Submission No 81

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Environmental Defenders Office

Date Received: 7 June 2024

Environmental Defenders Office

Submission to the Inquiry into Historical development consents in NSW

7 June 2024

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

Legislative Assembly Committee on Environment and Planning
Legislative Council
NSW Parliament
By email: environmentplanning@parliament.nsw.gov.au

For further information on this submission, please contact:

Rachel Walmsley
Head of Policy and Law Reform
[redacted]

Rachael Chick
Senior Solicitor
[redacted]

Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Executive Summary

Historical development consents, or 'zombie' developments are development consents granted many years and sometimes decades ago under previous planning controls which had not been substantively acted on by proponents but which nonetheless remain on foot.

There are a number of problematic provisions in the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) and other planning and environment regulations and instruments that mean these historical developments are able to proceed, under outdated and inappropriate planning controls and with minimal or outdated impact assessment, regardless of how much the planning and environmental circumstances have changed since the time of the original approval.

These include:

- Current EP&A Act provisions that allow development consents, once "physically commenced" (which is interpreted very broadly), to remain on foot indefinitely;
- there is nothing in the planning legislative framework that applies modern planning controls to previously granted consents or triggers updated assessments or conditions, regardless of the change in the social or environmental circumstances since the consent was granted;
- consent authorities do not currently have the power to require developments to meet modern controls or provide current impact assessments; and
- transitional provisions of long-repealed legislative regimes (such as the controversial Part 3A of the EP&A Act) keep those repealed regimes live for certain developments indefinitely.

These issues put people and ecosystems at risk, undermine public confidence in the planning system, and frustrate strategic planning objectives. EDO is grateful for the opportunity to make recommendations to address these serious issues, as summarised below.

Summary of Recommendations

Revise s 4.53 of the EP&A Act which deals with the lapsing of consents, to require substantive work to have been undertaken in a specified amount of time to avoid the consent lapsing. This amendment should apply to all development consents, regardless of when consent was granted. Further, development should be required to be completed within a specified timeframe and if not completed within the specified timeframe, be subject to further environmental assessment.

Revise s 4.57 of the EP&A Act to provide a broad legislative mechanism to suspend, revoke or vary any development consent, including in relation to development consents issued under repealed statutes, to ensure that development consents comply with the environmental assessment requirements under current Acts and instruments.

Revise s 4.57 of the EP&A Act to require reassessment of impacts where activities would have a substantially greater impact than those identified at the time of the action's approval, and to provide for any variation, suspension or revocation of consent considered necessary in light of the reassessment.

Remove the application of Part 3A to "transitional part 3A projects".

Repeal cl 34A of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (**BC Savings and Transition Reg)** and revise Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW) to require that development applications lodged under a concept plan approved under Part 3A are assessed under the current environmental and planning legislation and instruments.

Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the impact of historical development consents on the NSW planning system.

EDO is a community legal centre specialising in environmental and planning law and has over 30 years of experience assisting the community with NSW planning laws.

Over the past 3 years EDO has received an increasing number of inquiries from communities concerned about historical development consents that have been seemingly raised from the dead. These historical developments are development consents granted many years and sometimes decades ago under previous planning controls which had not been acted on by proponents, but which nonetheless remain on foot.

Crucially, the EP&A Act does not contain mechanisms to ensure that these historical developments are required to meet modern planning controls. There is very little that consent authorities can do to ensure the developments remain fit for purpose without the consent of the relevant proponent, which in our experience is rarely provided.

The assessment and approval framework under which many of these historical developments are being considered is very complex, involving the application of a number of savings or transitional provisions in regulations. This complex system acts as a barrier to community understanding of and participation in decision making processes.

The significant problems in the planning system undermines strategic planning, encourages land-banking, puts our precious and threatened ecosystems and species at risk. It also places communities at greater risk of harm from hazards such as bushfires and flooding. EDO has raised these issues in previous law reform submissions and reports,[1] and reiterates the necessity of legislative reform to address this.

