South Wales. Bega Valley Shire Council recognises that historical development consents have long existed in the NSW planning framework and are not a new occurrence in planning terms. However, we acknowledge that the expectations of communities, particularly in relation to biodiversity conservation and appropriate responses to the impacts of climate change including planning for hazards, have shifted over time. Environmental regulations for development have also changed extensively over the years to balance the demand for land with the protection of natural assets. Additionally, the legislative framework that supports councils' contemporary planning decisions can be significantly different to that which existed at the original approval date for many of these historical consents.

There are numerous examples of historical subdivision development consents throughout the Bega Valley, most notably at Mirador but also in several other locations, some of which achieved commencement through very minimal means under the physical commencement test. Some information on the range of historical consents in residential areas throughout the Bega Valley Local Government Area is available at Item 15.2 here: Agenda of Council - 19 October 2022 (infocouncil.biz)

Also worth noting was the impact of the introduction of the State Environmental Planning Policy (Rural Lands) in 2008 (now repealed) which saw concessional allotment subdivisions being extinguished. This resulted in an influx of concessional lot subdivisions (small lots interspersed with larger rural lots) within the Bega Valley immediately prior to the gazettal of the SEPP. Many of those consents went on to achieve commencement but remain incomplete, likely due to a range of reasons such as farm succession planning considerations, market demand, development economics, etc.

It is worth noting there is a substantial difference between a historical consent that has not been acted on, other than the minimum to achieve physical commencement, to one that has been progressively developed in stages over many years.

It is acknowledged that the changes to Section 96 of the Environmental Planning and Assessment Regulation 2021 work to define more clearly activities that cannot be deemed physical commencement, noting those provisions do not apply to development consents granted before 15 May 2020. It is submitted that consideration should be given to further strengthening of the Act and associated Regulation by requiring developments to 'substantially' commence, and establishing a very clear framework around how that is defined and achieved.

It is also noted that while there is scope with the existing legislation to revoke or modify development consents, there are also the resulting compensation requirements which local government would rarely, if ever, be financially placed to initiate. In effect, this means the relevant clause in the legislation is theoretical only and does not provide a practical or viable means for a local government to modify or revoke a consent.

The establishment of a state led and funded property acquisition fund to enable consent authorities to revoke historical consents on properties with high exposure to flood, bushfire and coastal hazards and/or within area of high biodiversity values may provide some scope for high risk / high value sites to be acquired from existing landowners to be returned to the Crown or Parks estate. However, this would need careful consideration regarding when and how this would be utilised to ensure it applies to areas with high biodiversity values or risk, rather than situations where neighbouring properties/communities are seeking to retain a more natural setting for their own, previously developed properties.

There is also scope within the existing legislation to require that works are completed within a defined period from the date of approval. Any proposed timeframe should balance the developer's need for certainty with the public interest matters of safety and biodiversity conservation in the context of climate change. Further, it is recommended that an evidence base be compiled that considers whether the existing legislative environment is contributing to land banking and speculative investment. Where there is no urgency or requirement to move ahead with land development, market participation is broadened to include speculative investors who are not constrained by the economics of development, possibly resulting in higher land prices and land banking.

Councils have historically planned for residential land supply for their communities by zoning land to residential. It becomes difficult for councils to plan for residential land supply (and other authorities to plan for and invest in supporting infrastructure) when land sits in private ownership, approved for subdivision, but remains undeveloped.

Bega Valley Shire Council strongly recommends that the framework for the lapsing of development consents is reviewed with the objective of ensuring that new development is appropriately located, threatened species are adequately protected, and natural hazards are assessed in contemporary terms and residential zoned land is developed and brought to market in a reasonable timeframe, particularly in staged developments and development applications where works have commenced but are not yet completed.

However, any changes need to balance biodiversity and hazards with housing need, and ensure any changes or levers do not have unintended or disproportional consequences for housing development into the future. High infrastructure costs—particularly in regional areas with constrained land and where populations are dispersed across multiple towns and villages—biodiversity offsets costs and escalating development costs in general are also key factors that can delay development for many years, which can then have unintended flow on effects.

It is also worth noting the inconsistencies between federal and state legislation. For example, in some cases such as Mirador, historic development consents are still valid and able to acted on under state legislation, however federal biodiversity legislation adds another layer of complexity and may make the development unviable. This tension and inconsistency between the two levels of legislation creates uncertainty for developers and significant confusion and unrest in the community.

Thank you again for the opportunity to provide feedback into the review of historical development consents in NSW. Should the Committee require additional information, I can be contacted on [redacted] or via email [redacted]

Yours sincerely

[redacted]

Emily Harrison
Director Community, Environment and Planning