[1] See, for example, our 2017 Submission on the draft Environmental Planning and Assessment Amendment Bill 2017, available at https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/3657/attachments/original/1488778490/Planning_Reform_Bill_2017_EDO_NSW_submission_Mar2017.pdf?1488778490; and our November 2022 report Wildlife can't wait: Ensuring timely protection of our threatened biodiversity, available at https://www.edo.org.au/wp-content/uploads/2022/12/EDO-Wildlife-cant-wait.pdf

The planning system allows for development consents to remain on foot and incomplete indefinitely.

There is no legal definition of an historical development consent, which may also be referred to as a legacy or 'zombie' development. For the purposes of this submission, we will use the term **historical development**. Historical development is a term used to describe a development, frequently for residential subdivision and housing, that was given development consent years ago, was not constructed, but which is not considered to have lapsed, and could therefore still be acted on many years after it was assessed and approved.

Historical developments include development consents granted under Part 4 of the EP&A Act along with development applications lodged under concept plans approved under the now repealed Part 3A of the EP&A Act.

The number and location of these historical development consents is presently unknown.

Increasing demand for housing and rising property values has seen a number of these historical developments re-enlivened, particularly in regional coastal areas. Local communities are concerned about these historical developments as they have not been assessed in accordance with, or subject to conditions or other requirements under current planning and environmental controls, even where the environmental circumstances of the site and its significance may have changed significantly.

The EP&A Act provides that a development consent will generally lapse 5 years from the date from which it operates.[2] However, if building, engineering or construction work relating to the development is "physically commenced" on the site to which the consent applies prior to the date on which the consent would otherwise lapse, then the consent does not lapse.[3]

Physical commencement

The type of building, engineering or construction work which would satisfy the requirement for physical commencement is not set out in the EP&A Act.

Courts have held that physical commencement is a question of fact that will turn on the circumstances of each development.[4] This has been interpreted increasingly broadly. Examples of the type of work that the court has accepted as physical commencement include:

- Survey work[5]
- Soil testing[6]
- Clearing of vegetation[7]

The interpretation of physical commencement has been amended, by cl 96 of the *Environmental Planning and Assessment Regulation Act 2021* NSW (**EP&A Regulation 2021**), to exclude some of the types of minor work that the Court had previously accepted. This includes such things as creating a

[2] EP&A Act, s 4.53.
[3] EP&A Act, s 4.53(4).
[4] *Hunter Development Brokerage Pty Limited v Cessnock City Council* [2005] NSWCA 169
[5] *Hunter Development Brokerage Pty Limited v Cessnock City Council* [2005] NSWCA 169
[6] *2 Phillip Rise Pty Ltd v Kempsey Shire Council (No 2)* [2023] NSWLEC 28
[7] *Cando Management and Maintenance Pty Ltd v Cumberland Council* [2019] NSWCA 26

bore hole or removing soil for testing, carrying out survey work or removing vegetation as an ancillary activity.

However, this minor amendment explicitly only applies to development consents granted after 15 May 2020, and therefore **not** to historical development consents. Development consents granted before 15 May 2020 remain subject to the broader interpretation of physical commencement previously held by the Courts.

If physical commencement has occurred, a development consent remains live in perpetuity and can be acted on -under the planning controls extant at the time of approval, no matter how outdated or inappropriate for changed circumstances- at any time and even when ownership of the site changes.

Recommendation:

Revise Div 4.9 of the EP&A Act (Post Consent Provisions), in particular s 4.53 (lapsing of consent). The Courts have interpreted 'building, engineering or construction work' very broadly. This provision should be tightened to require more substantive work to have been undertaken in a certain amount of time to avoid the consent lapsing. This amendment should apply to all development consents, regardless of when consent was granted. Further, development should be required to be completed within a specified timeframe and if not completed be subject to further environmental assessment.

Case study: South West Rocks, broad interpretation of physical commencement

In this matter there was a dispute as to whether physical commencement on the site had occurred. Kempsey Shire Council refused to issue a Construction Certificate to the applicant on the basis the development consent **which was granted in 1993** had lapsed due to works not being commenced within the required time frame.

The applicant contended that borehole drilling and testing of extracted material (**the works**) undertaken by a third party, Caltex, in 1994 was in accordance with a condition of the consent which required acid soil testing on the site. The works were undertaken across a larger area of land which included the development site.

In the first instance the Land and Environment Court was not satisfied the works were undertaken for the purposes of complying with the consent condition and concluded that the development consent had lapsed.

However, in March 2023, in *2 Phillip Rise Pty Ltd v Kempsey Shire Council* [2023] NSWLEC 28, the Land and Environment Court upheld an appeal by the Applicant and found that the development consent had not lapsed, because the works (i.e. borehole drilling and testing of extracted material) constituted physical commencement for the purpose of the EP&A Act.

The case is illustrative of the broad manner in which the Land and Environment Court interpreted the requirement for physical commencement and highlights the need for legislative intervention to ensure that physical commencement requirements are clearly expressed and require substantive works that relate directly to the development.

Part 3A Concept Plans and historical developments

In some cases, an historical development may relate to a development application lodged in accordance with a Concept Plan which was approved under Part 3A of the EP&A Act. Whilst Part 3A was repealed in 2011, transitional provisions are still in force under the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW). These transitional provisions provide that Part 3A of the EP&A Act continues to apply to any "transitional Part 3A project"[8] which includes a project that is the subject of an approved concept plan (whether approved before or after the repeal of Part 3A).[9]

However, where there is a concept plan approved under Part 3A, subsequent development applications are not approved under Part 3A.[10] Where a determination has not been made in relation to the project the subject of a Part 3A concept plan approval, or any stage of the project as is usually the case with historical developments, the project will be assessed under Part 4 of the EP&A Act.[11]

Where this is the case, any development is taken to be development that may be carried out with development consent under Part 4 of the EP&A Act, even if such development would no longer be permissible under an Environmental Planning Instrument (**EPI**), such as the Local Environment Plan.[12] Any provisions of an EPI or a Development Control Plan do not have effect to the extent they are inconsistent with the terms of the approval of the concept plan.[13]

Not consistent with strategic planning principles

This removes the ability of land use planners to ensure that development remains fit for purpose and meets the current and future, as opposed to past, social and economic needs of the community. Historical developments are frequently located on greenfield sites on the fringes of coastal towns in regional communities and do not align with current government policy seeking well placed, affordable housing close to transport hubs and other infrastructure.

---

[8] Clause 3(1) of Schedule 2 *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW).
[9] Clause 2 of Schedule 2 *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW).
[10] Clause 3A of Schedule 2 *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW).
[11] Clauses 3A(1)(a) and 3B(3) of Schedule 2 *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW).
[12] Clause 3B of Schedule 2 *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW).
[13] Clause 3B(2)(f) of Schedule 2 *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW). However, subclause 3B (2)(f) does not apply to the provisions of *State and Environmental Planning Policy (Transport and Infrastructure) 2021*, Chapter 6 (see clause 3B(2)(5A)).

Complexity of the transitional framework is prohibitive for communities and consent authorities

The existing framework for the assessment and approval of historical development applications lodged under a Part 3A approved concept plan is highly convoluted and complex, rendering it difficult for all stakeholders, including the proponents, consent authorities and concerned community members to have a clear understanding of the assessment pathways. This is a barrier to transparent decision making, public participation, and compliance and enforcement activities. It is also time and resource intensive for all involved in the process, especially consent authorities, due to the need for legal advice and conflicting interpretations of requirements.

The provisions preserving Part 3A "transitional" arrangements, in particular with respect to concept plans, must be repealed. There is no basis on which these arrangements should remain in place 13 years after the repeal of the controversial Part 3A, effectively extending its operation.

Recommendation:

Remove the application of Part 3A to "transitional part 3A projects".

Revise Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW) to require that development applications lodged under a concept plan approved under Part 3A are assessed under the current environmental and planning legislation and instruments.

Biodiversity legislation transitional arrangements

Historical developments, assessed and approved under repealed legislation, including Part 3A of the EPA Act and the *Threatened Species Conservation Act (1995)* (**TSC Act**), may not be required to comply with current planning and environmental controls

Under the *Biodiversity Conservation (Savings and Transitional) Regulation (2017)* (**BC Savings and Transitional Reg**) a proponent could seek a Clause 34A certificate which recognizes past biodiversity impact assessment and offsetting arrangements secured as part of a concept plan approval or a relevant planning arrangement.[14]

Clause 34A(5) of the BC Savings and Transitional Reg provides that all or any pending or future development applications that are part of a specified concept plan approval or relevant planning arrangement may be certified under that clause. Even where the circumstances for biodiversity in which the consent was granted have substantially changed, for example development in areas that have been the subject of major bushfires or flooding.

Where a Clause 34A Certificate is in place, biodiversity impacts of the development application are taken to have been assessed under the former provisions of the EP&A Act as well as now repealed legislation such as the TSC Act. Part 7 of the *Biodiversity Conservation Act (2016)* (**BC Act**), which deals with Biodiversity assessment and approvals for development under the current provisions of the EP&A Act, does **not** apply.[15]

[14] Clause 34A BC Savings and Transitional Reg. 2017.
[15] Clause 34A(2) BC Savings and Transitional Reg. 2017.

The BC Savings and Transitional Reg does provide that where there is any change in the status of the listing of a species or ecological community, such as a new or up-listing under the BC Act this will result in a corresponding change under the TSC Act. This may trigger additional assessment requirements under Section 5A of the EP&A Act[16] such as a Species Impact Statement.[17]

However, where there has been no change in the status of the listing, there is currently no requirement to undertake any further assessment where a clause 34A certificate is in place. This failure to require developments to comply with current environmental assessment requirements and allow proponents to rely on outdated environmental assessment that does not reflect current ecological constraints (such as those caused by bushfire), is likely to result in environmental impacts that would be deemed unacceptable under current standards.

Recommendation:

Repeal Clause 34A of the BC Savings and Transitional Reg and require that development applications lodged under an approved concept plan are assessed under the current environmental planning legislation and instruments to ensure that environmental assessment is undertaken at the time the development application is lodged.

The planning and environment legislative framework does not contain mechanisms to appropriately address historical development

As the Committee has noted, historical developments "only need to follow the law at the time they were approved. These could be planning and environmental standards from years ago. Legal standards and community expectations have changed since then."

The legislative framework around development in NSW does not currently provide avenues for up-to-date planning and environmental standards to be applied to historical developments, either as a matter of legislative operation, or actively by consent authorities or other regulators (except in the limited circumstances set out in s 4.57 of the EP&A Act as discussed below). The planning framework is also, in this manner, unable to respond to changed environmental or other circumstances once a development consent is granted.

Although s 4.57 of the EP&A Act provides that the Planning Secretary or a Council may revoke or modify a consent, this only applies in circumstances where the provisions of a proposed SEPP or proposed LEP (respectively) give rise to the opinion of the Planning Secretary or the Council that the development should not be carried out or completed (or not without modification). This is unlikely to apply to historical development consents as contemplated by this Inquiry, which are inappropriate in the context of current (not proposed) planning controls. Additionally, s 4.57 does not apply to consents granted by the Minister or by the Court, for which there is no equivalent provision. Finally, s 4.57(7) entitles a person aggrieved by the revocation or modification of

[16] Section 5A of the EP&A Act was repealed in 2017 however may still apply to development applications or approved concept plans lodged before this date or where a section 34A certificate is in place.
[17] See Part 6, Division 2 of the repealed TSC Act.

consent to compensation for expenditure rendered abortive by the revocation or modification. In EDO's experience s 4.57 is rarely (if ever) used.

This is significantly more limited than applies for other planning and environmental authorisations, including in NSW and federally.

For example, under the *Protection of the Environment Operations Act 1997* (**POEO Act**), the appropriate regulatory authority has a very broad power to vary an environment protection licence (**EPL**). This can be done by application of the licence holder or "on the initiative of the appropriate regulatory authority"[18] at any time,[19] by way of notice provided to the licence holder.[20]

The POEO Act further provides for suspension or revocation of an EPL by the appropriate regulatory authority at any time, for a (non-exhaustive) number of reasons, including that "the scheduled development work to which the licence relates has not been commenced or completed and the appropriate regulatory authority is of the opinion that it is no longer appropriate that the work be carried out or completed."[21]

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) contains powers for the Minister to: vary an approval, including by revoking, varying or adding conditions;[22] suspend an approval;[23] or revoke an approval.[24] The Minister can use these powers where an approved action is likely to have a significant impact, which was not identified at the time of the action's approval, or is substantially greater than the impact identified at the time of the action's approval.[25]

This deficiency in the EP&A Act and other laws governing development in NSW, and the need for change, is particularly apparent when it comes to historical development consents, because of the high likelihood that the regulatory and environmental context having changed so that the original assessment and approval are no longer fit for purpose. However, it also applies to non-historical development consents, when circumstances change or further information about impacts come to light.

For instance, it is crucial that after events like the 2019-2020 bushfires or 2022 floods, which have had a significant impact on threatened species, on strategic planning, and on our understanding of risks in a changing climate, that councils and regulators are able to adjust development, which has an impact on the whole community, not only on the developer.

The public interest requires that environmental protections applying to development are fit for purpose at the time of construction, and are able to respond to unforeseen circumstances,

[18] POEO Act, s 58(3).
[19] POEO Act, s 58(4).
[20] POEO Act, s 58(5).
[21] POEO Act, s 79(5)(c).
[22] EPBC Act, s 143.
[23] EPBC Act, s 144.
[24] EPBC Act, s 145.
[25] EPBC Act, ss 143-145.

including following a major event, such as a major fire or flood, or in circumstances where the status of a threatened species or ecological community has changed.

Recommendation:

Revise s 4.57 of the EP&A Act to provide a broad legislative mechanism to suspend, revoke or vary any development consent. This should include provisions to modify or revoke development consent conditions issued under repealed statutes to ensure that development consents comply with the environmental assessment requirements under current Acts and instruments.

Revise s 4.57 of the EP&A Act to require reassessment of impacts where activities would have a substantially greater impact than those identified at the time of the action's approval, and to provide for any variation, suspension or revocation of consent considered necessary in light of the reassessment.

Case study: Manyana

In 2008, development approval was granted by the then Minister for the subdivision of a 20.2 hectare lot and construction of 182 homes in the township of Manyana, in the Shoalhaven region of the South Coast. The project was not substantially commenced, but it was found to have been physically commenced by the undertaking of engineering survey work carried out on site. As a result of these works Council accepted the development consent had not lapsed and issued a construction certificate for Stage 1 of the development on 19.11.2019.

The region surrounding Manyana was catastrophically affected by the Black Summer bushfires of 2019/2020. More than 1.1 million hectares of bushland across the South Coast region was incinerated, 61% of which burnt at high or very high severity. The site of the 2008 approved subdivision was not burned and had become a refuge and crucial habitat for species devastated by the bushfires.

In May 2020, less than 6 months after the bushfires, the proponent, Ozy Homes, advised that it intended to commence works which would require clearing approximately 17.18 ha of vegetation.

Despite the significant impact the bushfires had on a number of threatened species, including the grey headed flying fox, southern brown bandicoot, greater glider and powerful owl, there was no mechanism under NSW State environmental or planning laws that would or could suspend or revoke the approval, or even trigger reassessment of the project or the impact it would have on biodiversity. Council determined that s 4.57 of the EP&A Act was not applicable because the original consent was granted by the Minister.[26]

That a consent granted more than a decade earlier over a property that had then been land banked for that time, was still on foot and able to be acted on following such an extreme change in

[26] See Shoalhaven City Council Minutes of Extraordinary Meeting, 12 May 2020, CL20.107 Proposed Subdivision of Land, Approved by NSW State Government – Manyana, available at https://shoalhaven.infocouncil.biz/Open/2020/05/CL_20200512_AGN_16189_AT_EXTRA.htm.

the physical and ecological context of the development, was a stark illustration of this serious defects in the law.

Impacts of Historical DAs

The planning system needs to be adaptive to meet the current socio-economic needs of the community. The NSW Government has adopted a strategic planning focus to facilitate diverse and well-located development. The existence of historical developments undermines the planning system and the Government's strategic planning objectives because they are developments that are essentially operating outside the current planning and environmental assessment framework and are reflecting outdated urban planning.

Impact on biodiversity

Major events, such as the 2019-2020 bushfires or 2022 floods, may have such catastrophic impacts that certain approved activities should no longer be allowed to proceed as originally approved. For example, a situation may arise where an existing approval permits the clearing of an area of habitat that, following a major event, is now a critical remaining stand of habitat for a particular species.

For species not previously listed, listing as a threatened species in the ordinary course of events would trigger additional impact assessment requirements, particularly if a proposed development or activity is likely to significantly impact that species. However, where consent has already been granted, there is no ability for decision makers to intervene in circumstances where, if an approved action were to proceed, there is a high likelihood that a species would become extinct.

Impact on Urban and Regional Strategic Planning

Development consents, once "physically commenced" (and even sometimes where not, as is the case for the transitional provisions discussed above) remain on foot essentially in perpetuity. This encourages speculative "land banking", which frustrates strategic planning and disincentivises the construction to completion of developments (often housing stock).

The NSW Government has entered into the National Housing Accord with a commitment to deliver 377,000 new well-located homes across the state by 2029[27]. The existence of historical developments is inconsistent with this policy and facilitates land banking and the construction of housing that is incompatible with community requirements, which may no longer be appropriate for the location. For instance, climate change means that hazard mapping is changing, and a number of locations which might once have been considered appropriate for development are no longer so.

[27] NSW Housing Targets; https://www.planning.nsw.gov.au/policy-and-legislation/housing/housing-targets#:~:text=The%205%2Dyear%20targets%20respond,to%20the%20national%20housing%20crisis.

Conclusion

Historical development consents are of significant concern to the community, undermine strategic planning, and put people and ecosystems at risk. EDO **recommends** the following legislative reforms:

- Revise Div 4.9 of the EP&A Act (Post Consent Provisions), in particular s 4.53 (lapsing of consent). The Courts have interpreted 'building, engineering or construction work' very broadly. This provision should be tightened to require more substantive work to have been undertaken in a certain amount of time to avoid the consent lapsing. This amendment should apply to all development consents, regardless of when consent was granted. Further, development should be required to be completed within a specified timeframe and if not completed be subject to further environmental assessment.
- Remove the application of Part 3A to "transitional part 3A projects".
- Revise Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW) to require that development applications lodged under a concept plan approved under Part 3A are assessed under the current environmental and planning legislation and instruments.
- Repeal Clause 34A of the BC Savings and Transitional Reg and require that development applications lodged under an approved concept plan are assessed under the current environmental planning legislation and instruments to ensure that environmental assessment is undertaken at the time the development application is lodged.
- Revise s 4.57 of the EP&A Act to provide a broad legislative mechanism to suspend, revoke or vary any development consent. This should include provisions to modify or revoke development consent conditions issued under repealed statutes to ensure that development consents comply with the environmental assessment requirements under current Acts and instruments.
- Revise s 4.57 of the EP&A Act to require reassessment of impacts where activities would have a substantially greater impact than those identified at the time of the action's approval, and to provide for any variation, suspension or revocation of consent considered necessary in light of the reassessment.

Thank you for the opportunity to make a submission to the Committee on this issue.